



# Ohio Legislative Service Commission

## Final Analysis

Jeff Grim

### Sub. S.B. 173

130th General Assembly  
(As Passed by the General Assembly)

**Sens.** Hughes, Seitz, Uecker, Schiavoni, Balderson, Coley, Eklund, Hite, Jordan, Kearney, Oelslager

**Reps.** Dovilla, Buchy, Gerberry, Amstutz, Barnes, Beck, Blessing, Boyd, Brenner, Brown, Burkley, Cera, Conditt, DeVitis, Duffey, Hackett, McClain, Milkovich, Pelanda, Ramos, Retherford, Rogers, Ruhl, Stebelton, Young

**Effective date:** July 10, 2014

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## ACT SUMMARY

### Sample servings of beer, wine, and mixed beverages

- Expands the locations that qualify for a D-8 liquor permit (authorizing the sale of tasting samples of specified alcoholic beverages) to include a retail store to which all of the following apply:
  - It has been issued a liquor permit authorizing retail sale of beer, wine, and mixed beverages for off-premises consumption (a C-1, C-2, or C-2x liquor permit);
  - It has at least 4,500 square feet of floor area;
  - It is located in a municipal corporation or township with a population of 5,000 or less; and
  - It generates 60% of its sales in nonalcohol related items.
- Generally authorizes specified persons to conduct consumer product instruction and provide serving samples of beer, wine, and mixed beverages, without obtaining a

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\* This version corrects a typographical error.

retail liquor permit, on a D-8 permit premises where beer, wine, or mixed beverages may be sold for off-premises consumption.

- Requires the Liquor Control Commission to adopt rules in accordance with the Administrative Procedure Act to implement the act's provisions governing consumer product instruction and serving samples of beer, wine, or mixed beverages.

### **Spirituos liquor tasting samples**

- Revises the law governing sales of spirituous liquor tasting samples at agency stores in the following ways:
  - Requires specified individuals that offer tasting samples to purchase the spirituous liquor from the agency store at which the samples are offered at the current retail price, rather than requiring an agency store to purchase the spirituous liquor at the current retail price and the individuals to reimburse the store;
  - Requires specified individuals that offer tasting samples to provide notice to the Division of Liquor Control regarding the tasting event ten business days prior to the tasting event, rather than five days prior; and
  - Allows up to ten spirituous liquor tasting sample events in a calendar month, provided that specified criteria are met, rather than up to five in a calendar month.

### **F-6 liquor permit**

- Allows an F-6 liquor permit (authorizing the auction of wine at a special event for the benefit of a nonprofit corporation) to be issued for the same location as an F-8 liquor permit (allowing alcohol sales at special events held on public property).
- Prohibits an F-6 and F-8 permit from being exercised concurrently at the same location.

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## **CONTENT AND OPERATION**

### **Background: tasting samples and the D-8 liquor permit**

Under continuing law, the D-8 liquor permit may be issued to an agency store, or to the holder of a C-1, C-2, or C-2x liquor permit that is a retail store and that has either of the following characteristics:



(1) The store has at least 5,500 square feet of floor area, and it generates more than 60% of its sales in general merchandise items and food for consumption off the premises where sold; or

(2) Wine constitutes at least 60% of the value of the store's inventory.<sup>1</sup>

The C-1, C-2, and C-2x permits govern the retail sale of beer, wine, and mixed beverages for off-premises consumption.<sup>2</sup>

Generally, the D-8 permit authorizes:

(1) The holder of a C-1, C-2, or C-2x permit to sell tasting samples of beer, wine, and mixed beverages, at retail, for on-premises consumption in an amount not to exceed two ounces or another amount designated by rule of the Liquor Control Commission; or

(2) An agency store to sell tasting samples of spirituous liquor in accordance with the law governing the sale of spirituous liquor.<sup>3</sup>

## **Sample servings of beer, wine, and mixed beverages**

### **Tasting samples at retail stores**

The act expands the type of establishment for which the D-8 permit may be issued for purposes of the sale of tasting samples of beer, wine, or mixed beverages. It authorizes a D-8 permit to be issued to the holder of a C-1, C-2, or C-2x permit that is a retail store and that has all of the following characteristics:

(1) It is located in a municipal corporation or township with a population of 5,000 or less;

(2) It has at least 4,500 square feet of floor area; and

(3) It generates more than 60% of its sales in general merchandise items and food consumption off the premises where sold.<sup>4</sup>

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<sup>1</sup> R.C. 4303.184(A)(1) and (2)(a) and (c).

<sup>2</sup> R.C. 4303.11, 4303.12, and 4303.121, not in the act.

<sup>3</sup> R.C. 4303.184(C).

<sup>4</sup> R.C. 4303.184(A)(2)(b).



## Persons serving samples and conducting product instruction

The act authorizes specified persons to provide serving samples of and conduct consumer product instruction about the products of a manufacturer, supplier, or broker of beer, wine, or mixed beverages. The instruction or sampling must take place on the premises of a C-1, C-2, or C-2x permit holder who holds a D-8 permit and who is authorized to sell beer, wine, or mixed beverages for off-premises consumption. In such a circumstance, the person conducting the instruction or providing samples is not required to obtain a retail liquor permit under the Liquor Control Law.

The persons authorized under the act to conduct consumer product instruction or provide serving samples include a manufacturer, supplier, or broker of beer, wine, or mixed beverages, or its agent, solicitor, or salesperson. The act specifies that wholesale distributors are excluded from this authorization.<sup>5</sup>

Under the act, if sample servings of beer, wine, or mixed beverages will be provided, the person providing the sample servings must purchase the beer, wine, or mixed beverages from the D-8 permit holder at the ordinary retail price. Additionally, the sample servings must be limited to the amount and frequency authorized under the D-8 permit. (Continuing law specifies that under the D-8 permit, the size of a tasting sample of beer, wine, or a mixed beverage may not exceed two ounces or another amount designated by rule of the Liquor Control Commission and not more than four tasting samples may be provided per person per day.)<sup>6</sup>

The act also requires the Liquor Control Commission to adopt rules in accordance with the Administrative Procedure Act to implement the act's provisions governing consumer product instruction and serving samples of beer, wine, or mixed beverages.<sup>7</sup>

Under continuing law, the persons specified above, along with wholesale distributors, may continue to conduct product instruction and provide serving samples of beer and intoxicating liquor on the premises of a retail permit holder who may sell such products for on-premises consumption.<sup>8</sup>

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<sup>5</sup> R.C. 4303.251(B).

<sup>6</sup> R.C. 4303.184(C)(1) and (3), and 4303.251(B).

<sup>7</sup> R.C. 4303.251(B).

<sup>8</sup> R.C. 4303.251(A).



## Spirituos liquor tasting samples

The act modifies the law governing the sale of spirituous liquor tasting samples at stores under contract with the Division of Liquor Control to sell spirituous liquor. Such stores are known as agency stores. Spirituous liquor is any intoxicating liquor containing more than 21% alcohol by volume, and a tasting sample generally means a serving of not more than a quarter ounce of spirituous liquor.<sup>9</sup>

The act first modifies the procedure by which tasting samples of spirituous liquor may be sold at an agency store. Under law unchanged by the act, an agency store that holds a D-8 permit may allow brokers in and solicitors of alcoholic beverages and persons involved in the trade marketing of alcoholic beverages to sell tasting samples of spirituous liquor at the agency store.<sup>10</sup> In order to sell tasting samples under continuing law, the trade marketing professional, broker, or solicitor must provide written notice to the Division of Liquor Control. The act requires the trade marketing professional, broker, or solicitor to provide the written notice to the Division not less than ten business days prior to the tasting event. Under former law, the trade marketing professional, broker, or solicitor had to provide written notice not less than five business days prior to the tasting event. Under continuing law, the notice must include the date and time of the sampling and the type and brand of spirituous liquor to be sampled.<sup>11</sup>

The act also requires the trade marketing professional, broker, or solicitor to directly purchase from the agency store the bottles of spirituous liquor that will be used to provide tasting samples at the current retail price. Under former law, the agency store had to purchase the bottles of spirituous liquor that were to be used to provide tasting samples at the current retail price, and the trade marketing professional, broker, or solicitor had to reimburse the store out of the amount collected for the sale of the tasting samples.<sup>12</sup>

The act increases the frequency with which the sale of tasting samples may occur at an agency store. Under former law, an agency store could host not more than five tasting events per calendar month. Under the act, an agency store may host not more than ten tasting events per calendar month, so long as not more than two tasting events

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<sup>9</sup> R.C. 4301.01, not in the act, and 4301.171(A).

<sup>10</sup> R.C. 4301.171(B).

<sup>11</sup> R.C. 4301.171(B) and (C).

<sup>12</sup> R.C. 4301.171(F).



take place during the same day and there is not less than one hour between the end of one event and the beginning of another event.<sup>13</sup>

## F-6 liquor permit

The act allows an F-6 liquor permit to be issued for the same location as an F-8 liquor permit, provided that the two permits are not exercised concurrently. Generally, the F-6 permit is issued to a nonprofit organization to auction bottles of wine at a benefit event for off-premises consumption. An F-6 permit is not valid for more than 72 hours and no more than six may be issued to the same nonprofit organization in a year.<sup>14</sup>

Generally, the F-8 permit is issued to a nonprofit organization that manages, for the benefit of the public and by contract with a political subdivision of the state, publicly owned property. It authorizes sale of beer or intoxicating liquor by the individual drink at specific events conducted on the public property and appurtenant streets. An F-8 permit is valid for not more than nine months.<sup>15</sup>

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## HISTORY

ACTION	DATE
Introduced	08-08-13
Reported, S. Agriculture	11-21-13
Passed Senate (32-0)	12-04-13
Reported, H. Policy and Legislative Oversight	03-12-14
Passed House (91-0)	03-26-14
Senate concurred in House amendments (31-0)	04-01-14

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<sup>13</sup> R.C. 4301.171(L).

<sup>14</sup> R.C. 4303.208(D) and 4303.206, not in the act.

<sup>15</sup> R.C. 4303.208(A)(1) and (3).

