



**Sub. H.B. 17\***

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

**Reps. Willamowski, Hartnett, Flowers, Jerse, Setzer, Redfern, Williams, Allen, Lendrum, Calvert, Hagan, Buehrer, Schaffer, Jolivette, Gilb, Cates, Webster, Coates, Grendell, Schmidt, Roman, Flannery, White, Perry, Collier, Clancy, Carmichael, Brown, Oakar, DeBose**

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**BILL SUMMARY**

- Prohibits a person under 21 years of age from knowingly being under the influence of any beer or intoxicating liquor in any public place if the person is not accompanied by a parent, spouse who is not an underage person, or legal guardian, and the beer or intoxicating liquor is not given by a physician in the regular line of the physician's practice or for established religious purposes.
- Consolidates in R.C. 4301.69(E) similar existing prohibitions in R.C. 4301.632 and 4301.69(E) regarding an underage person ordering, buying, possessing, or consuming, etc., beer or intoxicating liquor and makes the driver's license penalties for a violation of the transferred R.C. 4301.632 provisions also apply to a person who violates the existing R.C. 4301.69(E) prohibitions.
- Permits a court to order a person charged with violating the prohibitions against ordering, paying for, sharing the cost of, attempting to purchase, possessing, consuming, or being under the influence of any beer or intoxicating liquor into a diversion program, unless the person has previously been diverted into such a program pursuant to this provision.
- Requires the court to dismiss the complaint and order the record in the case sealed if a person is charged as described in the preceding paragraph

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*\* This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

and the person successfully completes the diversion program and requires the court to proceed with the complaint if the person fails to satisfactorily complete the diversion program.

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## CONTENT AND OPERATION

### Existing law

#### R.C. 4301.632 prohibitions

Existing Liquor Control Law generally prohibits a person under 21 years of age from doing any of the following in any public or private place (R.C. 4301.632):

- (1) Ordering, paying for, sharing the cost of, or attempting to purchase any beer or intoxicating liquor;
- (2) Consuming any beer or intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink;
- (3) Possessing any beer or intoxicating liquor.

A person who violates any of these prohibitions is guilty of a misdemeanor of the first degree. If the offender was under 18 years of age at the time of the offense and the offense occurred while the offender was the operator of or a passenger in a motor vehicle, the court, in addition to any other penalties it imposes upon the offender, must suspend the offender's temporary instruction permit or probationary driver's license for a period of six months. If the offender is 15 years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender is not eligible to be issued such a license or permit for a period of six months. If the offender has not attained the age of 15 years and six months, the offender is not eligible to be issued a temporary instruction permit until the offender attains the age of 16 years (R.C. 4301.99(C)).

#### R.C. 4301.69 prohibition

Existing Liquor Control Law also prohibits an "underage person" (a person under 21 years of age) from knowingly possessing or consuming any beer or intoxicating liquor, in any public or private place, unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes. A violation

of this prohibition is a misdemeanor of the first degree. (R.C. 4301.69(E) and 4301.99(C).)

### **Operation of the bill**

The bill prohibits an "underage person" (a person under 21 years of age) from knowingly being "under the influence" (see **COMMENT**) of any beer or intoxicating liquor in any public place. This prohibition does not apply if the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes.

The bill also relocates the prohibitions contained in existing R.C. 4301.632 into R.C. 4301.69(E). Related to this relocation: (1) the bill retains the existing parental, spousal, guardian, medical, and religious exceptions for the existing R.C. 4301.69(E) prohibitions but does not make them applicable to the transferred provisions and (2) makes the driver's license penalties that currently apply to a violation of the transferred R.C. 4301.632 provisions also apply to a person who violates the existing R.C. 4301.69(E) prohibitions.

As a result, under the bill, R.C. 4301.69(E) prohibits an underage person from knowingly ordering, paying for, sharing the cost of, attempting to purchase (all transferred from R.C. 4301.632), possessing, or consuming (both duplicated in R.C. 4301.632 and 4301.69(E)) any beer or intoxicating liquor, in any public or private place. As described above in the second preceding paragraph, R.C. 4301.69(E) also prohibits an underage person from knowingly being under the influence of any beer or intoxicating liquor in any public place. These prohibitions regarding an underage person possessing, consuming, or being under the influence of beer or intoxicating liquor do not apply if the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian, or if the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes. A violation or any of these prohibitions is a misdemeanor of the first degree, and the driver's license penalties that currently apply to a violation of R.C. 4301.632 apply to the offender. (R.C. 4301.632 (repealed), 4301.638, 4301.69(E)(1), and 4301.99(C).)

The bill specifies that, if a person is charged with violating the prohibitions described above in a juvenile court complaint, the court may order the child into a diversion program specified by the court and hold the complaint in abeyance pending successful completion of the diversion program. A child is ineligible for such a diversion if the child previously has been diverted pursuant to this provision. If the child completes the diversion program to the satisfaction of the

court, the court must dismiss the complaint and order the child's record in the case sealed (the bill expands the existing Juvenile Court Records Sealing Law to include this requirement). If the child fails to satisfactorily complete the diversion program, the court must proceed with the complaint.

The bill specifies that, if a person is charged in a criminal complaint with violating the prohibitions described above, the existing provision regarding pre-trial diversion (R.C. 2935.36--not in the bill) applies to the offense, except that a person is ineligible for diversion under that provision if the person previously has been diverted under the provision described in this paragraph or the preceding paragraph. If the person completes the diversion program to the satisfaction of the court, the court must dismiss the complaint and order the record in the case sealed (the bill expands the existing law regarding the sealing of records regarding criminal charges when a person is found not guilty of the charges or when the charges are dismissed to include this requirement). If the person fails to satisfactorily complete the diversion program, the court must proceed with the complaint. (R.C. 4301.69(E)(2) and R.C. 2151.358(D)(1), (3), and (E), 2953.52(B)(3), and 2953.53(D)(3) and (4).)

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## COMMENT

The term "under the influence" is not defined for the purposes of this provision. Sec. 4511.19, the prohibition against operating a motor vehicle under the influence of alcohol, a drug of abuse, or both, prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio if the person is "under the influence of alcohol." In *State v. Hardy* (1971), 28 Ohio St.2d 89, 91-92, the Ohio Supreme Court stated that it believed the statute prohibiting operating a vehicle while "under the influence" was enacted to protect persons and property from drivers "whose physical and mental ability to act and react are altered from the normal" because of the consumption of alcohol and that the influence effect some deprivation of clearness of intellect and control which one would otherwise possess. In *State v. Lowman* (Warren County, 1992), 82 Ohio App.3d 831, 836, the Twelfth District Court of Appeals held that the prosecution must prove that a person who is charged with operating a vehicle "under the influence" operated a vehicle when the person's faculties were appreciably impaired by the consumption of alcohol. Although not dispositive, these cases may indicate the scope of the meaning of the term "under the influence."

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-31-01	p. 96
Reported, H. Criminal Justice	10-30-01	p. 1043
Passed House (96-1)	03-20-02	pp. 1576-1577
Reported, S. Judiciary on Criminal Justice	---	---

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