



# Ohio Legislative Service Commission

## Final Analysis

Jeff Grim

### Sub. H.B. 37

131st General Assembly  
(As Passed by the General Assembly)

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

**Sens.** Uecker, Bacon, Balderson, Beagle, Burke, Coley, Eklund, Faber, Hackett, Hite, Jones, Patton, Seitz, Tavares, Thomas, Yuko

**Effective date:** August 31, 2016

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## ACT SUMMARY

### Alcohol content of beer

- Eliminates the maximum permitted alcohol content of beer, which was 12% alcohol by volume (ABV).
- States that beer, regardless of the percent of ABV, is not intoxicating liquor for purposes of Ohio law.
- Establishes labeling requirements for beer containing more than 12% ABV.

### Open Container Law exemptions

- Exempts the following from the law that prohibits a person from consuming an opened container of alcohol in a public place:

--Alcohol consumed on the premises of a market that meets certain conditions, including hosting a farmer's market, and that is purchased from a D permit holder located in the market; and

--Alcohol consumed on the premises of a market that has been in operation since 1860, when the market is hosting an event pursuant to an F-8 liquor permit (public event permit) and the alcohol is purchased from a D permit holder located adjacent to the market.

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## CONTENT AND OPERATION

### Alcohol content of beer

The act eliminates the maximum permitted alcohol content of beer. Thus, Ohio consumers may purchase beer and Ohio beer manufacturers may manufacture beer without any restriction as to the amount of alcohol in the beer. Under former law, the maximum permitted alcohol content of beer was 12% alcohol by volume (ABV).<sup>1</sup> The act also clarifies that beer, regardless of the percent of ABV, is not intoxicating liquor for purposes of Ohio law.<sup>2</sup>

Generally, under continuing law, beer includes all beverages brewed or fermented from malt products. Intoxicating liquor includes all liquids and compounds, other than beer, containing 0.5% or more ABV.<sup>3</sup>

### Labeling of beer

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

### Open Container Law exemptions

Continuing 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 act establishes two exemptions to the prohibition.

First, it exempts a person who has in the person's possession an opened container of beer or intoxicating liquor on the premises of a market if all of the following apply:

- (1) The market leases space to individual vendors, not less than 50% of which are licensed retail food establishments or food service operations;
- (2) It has an indoor sales floor area of not less than 22,000 square feet; and

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

<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).



(3) It hosts a farmer's market on each Saturday from April through December; and

(4) The beer or intoxicating liquor was 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.<sup>5</sup>

Second, the act exempts a person who has an opened container of beer or intoxicating liquor on the premises of a market that has been in operation since 1860 (see **COMMENT**), if both of the following apply:

(1) The beer or intoxicating liquor was purchased from a D liquor permit premises located adjacent to the market; and

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

An F-8 permit allows a nonprofit 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>7</sup>

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## COMMENT

It appears that this provision applies only to the Findlay Market in Cincinnati. As a result, the act's provisions may 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 Ohio. See *Hixon v. Burson*, 54 Ohio St. 470 (1896).

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

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

<sup>7</sup> R.C. 4303.208, not in the act.



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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	05-10-16
Passed Senate (32-0)	05-11-16
House concurred in Senate amendments (88-9)	05-18-16

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