



# Ohio Legislative Service Commission

## Bill Analysis

Jeff Grim

### Sub. S.B. 116\*

130th General Assembly  
(As Reported by S. Agriculture)

**Sens.** Kearney, Brown, Seitz

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## BILL SUMMARY

### Outdoor refreshment areas

- Authorizes the creation of an outdoor refreshment area by the legislative authority of a municipal corporation or township with a population of more than 35,000 people.
- Permits the Division of Liquor Control to issue an outdoor refreshment area designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder located within the outdoor refreshment area that is in compliance with the Liquor Control Law and the specific terms of the holder's permit.
- Exempts from the Open Container Law any person who is carrying an open container of beer or intoxicating liquor, purchased from an establishment with an outdoor refreshment area designation, while at an outdoor location within the outdoor refreshment area.
- Authorizes a municipal corporation or township to adopt safety requirements for outdoor refreshment areas.
- Requires a municipal corporation or township to review the operation of an outdoor refreshment area every five years after its creation.
- Authorizes the dissolution of all or a part of an outdoor refreshment area.

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\* This analysis was prepared before the report of the Senate Agriculture Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Creates the Outdoor Refreshment Area Study Committee to study the utility and viability of allowing municipal corporations and townships that have a population of 35,000 or less to create an outdoor refreshment area.

## **Appropriation**

- Increases appropriations for fiscal year 2015 to TourismOhio by \$500,000, and earmarks the money to support the 2015 Major League Baseball All-Star Game in Cincinnati.

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## **CONTENT AND OPERATION**

### **Outdoor refreshment areas**

#### **Overview**

The bill allows the mayor of a municipal corporation or the fiscal officer of a township to submit an application to the legislative authority of the municipal corporation or township to establish an outdoor refreshment area. Upon approval by the legislative authority, the outdoor refreshment area is created. Once the outdoor refreshment area is created, the Division of Liquor Control must issue an outdoor refreshment area designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder that is in compliance with the Liquor Control Law and the specific terms of the holder's permit. Any person who is carrying an open container of beer or intoxicating liquor, purchased from an establishment with an outdoor refreshment area designation, while at an outdoor location within the outdoor refreshment area is exempted from the Open Container Law. Under the Open Container Law, a person generally is prohibited from carrying an open container of beer or intoxicating liquor in public, unless a specific exception applies.

#### **Outdoor refreshment areas**

##### **Restrictions on the creation of outdoor refreshment areas**

Under the bill, outdoor refreshment areas only may be created in a municipal corporation or township with a population greater than 35,000 people.<sup>1</sup> The size of an outdoor refreshment area cannot exceed one-half mile by one-half mile and must contain no fewer than four total A-1, A-1-A, A-1c, A-2, or D liquor permit holders.<sup>2</sup> Those permits generally allow the permit holder to sell beer or intoxicating liquor for

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<sup>1</sup> R.C. 4301.82(D)(4).

<sup>2</sup> R.C. 4301.82(A) and (B).



on-premises consumption or in sealed containers for off-premises consumption.<sup>3</sup> Intoxicating liquor includes all beverages, except for beer, containing .5% or more of alcohol by volume.<sup>4</sup>

The number of outdoor refreshment areas that may be created within a single municipal corporation are limited as follows:

- Not more than one per municipal corporation or township with a population of 35,001-150,000 people;
- Not more than two per municipal corporation or township with a population between 150,001-275,000 people; and
- Not more than three per municipal corporation or township with a population of 275,001 or more people.

For purposes of making this determination, the population of a municipal corporation or township is the population included in the most recent regular federal decennial census.<sup>5</sup>

#### **Application process**

Under the bill, the mayor of a municipal corporation or the fiscal officer of a township may file an application for the creation of an outdoor refreshment area with the legislative authority of the municipal corporation or township in which the proposed outdoor refreshment area will be created. An application to create an outdoor refreshment area must contain the following information:

- A map or survey of the proposed area;
- A statement of the nature and types of establishments within, or proposed to be within, the proposed area;
- A statement that the proposed district will encompass not fewer than four A-1, A-1-A, A-1c, A-2, or D permit holders;
- Evidence that the uses of land within the proposed area are in accord with the municipal corporation's master zoning plan or map; and

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<sup>3</sup> R.C. 4303.02, 4303.021, 4303.022, 4303.03 and 4303.13 to 4303.184, not in the bill.

<sup>4</sup> R.C. 4301.01(A)(1), not in the bill.

<sup>5</sup> R.C. 4301.82(D).



- Proposed safety regulations.<sup>6</sup>

Within 45 days after the application is filed with the legislative authority, the legislative authority must publish a public notice, once a week for two consecutive weeks in one newspaper of general circulation in the municipal corporation or township. The legislative authority must ensure that the notice states that the application is on file in the office of the clerk of the municipal corporation or township and is available for inspection by the public during regular business hours. The notice also must indicate the date and time of any public hearing regarding the application.<sup>7</sup>

### **Application approval or disapproval**

Not earlier than 30 but not later than 60 days after the initial publication of the notice, the legislative authority must approve or disapprove the application. To approve the application, the legislative authority must pass an ordinance or resolution by an affirmative majority vote. If the application is approved, the proposed outdoor refreshment area is created. Upon creation of the outdoor refreshment area, the legislative authority must send notice of the approval to the Division of Liquor Control along with a description of the area. If the application is disapproved, the applicant may make changes to secure approval.<sup>8</sup>

### **Outdoor refreshment area designations**

After the creation of an outdoor refreshment area, the Division of Liquor Control must issue an outdoor refreshment area designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder located within the area that is in compliance with the Liquor Control Law and the specific terms of the holder's permit. The Division is prohibited from charging a fee for the issuance of the designation. The designation allows the patrons of the establishment owned by the permit holder to carry open containers of beer or intoxicating liquor purchased at the establishment at outdoor locations within the outdoor refreshment area, as discussed below.<sup>9</sup>

### **Adoption of safety requirements for an outdoor refreshment area**

At any time, the legislative authority of a municipal corporation or township in which an outdoor refreshment area is located may adopt an ordinance or resolution that establishes requirements the legislative authority determines necessary to ensure safety

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<sup>6</sup> R.C. 4301.82(B).

<sup>7</sup> R.C. 4301.82(C).

<sup>8</sup> R.C. 4301.82(C).

<sup>9</sup> R.C. 4301.82(E).



within the area. The legislative authority may, but is not required to, include any safety requirements proposed by the mayor or fiscal officer as part of an application for the creation or modification of the outdoor refreshment area (see above). Any safety regulations adopted by the legislative authority may be modified at any time.<sup>10</sup>

Prior to adopting an ordinance or resolution to establish or modify safety regulations for an outdoor refreshment area, the legislative authority must give notice of its proposed action by publication once a week for two consecutive weeks in one newspaper of general circulation in the municipal corporation or township. Subsequent to adopting any ordinance or resolution, the legislative authority must provide notice to the Division of Liquor Control.<sup>11</sup>

### **Expansion of existing areas**

The bill authorizes a municipal corporation or township to expand an existing outdoor refreshment area. To expand an area, a municipal corporation or township generally must follow the same procedures that are required to create an area.<sup>12</sup>

### **Review and dissolution of an outdoor refreshment area**

The bill requires the legislative authority of a municipal corporation or township in which an outdoor refreshment area is located to review the operation of an outdoor refreshment area every five years so long as the area is in existence. As part of the review, the legislative authority must adopt an ordinance or resolution, as applicable, either approving the continued operation of the area or dissolving the area. Prior to adopting the ordinance or resolution, the legislative authority must give notice of any proposed action by publication once a week for two consecutive weeks in a newspaper of general circulation in the municipal corporation or township.<sup>13</sup>

Additionally, at any time, all or part of an outdoor refreshment area may be dissolved by the legislative authority of the municipal corporation or township in which the area is located. After giving notice of the proposed action, by publication once a week for two consecutive weeks in a newspaper of general circulation, the legislative authority may dissolve the entire area or a portion of the area.<sup>14</sup>

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<sup>10</sup> R.C. 4301.82(F)(1).

<sup>11</sup> R.C. 4301.82(F)(2) and (3).

<sup>12</sup> R.C. 4310.82(A) through (E).

<sup>13</sup> R.C. 4301.82(H).

<sup>14</sup> R.C. 4301.82(I).

Upon dissolution of an outdoor refreshment area, the Division of Liquor Control must revoke all outdoor refreshment area designations issued to establishments within the dissolved area or portion of the area.<sup>15</sup>

### **Open Container Law exception**

Generally, under current law, a person is prohibited from carrying an open container of beer or intoxicating liquor in any public place. Under the bill, a person who purchases beer or intoxicating liquor from the holder of a permit with an outdoor refreshment area designation is permitted to have that beverage in an open container at any outdoor location within the outdoor refreshment area. However, no person may enter the premises of another establishment with an open container of beer or intoxicating liquor purchased elsewhere.<sup>16</sup>

### **Limitations on the liability of a liquor permit holder**

The bill clarifies the liability of a liquor permit holder within an outdoor refreshment area by specifically providing that the existing Dram Shop Law applies to a liquor permit holder located within an outdoor refreshment area in the same manner as if the liquor permit holder were not located in an outdoor refreshment area.<sup>17</sup> The existing Dram Shop Law imposes distinct limitations on the ability of any person to bring a cause of action against a liquor permit holder, or an employee of a liquor permit holder, for damage caused by an intoxicated person who was served by the permit holder. The standard for determining liability depends upon whether the damage occurred on the premises or off the premises of the liquor permit holder. With regard to damages occurring on the premises, the Dram Shop Law provides:

Notwithstanding [the general procedure for seeking damages for a criminal act] and except as otherwise provided in this section, no person, and no executor or administrator of the person, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person has a cause of action against any liquor permit holder or an employee of a liquor permit holder who sold beer or intoxicating liquor to the intoxicated person unless the personal injury, death, or property damage occurred on the permit holder's premises or in a parking lot

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<sup>15</sup> R.C. 4301.82(H) and (I).

<sup>16</sup> R.C. 4301.62(B)(3) and (C)(7).

<sup>17</sup> R.C. 4301.82(G).



under the control of the permit holder and was proximately caused by the negligence of the permit holder or an employee of the permit holder.

With regard to damages occurring off the premises, the Dram Shop Law provides:

A person has a cause of action against a permit holder or an employee of a permit holder for personal injury, death, or property damage caused by the negligent actions of an intoxicated person occurring off the premises or away from a parking lot under the permit holder's control only when both of the following can be shown by a preponderance of the evidence:

(A) The permit holder or an employee of the permit holder knowingly sold an intoxicating beverage to at least one of the following:

(1) A noticeably intoxicated person in violation of [the law prohibiting serving an intoxicated person];

(2) A person [under the age twenty-one].

(B) The person's intoxication proximately caused the personal injury, death, or property damage.<sup>18</sup>

### **Outdoor Refreshment Area Study Committee**

The bill creates the Outdoor Refreshment Area Study Committee. The Committee must study the utility and viability of allowing municipal corporations and townships that have a population of 35,000 or less to create an outdoor refreshment area. The Committee, not later than May 1, 2015, must issue a report of its findings and recommendations to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. The Committee ceases to exist after submitting its report.

The Committee must consist of the following seven members who must be appointed not later than five days after the bill's effective date:

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<sup>18</sup> R.C. 4399.18, not in the bill.



(1) Two members of the Senate, one from the majority and one from the minority party, both appointed by the President of the Senate;

(2) Two members of the House of Representatives, one from the majority and one from the minority party, both appointed by the Speaker of the House of Representatives;

(3) One member that is a county commissioner, appointed by the President;

(4) One member representing a municipal corporation, or township, with a population of 35,000 or less, appointed by the Speaker; and

(5) One member representing the Division of Liquor Control, appointed by the Governor.<sup>19</sup>

### **Appropriation for 2015 Major League Baseball All-Star Game**

The bill increases appropriations for fiscal year 2015 to TourismOhio by \$500,000, and earmarks the money to support the 2015 Major League Baseball All-Star Game in Cincinnati.<sup>20</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-25-13
Reported, S. Agriculture	---

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<sup>19</sup> Section 3.

<sup>20</sup> Sections 4 to 7.

