



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 37 of the 131st G.A.

**Date:** May 11, 2016

**Status:** As Reported by Senate Agriculture

**Sponsor:** Reps. Stinziano and Duffey

**Local Impact Statement Procedure Required:** No

**Contents:** Exempts persons in markets from the Open Container Law under certain conditions and allows for the sale of higher alcohol content beer

### State Fiscal Highlights

- **Open container exemptions.** The bill allows for the consumption of beer or spirituous liquor in an open container under certain conditions at markets meeting particular conditions. Currently, there are two such markets in this state that would qualify under this exemption. This may result in up to a handful of additional D liquor permit applications and issuances by the Division of Liquor Control within the Department of Commerce.
- **Higher alcohol content beer.** By allowing for the sale of higher alcohol content beer, the bill could increase the supply of beer in the Ohio marketplace. This in turn could minimally increase the amount collected from the beer excise tax, depending on the additional beer sales. The revenue from this source is credited to the General Revenue Fund.

### Local Fiscal Highlights

- **Open container violations.** There could be increased costs for local enforcement to ensure that consumption of beer or spirituous liquor is confined to the premises of the two markets where open container exemptions would apply. However, costs would be at least partially offset by revenue from more citations being issued for open container violations. Open container violations are a minor misdemeanor with a maximum fine of \$150.

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## Detailed Fiscal Analysis

### Open container exemptions

Generally, under current law a person is prohibited from carrying an open container of beer or liquor in any public place. However, certain exceptions of the law exist, most often for festivals and other temporary events held in streets and parks. The bill establishes exemptions to the Open Container Law regarding beer and intoxicating liquor purchased from specified D liquor permit holders and consumed on the premises of a market that meets certain conditions. The exemption applies to open consumption of beer or liquor at two markets in Ohio.

In the first case, the bill allows a person who purchases beer or intoxicating liquor from a D liquor permit holder located immediately adjacent to a market with a defined F-8 permit premises to have that beverage in an open container in that particular market under certain conditions. These conditions include market permission for the possession and consumption of beer and intoxicating liquor within the defined F-8 permit premises. Also, the market must be hosting an event pursuant to an F-8 permit. The bill defines a market, for which an F-8 permit is held, as being in operation since 1860. The Findlay Market in Cincinnati is the only market meeting these criteria.

Additionally, the bill allows a person who purchases beer or intoxicating liquor from a D liquor permit holder that is located in a market to have that beverage in an open container while at that particular market. The bill defines a qualifying market as one that: (1) leases space in the market to individual vendors, not less than 50% of which are retail food establishments or food service 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. It seems that the North Market in Columbus is the only market meeting these criteria.

As a result of these specific open container exemptions, it is possible that there could be a handful of additional D liquor permit applications and issuances by the Division of Liquor Control (DOLC) within the Department of Commerce. Fees for D liquor permits generally range from \$300 to \$2,344.<sup>1</sup> Liquor permit fees are collected by DOLC and deposited into the Undivided Liquor Permit Fund (Fund 7066), and then distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by DOLC (45%), the local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Mental Health and Addiction Services (20%).

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<sup>1</sup> The range does not include the D5N liquor permit which is for casino operators or casino management companies. The fee for a D5N liquor permit is \$20,000.

There could also be some minimal additional costs for local law enforcement as a result of the bill. Specifically, there could be more people prosecuted for open container violations if individuals leave the market with an open container. If this occurs, adjudication costs for counties and municipalities could increase. These costs would be at least partially offset by the amount of revenue the city of Columbus and the city of Cincinnati would receive from (1) its share of any new liquor permit fees, and (2) more citations being issued for open container violations. The local taxing district where a new permit is issued receives 35% of the permit revenue that was paid to DOLC. The fine for an open container violation is a maximum of \$150.

### **Alcohol content of beer**

The bill eliminates the alcohol content cap of beer, currently 12% alcohol by volume. It also requires beer that contains more than 12% alcohol by volume to have a label on every package, bottle, and container to state that the beer is "high alcohol beer." Removing the alcohol content cap of beer may increase the supply of beer not currently available in the Ohio marketplace. As a result, this would increase the amount of tax collected by the state, depending on the scope of additional sales. The current beer excise tax on a container of 12 ounces or less is \$0.0014 per ounce. This revenue is credited to the General Revenue Fund. According to Department of Taxation data for the five previous fiscal years, beer excise tax revenue has ranged from a low of \$43.9 million in FY 2015 to a high of \$46.5 million in FY 2012.