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Bill Analysis

Legislative Service Commission

S.B. 131

126th General Assembly
(As Introduced)

Sens. Mumper, Dann, Zurz

BILL SUMMARY

- Changes certain local option elections on Sunday sales of intoxicating liquor, those allowing sales between 1 p.m. and midnight, to allow sales between 11 a.m. and midnight.
- Authorizes certain Sunday liquor sales to begin at 11 a.m. even if the sales previously were approved by the voters to commence at 1 p.m., but allows voters to hold an election to revert the time of commencement to 1 p.m. in accordance with certain conditions.
- Makes other changes in the law governing local option elections on Sunday sales of beer and intoxicating liquor at or in election precincts, parts of a precinct, specific locations, and community facilities.
- Prohibits the sale, offering for sale, purchase, and use of alcohol vaporizing devices.
- Allows opened bottles of wine that are purchased at restaurants to be transported in motor vehicles under specified conditions.

CONTENT AND OPERATION

Overview of current law on Sunday sales of beer, wine and mixed beverages, or intoxicating liquor

Current law generally prohibits the sale of intoxicating liquor on Sunday after 2:30 a.m. by a permit holder unless the sale has been approved in a local option election held in the election precinct in which the premises is located (sec. 4301.22(D), not in the bill, and sec. 4303.182(A)). Questions may be submitted to the voters at a primary or general election to allow the sale of beer, wine and mixed beverages, or intoxicating liquor on Sundays either between the hours of

10 a.m. and midnight or between 1 p.m. and midnight. The question or questions submitted may govern sales in an election precinct, in a specific area of an election precinct, at a particular location, or at a community facility.¹

Changing Sunday sale of intoxicating liquor questions from between 1 p.m. and midnight to between 11 a.m. and midnight

Current law

Under current law, seven questions govern the Sunday sale of intoxicating liquor that may be legally sold in an election precinct or part of an election precinct on days of the week other than Sunday. Four of the questions for election precincts and three of the questions for parts of election precincts pertain to sales between the hours of 1 p.m. and midnight, and three of the questions for both election precincts and their parts pertain to sales between 10 a.m. and midnight. One question from each time period pertains to sales of wine and mixed beverages for off-premises consumption, another question from each time period pertains to sales of intoxicating liquor for on-premises consumption, and a final question from each time period pertains to sales of intoxicating liquor for on-premises consumption at premises where the sale of food and other goods and services exceeds 50% of the total gross receipts of the permit holder at the premises. A seventh question for election precincts pertains to intoxicating liquor sales between the hours of 1 p.m. and midnight for on-premises consumption at an outdoor performing arts center. The latter question may be presented to the voters of a precinct in which an outdoor performing arts center is located only by the legislative authority of the municipal corporation in which, or by the board of trustees of the township in which, the center is located and only within a specified period of time. (Secs. 4301.351(B)(1), (2), (3), and (4) and (C)(1), (2), and (3) and 4301.354(B)(1), (2), and (3) and (C)(1), (2), and (3).)

Current law specifies how the results of local option elections affect the sale of intoxicating liquor at locations wishing to sell intoxicating liquor on Sundays in election precincts or parts of election precincts. If the voters of a precinct or part of a precinct, whichever applies, approve the sale of intoxicating

¹ "Community facility" means either of the following: (1) any convention, sports, or entertainment facility or complex, or any combination of these, that is used by or accessible to the general public and that is owned or operated in whole or in part by the state, a state agency, or a political subdivision of the state or that is leased from, or located on property owned by or leased from, the state, a state agency, a political subdivision of the state, or a convention facilities authority created under current law, or (2) an area designated as a community entertainment district pursuant to current law (sec. 4301.01(B)(19), not in the bill).

liquor on Sundays, locations within the precinct or part of a precinct are authorized to sell intoxicating liquor. (Secs. 4301.361 and 4301.364.)

Changes proposed by the bill

Certain Sunday sale hours and D-6 permits. Under the bill, the questions governing the Sunday sale of intoxicating liquor are substantively the same as those that may be submitted in an election precinct under current law, except that the bill changes the questions governing the hours of Sunday sale of intoxicating liquor between 1 p.m. and midnight to apply to Sunday sale of intoxicating liquor between 11 a.m. and midnight (secs. 4301.351(B)(1), (2), (3), and (4) and 4301.354(B)(1), (2), and (3)). The bill also generally requires that the sale of intoxicating liquor be permitted between the hours of 11 a.m. and midnight on Sunday under a D-6 permit (Sunday liquor sales) if the sale of intoxicating liquor between the hours of 1 p.m. and midnight was approved at a local option election before the bill's effective date, except for the exception discussed below (sec. 4303.182(A)(3)). Finally, the bill requires that a D-6 permit be issued to the holders of specified liquor permits if Sunday sales are allowed as the result of an election in or at an election precinct, a specific area of a precinct, a particular location, or a community facility during specified hours. (Sec. 4303.182(A).)

Exception special election. The bill allows the electors in a precinct in which the commencement time is changed by its operation to 11 a.m. (see above) to hold an election to revert that time to 1 p.m. This election must be held under the following conditions:

- At the first general election that occurs after the bill's effective date unless that general election will be held less than 135 days after that date, in which case the election must be held at the immediately following general election;
- Under one of the "11 a.m. to midnight" questions (other than the question pertaining to outdoor performing arts centers), as amended by the bill, that seeks approval of Sunday sales of intoxicating liquor in an election precinct or part of an election precinct, as applicable, except that the starting time for sales under the question must be stated as 1 p.m. rather than 11 a.m.;
- In accordance with the applicable requirements and election provisions that govern those questions and that are established under the Liquor Control Law (Section 4(A)).

Not later than 45 days after the bill's effective date, the Superintendent of Liquor Control must publish notice of these special election provisions in a newspaper of general circulation in each county of the state (Section 4(B)).

Permitted hours of sale and effective period of election. The bill specifies that locations in a precinct or part of a precinct, whichever applies, generally are only authorized to sell intoxicating liquor on Sunday during the hours specified in the relevant questions--either 10 a.m. to midnight or 11 a.m. to midnight. As under current law, the results of elections on the Sunday liquor sales questions remain in effect until another election is held on the same question for the precinct or part of the precinct, but no election can be held on the same question for the precinct or part of the precinct more than once every four years. (Secs. 4301.361, 4301.364, and 4303.182(A), and sec. 4301.37(B) and (D), not in the bill.)

Validity of pending petitions. Under the bill, if a petition seeks the holding of an election on Sunday liquor sales on or after the bill's effective date under the questions seeking approval of Sunday sales for an election precinct, a specific area of a precinct, a specified location, or a community facility (which question now generally refers to "1 p.m. to midnight," but the bill changes to "11 a.m. to midnight") and the petition contains signatures that were placed on it before that date, the petition is not invalid merely because the question or questions sought to be submitted to the voters and contained in the petition state that Sunday liquor sales will commence beginning at 1 p.m. rather than 11 a.m. (Section 3).

Changes in procedure for local option elections on liquor sales at a particular location

Change in the petition requirements and in the wording of the questions on the ballot

Petition. Current law allows a local option election to be held in an election precinct on the sale of beer, wine and mixed beverages, or intoxicating liquor at a particular location within the precinct if the petitioner for the election is one of the following: (1) an applicant for the issuance or transfer of a liquor permit at, or to, a particular location within the precinct, (2) the holder of a liquor permit at a particular location within the precinct, (3) a person who operates or seeks to operate a liquor agency store at a particular location within the precinct, or (4) the designated agent for such an applicant, permit holder, or liquor agency store (sec. 4301.323, not in the bill, and sec. 4301.333(A)).

The petition for the election described above currently must contain all of the following: (1) a notice that the petition is for the submission of a question or questions seeking an election on sales of beer, wine and mixed beverages, or intoxicating liquor at a particular location, (2) the name of the applicant for the

issuance or transfer, or the holder, of the liquor permit or, if applicable, the name of the liquor agency store, including any trade or fictitious names under which the applicant, holder, or liquor agency store either intends to do or does business at the particular location, and (3) the address and proposed use of the particular location within the election precinct to which the results of the question or questions will apply (sec. 4301.333(B)(1), (2), and (3)). The bill specifies that a petition that seeks approval of Sunday sales at a particular location also must contain a statement indicating whether the hours of sale sought are between 10 a.m. and midnight or between 11 a.m. and midnight (sec. 4301.333(B)(4)).

Ballot. Under current law, the wording of a Sunday liquor sales question that is placed on the ballot must state whether beer, wine and mixed beverages, or intoxicating liquor is to be sold under the permit sought for, or under the permit issued to, the particular premises, or is to be sold at the liquor agency store, that is the subject of the election (sec. 4301.355(B)). Under the bill, the question also must specify that the sale of beer, wine and mixed beverages, or intoxicating liquor on Sunday will be either between the hours of 10 a.m. and midnight or 11 a.m. and midnight (sec. 4301.355(B)(2)).

Effect of election concerning Sunday liquor sales

Current law specifies how the results of a local option election concerning Sunday sales at a particular location affect the sale of beer, wine and mixed beverages, or intoxicating liquor at the location. If the voters in a precinct approve the Sunday sale of beer, wine and mixed beverages, or intoxicating liquor at a particular location, the location is allowed to sell whichever was the subject of the election. The bill adds that the location specified in a question generally is only authorized to sell beer, wine and mixed beverages, or intoxicating liquor during the hours authorized under the bill and approved in the local option election. (Secs. 4301.365(A) and (D) and 4303.182(A).)

Under existing law, if a question is submitted to the electors of a precinct proposing to authorize the sale of beer, wine and mixed beverages, or spirituous liquor between the hours of 10 a.m. and midnight at a particular location at which the sale of beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor is already allowed between the hours of 1 p.m. and midnight and the question submitted is defeated, the sale of beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor between the hours of 1 p.m. and midnight must continue at that particular location. Under the bill, if the question allowing sales between 10 a.m. and midnight is defeated and if the particular location is already allowed to sell beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor either between the hours of 11 a.m. and midnight or between the hours of 1 p.m. and midnight, the particular location is allowed to continue to sell beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor

between the hours of 11 a.m. and midnight or 1 p.m. and midnight, as applicable. (Sec. 4301.365(H).)

Changes in procedure for local option elections on liquor sales at a community facility

Change in the petition requirements and in the wording of the questions on the ballot

Petition. Current law allows a local option election to be held in a municipal corporation or the unincorporated area of a township on the sale of beer and intoxicating liquor at a community facility located within the municipal corporation or unincorporated area if the petitioner for the election presents a petition and other specified information to the board of elections of the county in which the community facility is located. The petition must contain both of the following: (1) a notice that it is for the submission of a question authorizing the sale of beer and intoxicating liquor on all days of the week except Sunday and between the hours of 1 p.m. and midnight on Sunday at a particular community facility, and (2) the name and address of the community facility and, if the community facility is a community entertainment district, the boundaries of the district. (Sec. 4301.334(A).) The bill specifies that the petition also must include a statement indicating whether the hours of Sunday sales sought in the local option election are between 10 a.m. and midnight or between 11 a.m. and midnight (sec. 4301.334(A)(1)).

Ballot. Under current law, the question for a local option election authorizing the Sunday sale of beer and intoxicating liquor at a community facility specifies that the sale can only occur on days of the week other than Sunday and between the hours of 1 p.m. and midnight on Sunday. The bill changes the hours of Sunday sale specified on the ballot question from between 1 p.m. and midnight to between 10 a.m. and midnight or between 11 a.m. and midnight, whichever time period is sought. (Sec. 4301.356.)

Effect of election concerning Sunday liquor sales

Under current law, if a majority of the voters approve the sale of beer and intoxicating liquor at a community facility, the community facility is authorized to sell beer and intoxicating liquor for the use specified in the question. The bill provides that the sale of beer and intoxicating liquor is allowed on Sunday at a community facility generally only during the hours approved by the voters, either between 10 a.m. and midnight or between 11 a.m. and midnight. (Secs. 4301.366 and 4303.182(A).)

Prohibitions regarding alcohol vaporizing devices

The bill prohibits a person from selling or offering for sale an alcohol vaporizing device (sec. 4301.65(B)). "Alcohol vaporizing device" means a machine or other device that mixes beer or intoxicating liquor with pure oxygen or any other gas to produce a vaporized product for the purpose of consumption by inhalation (sec. 4301.65(A)). A person who violates this prohibition is guilty of a misdemeanor of the third degree. For a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree. (Sec. 4301.99(J).)

The bill further prohibits a person from purchasing or using an alcohol vaporizing device (sec. 4301.65(C)). A person who violates this prohibition is guilty of a minor misdemeanor (sec. 4301.99(A)).

Transportation of opened bottles of wine

Existing law prohibits a person from having in the person's possession an opened container of beer or intoxicating liquor in various circumstances. One of these circumstances is while operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking. Another of these circumstances is while being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking. (Sec. 4301.62(B)(4) and (5).) However, with regard to both of those circumstances, current law excludes a person who pays for a chauffeured limousine, or a guest of the person, from the opened container prohibition when all of the following apply:

- (1) The person or guest is a passenger in the limousine;
- (2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located; and
- (3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking (sec. 4301.62(D)).

The bill also excludes from the opened container prohibition a person who has in a motor vehicle that the person is operating an opened bottle of wine that was purchased from the holder of a D permit issued to a restaurant and that is stored in the trunk of the motor vehicle or, if the motor vehicle does not have a

trunk, behind the last upright seat or in an area not normally occupied by the driver or the passengers (sec. 4301.62(E)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-21-05	p. 430

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