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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

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

Jeff Grim, Research Analyst

### SUMMARY

#### **Sale and delivery of beer and intoxicating liquor**

##### **Sale and delivery by retail liquor permit holder**

- Allows bars, restaurants, small breweries, micro-distilleries, and wineries (retail permit holders) to sell the following to personal consumers:
  - Drinks in covered cups or other containers for off-premises consumption, including via delivery (drinks may include beer, wine, mixed beverages, or spirituous liquor); and
  - Alcoholic beverages for delivery in sealed original containers (for example, a sealed bottle of wine or spirituous liquor).
- Prior to delivering a drink or alcoholic beverage to a personal consumer, requires a retail permit holder, or a retail permit holder's employee, to make an effort to ensure that the personal consumer is 21 or older.
- States that a micro-distillery that sells spirituous liquor in its original container under the bill must comply with existing requirements for sales of spirituous liquor, including limiting daily sales to 1.5 liters of spirituous liquor to the same personal consumer.

##### **Delivery by food delivery services**

- Allows a food delivery service (e.g., DoorDash or Grubhub) to deliver drinks in covered cups or other containers and alcoholic beverages in sealed original containers from a bar, restaurant, carryout store, small brewery, micro-distillery, or winery (liquor permit holder) to a personal consumer.
- As a condition of making deliveries, requires a food delivery service to register with the Division of Liquor Control.

- Allows a liquor permit holder to provide alcoholic beverages for delivery to a food delivery service only of the type that the permit holder is otherwise authorized to sell under the permit holder's permit.

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

- Expands a retail permit holder's authority to sell alcoholic beverages by the individual drink for on-premises consumption as follows:
  - In any area of the retail permit holder's property in which sales are not currently authorized and that is outdoors, including the retail permit holder's parking area;
  - In any outdoor area of public property that is immediately adjacent to the retail 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 retail permit holder's premises, if the permit holder obtains the written consent of the owner of the private property.

### **Open Container Law exemptions**

- Exempts from the Open Container Law both of the following:
  - An alcoholic beverage in a closed container being delivered in accordance with the bill to its final destination, if, during the transport, no person consumes the alcoholic beverage;
  - The consumption of an alcoholic beverage in an outdoor area of a retail permit holder, on public property, or on private property of a retail permit holder's neighbor.

### **Emergency declaration**

- Declares an emergency.

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## **DETAILED ANALYSIS**

### **Sale and delivery of beer and intoxicating liquor**

#### **Sale and delivery by retail liquor permit holder**

The bill allows bars, restaurants, small breweries, micro-distilleries, and wineries (retail permit holders) to sell drinks to personal consumers in 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 retail permit holder also may sell alcoholic beverages in

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

original containers to personal consumers for delivery (for example, a sealed bottle of wine or spirituous liquor).<sup>2</sup>

Under the bill, the retail permit holder may only sell alcoholic beverages that the retail permit holder is otherwise authorized to sell under the retail permit holder's permit. Prior to delivering an alcoholic beverage to a personal consumer, the retail permit holder, or a retail permit holder's employee, must make a bona fide effort to ensure that the personal consumer is 21 or older. In order to make deliveries, a retail permit holder does not need to use an H liquor permit holder (shippers of alcoholic beverages).<sup>3</sup>

Finally, a micro-distillery that sells spirituous liquor in its original container must comply with both of the following existing requirements established in the law governing micro-distilleries:

1. The micro-distillery can sell up to 1.5 liters of spirituous liquor per day to the same personal consumer; and
2. The micro-distillery sells spirituous liquor for off-premises consumption as an independent contractor of the Division. Thus, the Division determines the price at which the micro-distillery's spirituous liquor is sold. The micro-distillery also does not receive a commission on its sales for off-premises consumption as agency stores do for the store's spirituous liquor sales.<sup>4</sup>

### **Delivery by food delivery services**

The bill authorizes a food delivery service (for example, DoorDash or Grubhub) to deliver alcoholic beverages to personal consumers. A food delivery service is an online business that acts as an intermediary between multiple restaurants, convenience stores, or grocery stores and purchasers of food from those establishments by doing both of the following: (1) submitting food orders to participating establishments on behalf of those purchasers, and (2) delivering food orders from establishments to those purchasers.

Under the bill, a food delivery service may deliver drinks in covered cups or other containers and alcoholic beverages in sealed original containers from a bar, restaurant, carryout store, small brewery, micro-distillery, or winery (liquor permit holder) to a personal consumer.<sup>5</sup> As a condition of making deliveries, the service must register with the Division of Liquor Control in a manner that the Superintendent of Liquor Control prescribes.<sup>6</sup>

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<sup>2</sup> R.C. 4303.185(A) and (B).

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

<sup>4</sup> R.C. 4303.185(C)(4).

<sup>5</sup> A bar, restaurant, carryout store, small brewery, micro-distillery, and winery is issued an A-1-A, A-1c, A-2, A-2f, A-3a, or D class liquor permit.

<sup>6</sup> R.C. 4303.252(A) and (B).

A liquor permit holder may provide alcoholic beverages for delivery to a food delivery service only of the type that the permit holder is otherwise authorized to sell under the permit holder's permit. Prior to delivering an alcoholic beverage to a personal consumer, a representative of a food delivery service must make a bona fide effort to ensure that the personal consumer is 21 or older.<sup>7</sup>

### **Conveyance of spirituous liquor**

As indicated above, the bill allows a micro-distillery to deliver, or have delivered via a food delivery service, its spirituous liquor to a personal consumer. To effectuate this change, 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>8</sup>

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

The bill increases the areas in which a retail permit holder may sell alcoholic beverages. In addition to areas in which a retail permit holder may sell alcoholic beverages under the retail permit holder's permit, the bill allows a retail permit holder to sell alcoholic beverages by the individual drink for on-premises consumption as follows:

1. In any area of the retail permit holder's property in which sales are not currently authorized and that is outdoors, including the retail permit holder's parking area;
2. In any outdoor area of public property that is immediately adjacent to the retail 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 retail permit holder's premises, if the permit holder obtains the written consent of the owner of the private property.

If a retail permit holder sells alcoholic beverages in an outdoor area, the retail 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>9</sup>

### **Approval by public entities**

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

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<sup>7</sup> R.C. 4303.252(C) and (D).

<sup>8</sup> R.C. 4303.041(A).

<sup>9</sup> R.C. 4301.10(C) and 4303.185(D).

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 retail 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 fiscal officer of the township or the fiscal officer's designee. If the fiscal officer or the fiscal officer's designee denies consent, the retail permit holder may appeal the denial to the legislative authority of the township. The legislative authority may adopt a resolution consenting to the sale of alcoholic beverages.<sup>10</sup>

## Open Container Law exemptions

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

1. An alcoholic beverage in a closed container being delivered in accordance with the bill to its final destination, if, during the transport, no person consumes the alcoholic beverage;
2. The consumption of an alcoholic beverage in an outdoor area of a retail permit holder, on public property, or on private property of a retail permit holder's neighbor.<sup>11</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>12</sup>	Authorized activity
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.

<sup>10</sup> R.C. 4303.185(E).

<sup>11</sup> R.C. 4303.185(F) and 4303.252(E).

<sup>12</sup> R.C. 4303.021 to 4303.183.

Class of liquor permit <sup>12</sup>	Authorized activity
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.
C-1	Retail carryout store may sell beer for off-premises consumption.
C-2	Retail carryout store may sell wine and mixed beverages for off-premises consumption.
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.
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.

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## HISTORY

Action	Date
Introduced	05-20-20

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