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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 669  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsors:** Reps. Swearingen and LaRe

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## SUMMARY

### To-go sales

- Allows bars, restaurants, small breweries, micro-distilleries, and wineries (qualified permit holders) to sell alcoholic beverages in sealed, covered cups or other containers for off-premises consumption, including via delivery (drinks may include beer, wine, mixed beverages, or spirituous liquor).
- Specifies that a qualified permit holder may only sell alcoholic beverages in sealed, covered cups that the qualified permit holder is otherwise authorized to sell under the qualified permit holder's permit.
- Prior to delivering an alcoholic beverage to a personal consumer, requires a qualified permit holder, or a qualified permit holder's employee, to make an effort to ensure that the personal consumer is 21 or older.

### Delivery of spirituous liquor

- Requires the Division of Liquor Control to deliver spirituous liquor in original containers to liquor permit holders authorized to sell spirituous liquor by the individual drink and to personal consumers.
- Allows a micro-distillery to sell its spirituous liquor, via delivery, to a personal consumer, provided the micro-distillery enters into an agency contract with the Division.

### Expansion of sales area of liquor permit premises

- Allows a qualified permit holder to expand the area in which it may sell alcoholic beverages by the individual drink for on-premises consumption as follows:
  - In any area of the qualified permit holder's property in which sales are not currently authorized and that is outdoors, including the qualified permit holder's parking area;

- In any outdoor area of public property that is immediately adjacent to the qualified permit holder's premises, if the permit holder obtains written consent from the local government that owns the property;
- In any outdoor area of private property that is immediately adjacent to the qualified permit holder's premises, if the permit holder obtains the written consent of the owner of the private property.
- Requires the qualified permit holder to notify the Division of Liquor Control and the Investigative Unit of the Department of Public Safety one business day before the expansion.

### **Open Container Law exemptions**

- Exempts from the Open Container Law both of the following:
  - An alcoholic beverage in a sealed, closed container being delivered in accordance with the bill to its final destination;
  - The consumption of an alcoholic beverage in an expanded outdoor area of a qualified permit holder.

### **Emergency declaration**

- Declares an emergency.

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## **DETAILED ANALYSIS**

### **To-go sales**

The bill allows bars, restaurants, breweries, micro-distilleries, and wineries (qualified permit holders) to sell alcoholic beverages to personal consumers in sealed, covered cups or other containers for off-premises consumption, including via delivery. The drinks may include beer, wine, mixed beverages, or spirituous liquor.<sup>1</sup>

The qualified permit holder may only sell alcoholic beverages that the qualified permit holder is otherwise authorized to sell under the qualified permit holder's permit. For example, a D-2 liquor permit holder may sell wine and mixed beverages. Under the bill, the D-2 permit holder could not sell to-go beer orders because the permit holder's permit does not authorize beer sales.

Prior to delivering an alcoholic beverage to a personal consumer, the qualified permit holder, or a qualified permit holder's employee, must make a bona fide effort to ensure that

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<sup>1</sup> R.C. 4303.185(A) and (B). A qualified permit holder is an A-1, A-1-A, A-1c, A-2, A-2f, A-3a, or D class liquor permit holder (see "**Background**," below).

the personal consumer is 21 or older. In order to make deliveries, a qualified permit holder may use an H liquor permit holder (shippers of alcoholic beverages).<sup>2</sup>

## **Delivery of spirituous liquor**

The bill requires the Division of Liquor Control to deliver spirituous liquor in original containers to liquor permit holders authorized to sell spirituous liquor by the individual drink and to personal consumers. It also allows a micro-distillery to sell its spirituous liquor in sealed original containers, via delivery, to a personal consumer, provided the micro-distillery enters into an agency contract with the Division. The contract is limited in scope to the sale of spirituous liquor manufactured by the micro-distillery. The contract is not subject to the population quota restrictions that normally apply to agency stores under current law (five agency stores per county and an additional agency store for each 20,000 people in excess of the first 40,000).<sup>3</sup>

Finally, the bill eliminates a prohibition against a micro-distillery using an H permit holder to ship spirituous liquor to a personal consumer. Under current law, a micro-distillery may only sell to a personal consumer via an in-person transaction at the micro-distillery's location.<sup>4</sup>

### **Agency stores**

Under current law, agency stores operate under contract with the Division of Liquor Control to sell spirituous liquor to personal consumers. JobsOhio, acting through the Division, is the sole wholesale distributor of spirituous liquor in Ohio. It retains ownership of the spirituous liquor at an agency store until it is sold to a personal consumer. The agency store retains a portion of the sale price in accordance with its agency store contract.<sup>5</sup>

An example of an agency store is a location that sells spirituous liquor within a grocery store. The location is kept separate from the other portions of the grocery store, including portions where beer and wine is sold.

## **Expansion of sales area of liquor permit premises**

The bill allows a qualified permit holder to expand the area in which it may sell alcoholic beverages as follows:

1. In any area of the qualified permit holder's property in which sales are not currently authorized and that is outdoors, including the qualified permit holder's parking area;

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<sup>2</sup> R.C. 4303.185(C)(1) to (3).

<sup>3</sup> R.C. 4301.10(A)(11) and 4303.041.

<sup>4</sup> R.C. 4301.10(A)(11), 4301.17, not in the bill, and 4303.041(A).

<sup>5</sup> See R.C. 4301.17, not in the bill, and R.C. Chapter 4313, not in the bill.

2. In any outdoor area of public property that is immediately adjacent to the qualified permit holder's premises, if the permit holder obtains written consent in accordance with the bill (see below);
3. In any outdoor area of private property that is immediately adjacent to the qualified permit holder's premises, if the permit holder obtains the written consent of the owner of the private property.

If a qualified permit holder sells alcoholic beverages in an outdoor area, the qualified permit holder must clearly delineate the area where personal consumers may consume alcoholic beverages. The bill also excludes the above expansions from the Division's existing authority to approve the expansion or diminution of a premises to which a liquor permit has been issued.<sup>6</sup>

### **Approval by public entities**

For purposes of sales of alcoholic beverages in an outdoor area of public property discussed above, a qualified permit holder must obtain the written consent of either of the following:

1. If the public property is located in a municipal corporation, the executive officer of the municipal corporation or the executive officer's designee. If the executive officer or the executive officer's designee denies consent, the qualified permit holder may appeal the denial to the legislative authority of the municipal corporation. The legislative authority may adopt a resolution requesting the executive officer to reconsider the executive officer's denial.
2. If the public property is located in the unincorporated area of a township, the board of township trustees by the adoption of a resolution consenting to the sale of alcoholic beverages.<sup>7</sup>

### **Notification**

The bill requires a qualified permit holder, at least one business day prior to selling alcoholic beverages by the individual drink in an outdoor area, to notify the Division of Liquor Control and Investigative Unit of the Department of Public Safety of the areas that the qualified permit holder intends to sell the alcoholic beverages.<sup>8</sup>

### **Open Container Law exemptions**

The bill exempts from the Open Container Law both of the following:

1. An alcoholic beverage in a sealed, closed container being delivered in accordance with the bill to its final destination if the closed container is securely sealed in such a manner

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<sup>6</sup> R.C. 4301.10(C) and 4303.186(B).

<sup>7</sup> R.C. 4303.186(C).

<sup>8</sup> R.C. 4303.186(D).

that is visibly apparent if the closed container has been subsequently opened or tampered with after sealing;

2. The consumption of an alcoholic beverage in an expanded outdoor area of a qualified permit holder.<sup>9</sup>

## Background

Below is a list of permits referenced above, along with a description of the authorized activity under the permit.

Class of liquor permit <sup>10</sup>	Authorized activity
A-1	Large brewery may sell its beer for on- or off-premises consumption.
A-1c	Craft brewery may sell its beer for on- or off-premises consumption.
A-1-A	Brewery, winery, or distillery may sell beer and any intoxicating liquor by glass or from a container; and a brewery may sell beer for off-premises consumption.
A-2	Winery may sell wine to personal consumers for on- or off-premises consumption and to wholesalers.
A-2f	Farm winery (same authorized activity as a winery, but winery grows grapes and other agricultural products).
A-3a	Micro-distillery (less than 100,000 gallons a year) may sell to personal consumers a specified amount of spirituous liquor.
D-1	Restaurant or other specified entity may sell beer for on- or off-premises consumption.
D-2	Restaurant or other specified entity may sell wine or certain mixed beverages for on- or off-premises consumption.

<sup>9</sup> R.C. 4301.62(C)(1)(f) and 4301.62(H).

<sup>10</sup> R.C. 4303.021 to 4303.183.

Class of liquor permit <sup>10</sup>	Authorized activity
D-3	Restaurant or other specified entity may sell spirituous liquor for on-premises consumption until 1:00 a.m.
D-3a	D-3 permit holder may sell until 2:30 a.m.
D-4	Club may sell beer or intoxicating liquor to members only for on-premises consumption, until 1:00 a.m.
D-4a	D-4 permit holder may sell until 2:30 a.m.
D-5	Restaurant or night club may sell beer or intoxicating liquor for on- or off-premises consumption until 2:30 a.m.
D-5a to D-5o	Various establishments may sell beer or intoxicating liquor for on- or off-premises consumption, depending on the circumstances until 1:00 or 2:30 a.m.
D-7	Restaurant or other specified entity in a resort area may sell beer or intoxicating liquor for on-premises consumption until 2:30 a.m.

## HISTORY

Action	Date
Introduced	05-20-20
Reported House Commerce & Labor	06-10-20
Passed House (87-8)	06-10-20