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Bill Analysis
Legislative Service Commission

Sub. S.B. 200

123rd General Assembly

(As Reported by H. State Government)

**Sens. Armbruster, Drake, Spada, Wachtmann, Oelslager, Brady, Latell,
Gardner, DiDonato, Watts, Hagan, Mumper**

Reps. Buehrer, Trakas, Healy, Gerberry

BILL SUMMARY

- Permits sellers of tobacco products or liquor permit holders to raise an affirmative defense against a charge of selling or otherwise distributing tobacco products or of selling liquor, beer, or low-alcohol beverages to an underage person, that a transaction scan of the purchaser's or recipient's license or identification card was performed, the scan indicated its validity, and the scan was reasonably relied upon.
- Restricts the use of information obtained through a transaction scan.
- Requires the Registrar of Motor Vehicles to adopt rules regarding the use of a transaction scan device and the recording and maintenance of information obtained from a scan.
- Creates the F-3 permit and authorizes it to be issued to certain nonprofit trade organizations to allow the serving of beer, wine, or mixed beverages for a period not to exceed five consecutive days at an event at a convention facility or hotel.
- Authorizes the holder of a D-6 (Sunday sales) permit issued to a sports facility to make sales between the hours of 11 a.m. and midnight on a Sunday on which certain professional sports games are being played at the facility.

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CONTENT AND OPERATION

Transaction scan devices

Overview

Under continuing law (sec. 2927.02--not in the bill), it is illegal to give, sell, or otherwise distribute cigarettes or other tobacco products to any person under age 18. Similarly, it is illegal to engage in transactions involving alcohol and underage persons, including selling beer or intoxicating liquor to any person under age 21 (secs. 4301.22 and 4301.69) or selling or furnishing any low-alcohol beverage to a person under age 18 (sec. 4301.631).

Generally, the bill permits a seller of cigarettes or other tobacco products, or an agent or employee of that seller, to raise an affirmative defense against a charge of an illegal distribution of cigarettes or other tobacco products if a transaction scan of the purchaser's driver's or commercial driver's license or identification card was performed, the scan indicated its validity, and the scan was reasonably relied upon. Likewise, a liquor permit holder or an agent or employee of the holder is allowed to raise an affirmative defense against a charge of a violation of the Liquor Control Law or Liquor Control Commission rules in which the age of a purchaser of beer, intoxicating liquor, or low-alcohol beverages is an element of the alleged violation, that the permit holder, agent, or employee

performed a transaction scan of the purchaser's license or identification card, the scan indicated its validity, and the scan was reasonably relied upon.¹

Significant definitions

Under the bill's provision pertaining to cigarettes or other tobacco products, a "transaction scan" is the process by which a seller checks, by means of a "transaction scan device," the validity of a driver's or commercial driver's license or of an identification card (issued by the Registrar of Motor Vehicles or a deputy registrar) that is presented to purchase, receive a gift of, or otherwise be distributed cigarettes or other tobacco products (sec. 2927.021(A)(2), (3), and (4)).²

The bill's provision pertaining to alcohol defines a "transaction scan" in a similar manner, but a permit holder checks the validity of a license or identification card that is presented to do either of the following (sec. 4301.61(A)(2), (3), and (4)):³

(1) Purchase any beer, intoxicating liquor, or low-alcohol beverage;

(2) Gain admission to a premises that has been issued a liquor permit authorizing the sale of beer or intoxicating liquor for consumption on the premises where sold and where admission is restricted to persons age 21 or older.

Both the cigarette or other tobacco product and alcohol provisions of the bill define a "transaction scan device" as any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card (secs. 2927.021(A)(5) and 4301.61(A)(5)).

¹ Hereinafter, references in this analysis to a seller or permit holder include agents and employees of a seller or permit holder, unless otherwise indicated.

² Under the bill, a "seller" means a seller of cigarettes or other tobacco products and includes any person whose gift of or other distribution of cigarettes or other tobacco products is subject to the law regarding the illegal distribution of those substances (sec. 2927.021(A)(3)).

³ A "permit holder" is a holder of a permit issued by the Division of Liquor Control under the Liquor Permit Law (R.C. Chapter 4303.) (sec. 4301.61(A)(3)).

Who may perform transaction scans

The bill authorizes a seller or permit holder to perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a "card holder" (1) as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes or other tobacco products or (2) for the purposes of purchasing any beer, intoxicating liquor, or low-alcohol beverage, or gaining admission to a liquor permit premises where admission is restricted to persons age 21 or older (secs. 2927.021(B)(1) and 4301.61(A)(4) and (B)(1)). A "card holder" is defined as any person who presents a driver's or commercial driver's license or identification card to a seller or permit holder as a condition mentioned in (1) above or for a purpose mentioned in (2) above (secs. 2927.021(A)(1) and 4301.61(A)(1)).

If the information deciphered by a transaction scan fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, the seller or permit holder is not permitted to sell, give away, or otherwise distribute any cigarettes or other tobacco products, or sell any beer, intoxicating liquor, or low-alcohol beverage, to the card holder (secs. 2927.021(B)(2) and 4301.61(B)(2)).

The bill does not preclude a seller or permit holder from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products to the person presenting the document, or as a condition of a sale of beer, intoxicating liquor, or a low-alcohol beverage or of granting admission to a liquor permit premises (secs. 2927.021(B)(3) and 4301.61(B)(3)).

Affirmative defenses

A seller or permit holder may not be found guilty of a violation of the Cigarette or Other Tobacco Product Illegal Distribution Law, or a violation of the Liquor Control Law or Liquor Control Commission rules, in which the age of the purchaser or other recipient of cigarettes or other tobacco products, or of any beer, intoxicating liquor, or low-alcohol beverage, is an element of the alleged violation, if the seller or permit holder raises and proves as an affirmative defense that all of the following occurred (secs. 2927.022(A), 4301.611(A), and 4301.639(C)):

(1) A card holder attempting to make a purchase of, receive a gift of, or otherwise be distributed cigarettes or other tobacco products, or a purchase of any

beer, intoxicating liquor, or low-alcohol beverage, presented a driver's or commercial driver's license or an identification card.

(2) A transaction scan of the license or card indicated that it was valid.

(3) The cigarettes or other tobacco products were sold, given away, or otherwise distributed, or the beer, intoxicating liquor, or low-alcohol beverage was sold, to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

In determining whether a seller or permit holder has *proven this affirmative defense*, the trier of fact in an action for an alleged violation of the Cigarette or Other Tobacco Product Illegal Distribution Law, or the Liquor Control Commission or trier of fact in a court of record in relation to an alleged violation of the Liquor Control Law or the Commission's rules, must consider any *written policy* that the seller or permit holder (not an agent or employee) has adopted and implemented and that is intended to prevent violations of the Cigarette or Other Tobacco Product Illegal Distribution Law or the laws regarding restrictions on the sale of beer or liquor (sec. 4301.22), prohibitions on underage persons purchasing or consuming intoxicating liquor, beer, or low-alcohol beverages or using misrepresentations to obtain those substances (secs. 4301.63 to 4301.634), furnishing fake licenses or identification cards (sec. 4301.636), and other offenses involving underage persons (secs. 4301.69 and 4301.691). Additionally, the trier of fact (or Commission, where appropriate) must consider that *reasonable reliance on the identification presented* and the completed transaction scan *may require* a seller or permit holder to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse them from exercising reasonable diligence to determine (1) whether a person to whom the seller sells, gives away, or otherwise distributes cigarettes or other tobacco products is age 18 or older or the person to whom the permit holder sells any beer or intoxicating liquor is age 21 or older or sells any low-alcohol beverage is age 18 or older and (2) whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder. (Secs. 2927.022(B) and 4301.611(B).)

The affirmative defense to an alleged violation of the Liquor Control Law or the Liquor Control Commission's rules is *in addition to* the defense provided by the existing Liquor Control Law where a permit holder was presented a valid license or identification card, a bona fide effort was made to ascertain the buyer's age, and there was reason to believe that the buyer was of legal age (secs. 4301.611(C) and 4301.639(A)).

The bill provides that in any criminal action or in any hearing before the Liquor Control Commission in which the affirmative defenses are raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card must be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action or hearing (secs. 2927.022(C) and 4301.611(D)).

Prohibitions; rule-making by the Registrar of Motor Vehicles

No sale prohibitions. The bill prohibits a seller or permit holder from selling, giving away, or otherwise distributing any cigarettes or other tobacco products, or selling any beer, intoxicating liquor, or other low-alcohol beverages, to a card holder after a transaction scan indicates false or fraudulent information was presented by the card holder (secs. 2927.021(B)(2) and 4301.61(B)(2)).

Recording-maintenance of information prohibitions. The bill prohibits a seller or permit holder from electronically or mechanically recording or maintaining any information derived from a transaction scan, except the name and birth date of the person listed on the driver's or commercial driver's license or identification card presented by a card holder, and the expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder (secs. 2927.021(D)(1) and 4301.61(D)(1)).

Relatedly, the Registrar of Motor Vehicles, with the approval of the Liquor Control Commission, must adopt, and may amend or rescind, under the Administrative Procedure Act rules that govern the recording and maintenance of this transaction scan information and ensure quality control in the use of transaction scan devices under the bill (secs. 2927.021(C) and 4301.61(C)).

Use of information and devices prohibitions. No seller or permit holder may use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under the bill, except for the purpose of using it in raising and proving the affirmative defenses discussed under "**Affirmative defenses**," above. Further, no seller or permit holder may use a transaction scan device for a purpose other than to check the validity of a license or identification card presented by a card holder (1) as a condition of selling, giving away, or otherwise distributing cigarettes or other tobacco products to the card holder or (2) to purchase any beer, intoxicating liquor, or low-alcohol beverage or gain admission to a premises where such substances are sold and where admission is restricted to persons age 21 or older. (Secs. 2927.021(D)(2) and (3) and 4301.61(D)(2) and (3).)

Sales of information prohibitions. The bill generally prohibits a seller or permit holder from selling or otherwise disseminating the information derived

from a transaction scan to any third party, including selling or otherwise disseminating that information for any marketing, advertising, or promotional activities. But a seller or permit holder may release that information pursuant to a court order or as specifically authorized under the bill's affirmative defense provisions or under another provision of the Revised Code (secs. 2927.021(D)(4) and 4301.61(D)(4)).

Penalties. A seller or permit holder who violates any of these prohibitions is guilty of "engaging in an illegal tobacco product transaction scan" or of "an illegal liquor transaction scan," respectively, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The clerk of the court must pay each collected civil penalty to the county treasurer for deposit into the county treasury. (Secs. 2927.021(F) and 4301.61(F).)

Continued application of state and federal tobacco distribution and liquor control laws

The bill provides that it does not relieve a seller or permit holder of any responsibility to comply with any other applicable state or federal laws or rules governing (1) the sale, giving away, or other distribution of cigarettes as other tobacco products or (2) the sale of beer, intoxicating liquor, or low-alcohol beverages (sec. 2927.021(E) and 4301.61(E)).

Creation of the F-3 permit

Requirements to be issued an F-3 permit

The bill creates the F-3 permit and authorizes it to be issued to an organization whose primary purpose is to support, promote, and educate members of the beer, wine, or mixed beverage industries, to allow the organization to bring beer, wine, or mixed beverages in their original packages or containers *into a convention facility or hotel* for consumption in the facility or hotel, if all of the following requirements are met (sec. 4303.203(B)):

(1) The Superintendent of Liquor Control is satisfied that the organization is a nonprofit organization and that the organization's membership exceeds 250 persons.

(2) The general manager or the equivalent officer of the convention facility or hotel provides (a) a written consent for the use of a portion of the facility or hotel by the organization and (b) a written statement that the facility's or hotel's permit privileges will be suspended in the portion of the facility or hotel in which the F-3 permit is in force.

(3) The organization provides a written description that clearly sets forth the portion of the convention facility or hotel in which the F-3 permit will be used.

(4) The organization provides a written statement as to its primary purpose and the purpose of its event at the convention facility or hotel.

(5) The bill's prohibition mentioned in the next paragraph does not apply.

The bill prohibits an F-3 permit from being issued to any nonprofit organization that is created by or for a specific manufacturer, supplier, distributor, or retailer of beer, wine, or mixed beverages (sec. 4303.203(C)).

Duration of and fee for the F-3 permit

The bill makes an F-3 permit effective for a period not to exceed five consecutive days and prohibits the Division of Liquor Control from issuing more than three F-3 permits per calendar year to the same nonprofit organization. The fee for an F-3 permit is \$150. (Sec. 4303.203(H).)

Exceptions to the prohibition against giving away beer and liquor

The bill creates two exceptions to the general prohibition against a permit holder giving away any beer or intoxicating liquor of any kind at any time in connection with the permit holder's business (sec. 4301.22(E), not in, but referred to in, the bill). First, the bill forbids any holder of an F-3 permit from *making any charge* for any beer, wine, or mixed beverage served by the drink, or in its original package or container, in connection with the use of the portion of the convention facility or hotel covered by the permit (sec. 4303.203(F)). Second, the bill allows the holder of an F-3 permit to *obtain by donation* beer, wine, or mixed beverages from any manufacturer or producer of beer, wine, or mixed beverages (sec. 4303.203(D)).

The bill also specifies that nothing in the Liquor Permit Law prohibits the holder of an F-3 permit from bringing into the portion of the convention facility or hotel covered by the permit beer, wine, or mixed beverages otherwise not approved for sale in Ohio (sec. 4303.203(E)).

Issuance of the F-3 permit

The bill requires the Division of Liquor Control to prepare and make available an F-3 permit application form. It also permits the Division to require applicants for the permit to provide information, in addition that required by the bill, that is necessary to administer the bill's F-3 permit provisions. (Sec. 4303.203(G).)

Definitions

Under the bill's F-3 permit provisions:

(1) "Convention facility" means any structure owned or leased by a municipal corporation or county that was expressly designed and constructed and is currently used for the purpose of presenting conventions, public meetings, and exhibitions (sec. 4303.203(A)(1), by cross-reference to sec. 4303.201(A)(1)--not in the bill).

(2) "Nonprofit organization" means any unincorporated association or nonprofit corporation that is not formed for pecuniary gain or profit of, and whose net earnings or any part of its net earnings is not distributable to, its members, trustees, officers, or other private persons, except that the payment of reasonable compensation for services rendered and the distribution of any assets on dissolution cannot be considered pecuniary gain or profit, or distribution of earnings, in a corporation or association all of whose members are nonprofit corporations. The distribution of earnings to member organizations does not deprive a nonprofit organization of its status as a nonprofit organization. (Sec. 4303.203(A)(1), by cross-reference to sec. 4303.201(A)(2)--not in the bill.)

(3) "Hotel" means a hotel described in the Hotel Licensing Law that has at least 50 rooms for registered transient guests and that is required to be licensed under that law (sec. 4303.203(A)(2)).

Conforming changes

The bill amends the Open Container Law to authorize as an exception to that law's prohibitions the possession of an opened container of beer, wine, and mixed beverages served for consumption on the premises by an F-3 permit holder (sec. 4301.62(C)(1)(b)). It also prohibits F-3 permit holders from purchasing beer, wine, and mixed beverages subject to specified state taxes except from the holders of A (manufacturer) and B (distributor) permits (sec. 4303.35).

Expanded hours of sale for D-6 permit holders at professional sports facilities

Current law allows the holders of D-6 permits to sell intoxicating liquor on Sunday between the hours of *1 p.m. and midnight*. The D-6 permit is only issued to holders of specified A (manufacturer), C (sales for off-premises consumption), and D (sales for both on- and off-premises consumption) permits who are allowed to sell intoxicating liquor under those permits. (Sec. 4303.182(A) through (C).)

The bill allows the holder of a D-6 permit that is issued to a sports facility to make sales under the permit between the hours of *11 a.m. and midnight on any*

Sunday on which a professional baseball, basketball, football, hockey, or soccer game is being played at the sports facility. It defines "sports facility" for this purpose as a stadium or arena that has a seating capacity of at least 4,000 and that is owned or leased by a professional baseball, basketball, football, hockey, or soccer franchise or any combination of those franchises. (Sec. 4303.182(D).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-02-99	pp. 1133-1134
Reported, S. Ways & Means	01-20-00	p. 1319
Passed Senate (30-0)	01-26-00	pp. 1353-1354
Reported, H. State Gov't	05-09-00	p. 1900

S0200-RH.123/ejs

