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Bill Analysis

Legislative Service Commission

H.B. 274

123rd General Assembly
(As Introduced)

Reps. Jacobson, Allen, Roberts, Beatty, Barrett

BILL SUMMARY

- Allows a municipal corporation to prohibit, in specified areas of the municipal corporation, the sale of beer and intoxicating liquor in glass containers that exceed a specified number of ounces.

CONTENT AND OPERATION

The bill authorizes the legislative authority of a municipal corporation to prohibit, by ordinance or resolution, the sale of beer or intoxicating liquor in a glass container that exceeds the number of ounces specified in the ordinance or resolution, in those areas of the municipal corporation that are specified in the ordinance or resolution and in which the legislative authority has determined that the breaking of glass containers has caused or may cause a threat to the public health or safety (sec. 4301.22(I)(1)). The bill further prohibits any permit holder, or any agent or employee of a permit holder, from selling beer or intoxicating liquor in a glass container that exceeds the number of ounces specified in such an ordinance or resolution, at a premises located in an area of the municipal corporation in which that ordinance or resolution prohibits the sale (sec. 4301.22(I)(2)).

The bill specifically authorizes a municipal corporation to adopt this type of ordinance or resolution because, without statutory authorization, a municipal corporation may be unable to prohibit sales of beer and intoxicating liquor in glass containers in the same way that, for example, a municipal corporation could forbid the sale of soft drinks in glass containers (see **COMMENT**).

COMMENT

Municipalities in Ohio are authorized to adopt by ordinance local police, sanitary, and other similar regulations by virtue of Section 3 of Article XVIII of the Ohio Constitution and derive no authority from, and are subject to no limitations of, the General Assembly, except that those regulations must not be in

conflict with general laws. In determining whether an ordinance is in "conflict" with general laws, the test is whether the ordinance permits or licenses that which a statute forbids and prohibits and vice versa. *Village of Struthers v. Sokol* (1923), 108 Ohio St. 263, syllabus.

The Liquor Control Law generally authorizes holders of C permits (which allow sales of beer and intoxicating liquor for consumption off the premises where sold) and D permits (which allow sales of beer and intoxicating liquor for consumption both on and off the premises where sold) to sell these products in original containers having a capacity of not more than five and one-sixth gallons. Thus, if a municipal corporation adopted an ordinance prohibiting C and D permit holders from selling beer or intoxicating liquor in glass containers of less than this volume, a court might rule that *the municipal ordinance is prohibiting what the state allows through the issuance of a liquor permit*. For example, the Ohio Supreme Court has invalidated a municipal ordinance that prohibited the sale of beer and intoxicating liquor after midnight by permit holders whose permits allowed sales after that hour. *Neil House Hotel Co. v. City of Columbus* (1944), 144 Ohio St. 248.

HISTORY

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