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H.B. 674
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Agriculture & Natural Resources

Primary Sponsors: Reps. Hillyer and Becker

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SUMMARY

Sole and exclusive regulation of alcohol

- States that the General Assembly has the sole and exclusive authority to regulate the sale and distribution of beer and intoxicating liquor in Ohio under the Twenty-first Amendment to the U.S. Constitution (repeal of Prohibition).
- Finds that the General Assembly's authority to so regulate is exercised through the liquor control laws and other relevant statutes.

Delivery of spirituous liquor

- Allows the Division of Liquor Control to deliver spirituous liquor to personal consumers in original containers pursuant to rules adopted by the Superintendent of Liquor Control.

Intoxicating liquor pods

- Treats a pod containing spirituous liquor (more than 21% alcohol by volume [ABV]) as a mixed beverage (.5% to 21% ABV) for regulatory purposes.
- Defines "pod" to mean a sealed capsule made from specified materials and to which certain requirements apply, including:
 - The alcohol content of the pod exceeds 21% ABV;
 - Processing the pod involves releasing the contents of the capsule through a machine specifically designed to process the contents; and
 - The beverage that results after processing the capsule has an ABV of .5% to 21%.

Brewpubs

- Exempts certain brewpubs (A-1-A liquor permit holders) from the requirement to obtain a retail food establishment or food service operation license from a local board of health and operate as a restaurant.
- Instead, allows a brewpub to:
 - Serve unopened commercially prepackaged meals and nonalcoholic beverages, as well as beer and intoxicating liquor, under exemptions from board of health regulation; or
 - Maintain a schedule with the owner or operator of a licensed mobile retail food establishment or a mobile food service operation to serve food to the brewpub's customers.
- Eliminates the existing requirement that beer growlers sold for off-premises consumption at a brewpub be made of glass.

Alcohol consumption in restricted areas of airports

- Expands the area in which a person who buys beer or intoxicating liquor from a restaurant at a public airport (D-5d liquor permit holder) may consume the beer or intoxicating liquor.
- Specifies that the expanded area includes the portion of the airport terminal in which people are taking flights to and from the airport, provided certain conditions are met, including the airport's governing body authorizes consumption in the area.
- Specifies that consumption in the expanded area is not a violation of the Opened Container Law.
- Broadens the type of public airport in which the expanded area of consumption may occur to include an airport operated by a municipal corporation

F-11 liquor permit

- Authorizes the Division to issue an F-11 liquor permit to a nonprofit organization to conduct an event if the event has certain characteristics, including:
 - The event is coordinated by the nonprofit organization and the nonprofit organization is responsible for the activities at the event; and
 - One of the event's purposes is the introduction, showcasing, or promotion of craft beers manufactured in Ohio.
- Establishes duties and responsibilities for F-11 permit holders, and allows the permit holder to sell, at the event, beer that it has purchased from the breweries that are participating in the event.
- Establishes requirements and procedures for the issuance of an F-11 permit.

Gifts of glassware

- Allows a manufacturer or supplier of alcoholic beverages to provide glassware intended for the serving of beer to a permit holder authorized to sell beer for on-premises consumption if the manufacturer or supplier provides a receipt to the permit holder.
- Establishes requirements and procedures for the provider of the glassware.

F permit leasing agreements with manufacturers

- Exempts a manufacturer's lease or rental of property to an F class liquor permit holder from the existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers.

Severability

- Provides that the bill's provisions are severable.

DETAILED ANALYSIS

Sole and exclusive regulation of alcohol

The bill states that the General Assembly finds that the Twenty-first Amendment to the U.S. Constitution (repeal of Prohibition) confers upon the state of Ohio sole and exclusive authority to regulate the sale and distribution of beer and intoxicating liquor in Ohio. Intoxicating liquor includes wine, mixed beverages, and spirituous liquor. The bill declares that this authority, so conferred, has rested with the state of Ohio since the ratification of the Twenty-first Amendment.

The General Assembly also finds that its authority to so regulate is exercised through the liquor control laws and other relevant statutes. The laws and statutes reflect the intent of the General Assembly to do all of the following:

1. Promote temperance by preventing consumption of beer and intoxicating liquor by underage persons and by discouraging abusive consumption;
2. Promote orderly markets by requiring transparent, accountable, and stable distribution of beer and intoxicating liquor and preventing unfair competition; and
3. Facilitate the collection of taxes related to the sale and consumption of beer and intoxicating liquor.¹

¹ R.C. 4301.011.

Delivery of spirituous liquor

The bill allows the Division of Liquor Control to deliver spirituous liquor to personal consumers in original containers pursuant to rules adopted by the Superintendent of Liquor Control.²

Intoxicating liquor pods

The bill treats a pod containing spirituous liquor (more than 21% alcohol by volume [ABV]) as a mixed beverage (.5% to 21% ABV) for purposes of the liquor control laws and alcoholic beverage taxes. Thus, a pod may be sold by a retail liquor permit holder that is authorized to sell mixed beverages. Normally, spirituous liquor products may only be sold by a liquor agency with a contract with the Division of Liquor Control.

A “pod” is a sealed capsule made from plastic, glass, aluminum, or a combination of those materials to which all of the following apply:

1. The capsule contains intoxicating liquor of more than 21% ABV;
2. The capsule also contains a concentrated flavoring mixture;
3. The contents of the capsule are not readily accessible or intended for consumption unless certain manufacturer’s processing instructions are followed;
4. The instructions include releasing the contents of the capsule through a machine specifically designed to process the contents; and
5. After the capsule is processed according to the manufacturer’s instructions, the resulting beverage contains between 0.5% ABV and 21% ABV.³

Brewpubs

Food sales

The bill exempts certain brewpubs (A-1-A liquor permit holders) from the requirement to obtain a retail food establishment or food service operation license from a board of health and operate as a restaurant. In lieu of operating as a restaurant and obtaining one of those licenses, a brewpub may do either of the following:

1. Serve unopened commercially prepackaged meals and nonalcoholic beverages, as well as beer and intoxicating liquor, without a retail food establishment or food service operation license. Thus, the bill allows sales of food under this circumstance without licensure by a board of health.⁴

² R.C. 4301.101(D).

³ R.C. 4301.01(B)(4), (5), and (23).

⁴ Sales of food by retail food establishments and food service operations are regulated by the Department of Health and the Department of Agriculture, respectively. Boards of health are generally responsible for implementing rules adopted by those Departments. See R.C. Chapter 3717.

2. Maintain a schedule with the owner or operator of a mobile retail food establishment or a mobile food service operation licensed by a board of health to serve food to the brewpub's customers. The schedule must be in writing and agreed to a week in advance. In addition, the brewpub must maintain the schedule for a minimum of one month.⁵

Containers for dispensing beer

The bill eliminates the existing requirement that beer growlers sold for off-premises consumption at a brewpub be made of glass.⁶

Alcohol consumption in restricted areas of airports

The bill expands the area in which a person, who buys beer or intoxicating liquor from a restaurant at an airport (D-5d liquor permit holder), may consume the beer or intoxicating liquor. It specifies that the expanded area includes the portion of the airport terminal in which people are taking flights to and from the airport, provided:

1. The airport's governing body authorizes consumption in the area;
2. The restaurant is located in the same area;
3. The airport is a public airport that has commercial flight activity and has one or more passenger or property screening checkpoints or restricted areas used as security measures; and
4. The beer or intoxicating liquor is served solely in plastic bottles or other plastic containers that clearly identify the restaurant.

The bill also specifies that consumption in the expanded area is not a violation of the Opened Container Law. Finally, it broadens the type of public airport in which the expanded area of consumption may occur to include an airport operated by a municipal corporation.

Current law only allows a person to buy and consume beer or intoxicating liquor at the restaurant premises. It also only allows consumption at restaurants located at an airport operated by a board of county commissioners, a port authority, or a regional airport authority.⁷

F-11 liquor permit

The bill creates the F-11 liquor permit. The Division may issue an F-11 liquor permit to a nonprofit organization that has at least 250 members. Under the permit, the nonprofit organization may conduct an event if the event has all of the following characteristics:

1. The event is coordinated by the nonprofit organization and the nonprofit organization is responsible for the activities at the event;

⁵ R.C. 3717.22(A)(2), 3717.42(B)(15), and 4303.021(C)(1) and (2).

⁶ R.C. 4303.021(C)(3)

⁷ R.C. 4301.62(H) and 4303.181(D).

2. One of the event's purposes is the introduction, showcasing, or promotion of craft beers manufactured in Ohio;
3. The event includes the sale of food for consumption on the premises where sold; and
4. The event features at least 20 craft breweries (A-1c liquor permit holders) as participants who are members of the nonprofit organization. The nonprofit organization may allow any number of large breweries (A-1 liquor permit holders) to participate in the event.⁸

F-11 permit holder duties and responsibilities

At an event, an F-11 permit holder may sell beer that it has purchased from the breweries that are participating in the event. The F-11 permit holder may sell the beer in four-ounce samples or in containers up to 16 ounces for consumption on the premises where sold. Beer may be sold on the F-11 permit premises only where and when the sale of beer is otherwise permitted by law.

An F-11 permit holder must clearly define and sufficiently restrict the premises of the event to allow proper enforcement of the permit by state and local law enforcement officers. If an F-11 permit is issued for all or a portion of the same premises for which another class of liquor permit is issued, that permit holder's privileges are suspended in that portion of the premises in which the F-11 permit is in effect.

An F-11 permit holder is responsible, and is subject to penalties, for any violations of the liquor control laws that occur during the event. An F-11 permit holder cannot allow a brewery to participate in the event if the brewery or, if applicable, the bar or restaurant permit of that brewery is under suspension.

Notwithstanding the existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers or any rule adopted by the Liquor Control Commission to the contrary, employees of a brewery or beer distributor, or employees or agents of a beer distributor, may assist an F-11 permit holder in serving beer at an event.⁹

Application and issuance

An applicant for an F-11 permit must apply for the permit at least 30 days prior to the first day of the event. In the application, the applicant must list all of the breweries that will participate in the event. The fee for the F-11 permit is \$60 for each day of the event.

The Division must prepare and make available an F-11 permit application form. The Division may require applicants for the F-11 permit to provide information that is in addition to that required by the bill, provided that the information is necessary for the administration of the bill's provisions governing the F-11 permit. The Division cannot issue more than six F-11 permits to the same nonprofit organization in any one calendar year.

⁸ R.C. 4303.2011(A) and (B).

⁹ R.C. 4303.2011(C), (D), (H)(1) and (2), and (I).

The Division may refuse to issue an F-11 permit to an applicant if both of the following apply:

1. The applicant has pleaded guilty to or has been convicted of violating the liquor control laws while operating under a previously issued F-11 permit;
2. The violation occurred within the two years preceding the filing of the new F-11 permit application.¹⁰

An F-11 permit is effective for up to 72 consecutive hours. However, for purposes of an exposition at the state fairgrounds, an F-11 permit is effective for the duration of the exposition. No sales of beer can take place under an F-11 permit after 1:00 a.m.¹¹

Gifts of glassware

The bill allows a manufacturer or supplier to provide glassware intended for the serving of beer to a permit holder authorized to sell beer for on-premises consumption. However, the manufacturer or supplier cannot annually provide more than four cases of the glassware (24 individual pieces of glassware per case) to the permit holder. In order to provide the glassware, the manufacturer or supplier must provide a receipt to the permit holder. Existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers do not apply to the provision of glassware under the bill.¹²

Glassware is a glass, of no more than 24 ounces, that has the brand name of a beer or the name of the beer's manufacturer or supplier permanently and prominently marked on it. A receipt is a record that contains specified information, including:

1. The name and address of both the recipient and provider of the glassware;
2. The date that the glassware is provided;
3. The amount, if any, that the manufacturer or supplier charged the permit holder for the glassware;
4. A description and the amount of glassware provided to the permit holder; and
5. The amount that the manufacturer or supplier paid to have the glassware manufactured.¹³

F permit leasing agreements with manufacturers

The bill exempts from the existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers a manufacturer's rental of property to an F class liquor permit holder. Specifically, a manufacturer may rent or lease

¹⁰ R.C. 4303.2011(F), (G), and (H)(3).

¹¹ R.C. 4303.2011(E).

¹² R.C. 4301.24(A) and 4301.246(A)(1), (B), and (C).

¹³ R.C. 4301.246(A)(2) and (3).

property to an F class permit holder for purposes of an event for which the F class permit has been issued.¹⁴

Severability

The bill provides that its provisions are severable.¹⁵

Background

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

Class of liquor permit ¹⁶	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.
F class	Organizations that operate festivals that have a short duration may sell beer or intoxicating liquor.

HISTORY

Action	Date
Introduced	05-26-20
Reported, H. Commerce & Labor	06-10-20
Passed House (76-16)	06-11-20
Reported, S. Agriculture & Natural Resources	12-10-20

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¹⁴ R.C. 4301.24(E)(5).

¹⁵ Section 6.

¹⁶ R.C. 4303.021 to 4303.183, 4303.19, 4303.20 to 4303.2010.