



# Ohio Legislative Service Commission

## Bill Analysis

Jeff Grim

### **Sub. H.B. 37\***

131st General Assembly  
(As Reported by S. Agriculture)

**Reps.** Stinziano and Duffey, Blessing, Antani, Boyd, Buchy, Driehaus, Gerberry, Henne, Leland, Lepore-Hagan, Manning, M. O'Brien, Perales, Ramos, Retherford, Rogers, Sweeney, Young

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## **BILL SUMMARY**

### **Alcohol content of beer**

- Eliminates the maximum permitted alcohol content of beer, which is currently 12% alcohol by volume.
- States that beer, regardless of the percent of alcohol by volume, is not intoxicating liquor for purposes of the Revised Code or any rules adopted under it.
- Establishes labeling requirements for beer containing higher alcohol content.

### **Open Container Law exemptions**

- Establishes exemptions to the Open Container Law regarding beer or intoxicating liquor purchased from specified D liquor permit holders (retail sales for on- or off-premises consumption) and consumed on the premises of specified markets that meet certain conditions.

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## **CONTENT AND OPERATION**

### **Alcohol content of beer**

The bill eliminates the maximum permitted alcohol content of beer. Under current law, the maximum permitted alcohol content is 12% alcohol by volume.<sup>1</sup> The

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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.

<sup>1</sup> R.C. 4301.01(B)(2).

bill then states that beer, regardless of the percent of alcohol by volume, is not intoxicating liquor for purposes of the Revised Code or any rules adopted under it.<sup>2</sup>

Generally under current law, beer includes all beverages brewed or fermented from malt products. Intoxicating liquor includes all liquids and compounds, other than beer, containing .5% or more of alcohol by volume.<sup>3</sup>

### **Labeling of beer**

With respect to beer that contains more than 12% alcohol by volume, the bill authorizes the Liquor Control Commission to adopt rules requiring the label on every package, bottle, and container of such beer to state the percentage of alcohol by volume and that the beer is a "high alcohol beer."<sup>4</sup>

### **Open Container Law exemptions**

Current law generally prohibits a person from having in the person's possession an opened container of beer or intoxicating liquor in any public place. The bill establishes two exemptions to the prohibition. First, it excludes from the prohibition a person who has in the person's possession an opened container of beer or intoxicating liquor on the premises of a market if the beer or intoxicating liquor has been purchased from a D liquor permit holder (generally allows sales of beer or intoxicating liquor for on- or off-premises consumption) that is located in the market. For purposes of the first exemption, a market is an establishment that:

(1) Leases space in the market to individual vendors, not less than 50% of which are retail food establishments or food service operations licensed under the law that governs those establishments and operations;

(2) Has an indoor sales floor area of not less than 22,000 square feet; and

(3) Hosts a farmer's market on each Saturday from April through December.<sup>5</sup>

Second, the bill excludes from the prohibition a person who has an opened container of beer or intoxicating liquor on the premises of a market if both of the following apply:

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<sup>2</sup> R.C. 4301.244.

<sup>3</sup> R.C. 4301.01(A)(1) and (B)(2).

<sup>4</sup> R.C. 4301.03(E).

<sup>5</sup> R.C. 4301.62(B)(3) and (F).



(1) The beer or intoxicating liquor was purchased from an adjacent D liquor permit premises; and

(2) The market is hosting an event pursuant to an F-8 permit held for the market, has notified the Division of Liquor Control of the event as required under the permit, and grants permission for the possession and consumption within the defined F-8 permit premises.<sup>6</sup>

For purposes of the second exemption, the bill defines "market" as a market that has been in operation since 1860 and for which an F-8 permit is held (see **COMMENT**).<sup>7</sup> An F-8 permit allows a not-for-profit organization that manages publicly owned property to sell beer or intoxicating liquor by the individual drink at specific events conducted on the publicly owned property and appurtenant streets.<sup>8</sup>

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## COMMENT

It is unclear whether more than one market has been in operation in this state since 1860. As a result, it is unclear whether the bill's provisions constitute special legislation in violation of Article II, Section 26 of the Ohio Constitution, which requires all laws of a general nature to have a uniform operation throughout the state. See *Hixon v. Burson*, 54 Ohio St. 470 (1896).

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## HISTORY

ACTION	DATE
Introduced	02-03-15
Reported, H. Gov't Accountability & Oversight	04-29-15
Passed House (92-3)	05-27-15
Reported, S. Agriculture	---

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<sup>6</sup> R.C. 4301.62(C)(8)(a).

<sup>7</sup> R.C. 4301.62(C)(8)(b).

<sup>8</sup> R.C. 4303.208, not in the bill.

