



Jeff Grim

Final Analysis

Legislative Service Commission

Sub. H.B. 209

126th General Assembly
(As Passed by the General Assembly)

Reps. Combs, Carano, Chandler, C. Evans, Harwood, Martin, Perry, Trakas, Daniels, Fende, Yuko, Wolpert, Allen, Barrett, Blessing, Bocchieri, Brown, Distel, Domenick, D. Evans, Flowers, Hughes, Kearns, Key, Otterman, Reidelbach, Schneider, Seaver, Seitz, Webster, Yates

Sen. Mumper

Effective date: March 29, 2006

ACT SUMMARY

- Allows manufacturers and wholesale distributors of beer or intoxicating liquor to provide to other manufacturers or wholesale distributors travel, lodging, food, and beverages and to provide to liquor permit holders food, beverages, and recreational activities.
- Qualifies the owner or operator of a community arts center or a community theater for issuance of a D-5h liquor permit.
- Creates an additional qualification under which a D-5j permit may be issued within a community entertainment district.
- Excludes wine sales from the total gross receipts requirement governing the issuance of a D-5i liquor permit, and modifies the population requirement for the issuance of a D-5i liquor permit.

CONTENT AND OPERATION

Gifts from manufacturers and wholesale distributors of beer or intoxicating liquor

Law generally retained by the act, but to which the act creates an exception, prohibits a manufacturer from aiding or assisting the holder of any liquor permit for sale at wholesale, and a manufacturer or wholesale distributor from aiding or assisting the holder of any permit for sale at retail, by gift or loan of any money or

property of any description or other valuable thing or by giving premiums or rebates.¹ It further prohibits a holder of any liquor permit from accepting any of those items, provided that the manufacturer or wholesale distributor may furnish to a retail permittee the inside signs or advertising and the tap signs and devices authorized by continuing law. (Sec. 4301.24.) The act creates an exception to these prohibitions by allowing manufacturers and wholesale distributors to provide specified gifts to other manufacturers or wholesale distributors and liquor permit holders.

The act states that notwithstanding the restrictions placed on manufacturers, wholesale distributors, and holders of liquor permits for sale at retail or wholesale under the law discussed above, a manufacturer or wholesale distributor may engage in the following conduct, provided that the conduct does not lead to control of a permit holder by another person:

(1) A manufacturer or wholesale distributor may accept from or provide to a manufacturer or wholesale distributor travel, lodging, food, and beverages.

(2) A manufacturer or wholesale distributor may provide to a retail permit holder or the permit holder's employees or agents food, beverages, and recreational activities under either of the following circumstances:

(a) Food and beverages are provided by the manufacturer or wholesale distributor or the manufacturer's or wholesale distributor's employees or agents during a business meeting with a retail permit holder or the permit holder's employees or agents.

(b) Recreational activities are enjoyed in the presence of the retail permit holder or the permit holder's employees or agents and the manufacturer or wholesale distributor or the manufacturer's or wholesale distributor's employees or agents who are paying for the recreational activities. (Sec. 4301.242(A).)

Under the act, "recreational activities" includes sporting events, concerts, theatrical performances, and other forms of entertainment (sec. 4301.242(B)).

¹ Continuing law defines "manufacturer" as any person engaged in the business of manufacturing beer or intoxicating liquor (sec. 4301.01(B)(9), not in the act). "Wholesale distributor" and "distributor" means a person engaged in the business of selling to retail dealers for purposes of resale (sec. 4301.01(B)(10), not in the act).

D-5h permit for nonprofit organization that operates community arts center or community theater

Continuing law allows the D-5h liquor permit to be issued to any nonprofit organization that: (1) is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code, (2) owns or operates a fine arts museum, and (3) has not less than 5,000 bona fide members possessing full membership privileges. The holder of a D-5h permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, but the permit holder cannot so sell beer or intoxicating liquor after 1 a.m. A D-5h permit cannot be transferred to another location, and no quota restrictions may be placed on the number of D-5h permits that can be issued. The fee for the D-5h permit is \$1,875. (Sec. 4303.181(H).)

Under the act, a D-5h permit also may be issued to any nonprofit organization that is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code and that owns or operates either of the following:

(1) A community arts center. The act defines "community arts center" as a facility that provides arts programming to the community in more than one arts discipline, including, but not limited to, exhibits of works of art and performances by both professional and amateur artists. (Sec. 4303.181(H)(2)(b).)

(2) A community theater, provided that the nonprofit organization is a member of the Ohio Arts Council and the American Community Theatre Association and has been in existence for not less than ten years. Under the act, "community theater" means a facility that contains at least 150 seats and has a primary function of presenting live theatrical performances and providing recreational opportunities to the community. (Sec. 4303.181(H)(2)(c).)

D-5j permit for retail food establishments or food service operations within community entertainment districts

Law unchanged by the act authorizes a D-5j permit to be issued to the owner or operator of a retail food establishment or a food service operation that is licensed under the Retail Food Establishments and Food Service Operations Law to sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold and to sell beer and intoxicating liquor in the same manner and amounts not for consumption on the premises where sold as may be sold by holders of D-1 (sales of beer for on-premises consumption) and D-2 (sales of wine or mixed beverages for on-premises consumption) permits. The holder of a D-5j permit may exercise the same privileges, and must observe the same hours of operation, as the holder of a

D-5 permit (sales of beer or intoxicating liquor for on-premises consumption at restaurants or night clubs). The D-5j permit must be issued only within a community entertainment district that is designated under continuing law. Under law retained, but expanded by the act (see below), an entertainment district must meet any one of three qualifications.

The act establishes another qualification that specifies that a community entertainment district may be located in a municipal corporation with a population of at least 10,000, if not less than \$70 million will be invested in development and construction in the community entertainment district's area located in the municipal corporation. (Sec. 4303.181(J)(2).)

D-5i permit for retail food establishments or food service operations that operate as restaurants

Under ongoing law, a D-5i permit may be issued to the owner or operator of a retail food establishment or food service operation that is licensed under the Retail Food Establishment and Food Service Operations Law, that operates as a restaurant for purposes of the Liquor Permits Law, and that meets certain requirements. The act retains those requirements, but makes changes to two of them. Under law retained in part by the act, the restaurant's receipts from beer and liquor sales cannot exceed 25% of its total gross receipts, and the restaurant must be located in a municipal corporation or a township with a population of 75,000 or less. Under the act, wine sales are excluded from total gross receipts for purposes of the first requirement. Additionally, the act increases the population requirement from 75,000 or less to 100,000 or less. (Sec. 4303.181(I).)

COMMENT

Subsection 501(c)(3) of the Internal Revenue Code concerns corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or education purposes, or to foster national or international amateur sports competition (with a caveat), or for the prevention of cruelty to children or animals--no part of the net earnings of which entity inures to the benefit of any private shareholder or individual; no substantial part of the activities of which entity is carrying on propaganda, or otherwise attempting, to influence legislation (with a caveat); and which entity does not participate in, or intervene in (including statement publication or distribution), any political campaign on behalf of or in opposition to any candidate for public office.

HISTORY

ACTION	DATE
Introduced	04-20-05
Reported, H. Local & Municipal Gov't & Urban Revitalization	06-14-05
Passed House (99-0)	06-21-05
Reported, S. Agriculture	10-26-05
Passed Senate (31-0)	10-26-05
House concurred in Senate amendments (91-1)	11-15-05

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