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Bill Analysis
Legislative Service Commission

Sub. H.B. 529*

124th General Assembly
(As Reported by H. State Government)

Reps. Wolpert, Kearns, Webster, Schmidt, Husted, Seitz, Collier

BILL SUMMARY

- Eliminates the authority of the Division of Liquor Control to order liquor permit holders to stop selling intoxicating liquor to certain persons.
- Authorizes the Division to share Social Security numbers with other state agencies for specific purposes, and to seek BCII and FBI criminal records checks for specified persons.
- Changes the annual permit fees for A-2 (wine manufacturing), B-2 (wholesale wine distribution), and B-4 (wholesale mixed beverages distribution) permit holders.
- Authorizes a state institution of higher education or a private college or university to qualify to be issued the D-5a permit even if the hotel or motel it owns does not contain at least 50 rooms for registered transient guests.
- Requires annual audits of D-5i permit holders by a certified public accountant and authorizes periodic audits of these permit holders by the Division.
- Eliminates the requirement that persons who order special varieties or brands of spirituous liquor from the Division must secure the order with a deposit.

** This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Revises the deadline for paying a permit fee when a person applies for a liquor permit.
- Eliminates the required use of Ohio grapes and fruits by A-2 permit holders.
- Allows the Division to sell spirituous liquor in 50 milliliter sealed containers to airlines that hold an E permit.
- Changes provisions that require the disclosure of shareholders of a corporation that is an applicant or a permit holder, and specifies disclosures for limited liability companies that are applicants or permit holders.
- Corrects outdated references to the "Department of Liquor Control" and the "Director of Liquor Control."
- Revises other provisions of the Liquor Control Law.

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CONTENT AND OPERATION

Division of Liquor Control's authority to order liquor permit holders to stop selling intoxicating liquor to certain persons

Current law prohibits a permit holder from selling intoxicating liquor to any individual (1) who habitually drinks intoxicating liquor to excess or (2) to whom the Division of Liquor Control, after investigation, has determined to prohibit the sale of intoxicating liquor. The Division's determination must be based on cause shown by the spouse, parent, sibling, or other person dependent upon or in charge of the individual, or cause shown by the mayor of the municipal corporation or a township trustee of the township in which the individual resides. (Sec. 4301.22(C).) Current law also grants a cause of action to a spouse, child, parent, guardian, employer, or other person who is injured in person, property, or means of support by an intoxicated individual, or in consequence of the habitual or other intoxication of an individual, after the Division issues and during the existence of an order prohibiting the sale of intoxicating liquor to that individual. The cause of action is against any person who sells or gives intoxicating liquors to that individual which cause that individual's intoxication in whole or in part. (Sec. 4399.01.) Also, under certain circumstances, a building or premises owner, lessee, or other renter is jointly or severally liable with the person who sells or gives intoxicating liquors to an individual who is the subject of such a Division order and who causes any of the described injuries (sec. 4399.02).

The bill eliminates these provisions and makes conforming and other technical changes in related statutes (secs. 4301.22(C), 4301.24, 4301.99(B) and (D), 4303.203(D) and (F), 4399.01 (outright repealed in Section 2 of the bill), 4399.02, 4399.04, 4399.07, 4399.08, and 4399.18(A)(2)).

Sharing of Social Security numbers with other state agencies

The bill authorizes the Division of Liquor Control to provide the Social Security number of an individual that the Division possesses to the Department of Public Safety, Department of Taxation, Attorney General's office, or any other state agency if the department, office, or agency requests the number to conduct an investigation, implement an enforcement action, or collect taxes (sec. 4301.77).

Criminal records checks

The bill authorizes the Division of Liquor Control to request from the Bureau of Criminal Identification and Investigation (BCII) pursuant to procedures specified in current law, or to coordinate with appropriate federal, state, and local government agencies to accomplish, criminal records checks for any person whose identity must be disclosed by an applicant for the issuance or transfer of ownership of a liquor permit (see "**Change in the required disclosures of applicants and permit holders**," below) (hereafter, covered person). At or before the time of making a request for a criminal records check, the Division may require a covered person to submit to the Division valid fingerprint impressions in a format or by any media or means acceptable to the BCII and, when applicable, the Federal Bureau of Investigation (FBI). The Division may cause the BCII to conduct a criminal records check through the FBI only (1) if the person for whom the check would be conducted resides or works outside Ohio or has resided or worked outside Ohio during the preceding five years, or (2) if a criminal records check conducted by the BCII within Ohio indicates that the person may have a criminal record outside Ohio.

In the case of a criminal records check made pursuant to current law procedures, the Division must forward to the BCII the requisite form, fingerprint impressions, and fee. When requested by the Division in accordance with the bill's conditions mentioned in (1) and (2) above, the BCII must request from the FBI any information it has with respect to the covered person who is the subject of the criminal records check and must forward the requisite fingerprint impressions and information to the FBI for that check. After conducting a criminal records check or receiving the results of such a check from the FBI, the BCII must provide the results to the Division.

The Division may require any covered person about whom a criminal records check is requested to pay to the Division the amount necessary to cover the fee charged to it by the BCII, including, when applicable, any fee for a criminal records check conducted by the FBI. (Secs. 109.572(A)(1), (B), and (C)(1), (2), and (3) and 4301.10(B)(5).)

Change in fees for A-2, B-2, and B-4 permit holders

Current law assesses a fee of \$63 upon each holder of an A-2 permit (authorizing wine manufacturing) for each plant producing 100 wine barrels, of 50 gallons each, or less annually. This fee is increased at the rate of 10¢ per barrel for all wine manufactured in excess of 100 barrels during the year covered by an A-2 permit. The bill establishes a fee of \$150 for each plant producing wine and eliminates the 10¢ per barrel fee increase contained in current law. (Sec. 4303.03.)

Current law assesses a fee of \$250 upon each holder of a B-2 permit (authorizing wholesale wine distribution) for each distributing plant or warehouse. This fee is increased at the rate of 10¢ per wine barrel of 50 gallons for all wine distributed and sold in Ohio in excess of 1,250 barrels during the year covered by a B-2 permit. The bill establishes a fee of \$300 for each distributing plant or warehouse and eliminates the 10¢ per barrel fee increase contained in current law. (Sec. 4303.07.)

Current law assesses a fee of \$250 upon each holder of a B-4 permit (authorizing wholesale mixed beverage distribution) for each distributing plant or warehouse. This fee is increased at the rate of 10¢ per wine barrel of 50 gallons for all mixed beverages distributed and sold in Ohio in excess of 1,000 barrels during the year covered by a B-4 permit. The bill establishes a fee of \$300 for each distributing plant or warehouse and eliminates the 10¢ per barrel fee increase contained in current law. (Sec. 4303.09.)

D-5a permit for university-owned or college-owned hotels or motels

Current law creates the D-5a permit, which may be issued to (1) the owner or operator of a hotel or motel that is required to be licensed under the Hotel Law, that contains at least 50 rooms for registered transient guests, and that meets certain other requirements or (2) to the owner or operator of a restaurant affiliated with such a hotel or motel. The D-5a permit authorizes the sale of beer and intoxicating liquor at retail for consumption both on and off the premises where sold and to guests in their rooms. The sales to guests in their rooms may be by means of a controlled access alcohol and beverage cabinet. (Sec. 4303.181(A).)

The bill also authorizes the D-5a permit to be issued to (1) the owner or operator of a hotel or motel that is required to be licensed under the Hotel Law, *that is owned by a state institution of higher education or by a private college or university*, and that meets certain other requirements or (2) the owner or operator of a restaurant affiliated with such a hotel or motel. Thus, under the bill, a hotel or motel that a state institution of higher education or a private college or university owns need not contain at least 50 rooms for registered transient guests in order to be issued a D-5a permit. (Sec. 4303.181(A).)

Audits of D-5i liquor permits

Current law creates the D-5i permit that may be issued to a restaurant that meets certain specific qualifications. One of these qualifications is that the restaurant's receipts from beer or liquor sales do not exceed 25% of its total gross receipts. Current law requires a D-5i permit holder to cause an independent audit to be performed at the end of the first full year of operation following issuance of the permit in order to verify satisfaction of this requirement. (Sec. 4303.181(I).)

The bill requires a D-5i permit holder to cause an independent audit to be performed by *a certified public accountant* at the end of the first full year of operation following issuance of the permit, *and at the end of each year thereafter*, in order to verify that this requirement has been satisfied. In addition, the *Division of Liquor Control* may *periodically perform* an audit to verify that this requirement has been satisfied. The bill continues the provision of current law that requires the Division to suspend a D-5i permit or allows the Division to authorize a D-5i permit holder to elect to pay a forfeiture, if an audit determines that the receipts of the D-5i permit holder from beer and liquor sales exceeded 25% of its total gross receipts. (Sec. 4303.181(I).)

Elimination of required deposit for special orders from the Division of Liquor Control

Under current law, if any person desires to purchase any variety or brand of spirituous liquor that is not in stock at a state liquor store or agency store, the Division must immediately procure the variety or brand after the purchaser makes a reasonable deposit in proportion to the approximate cost of the order. Unless the purchaser pays for the spirituous liquor and accepts delivery within five days after receiving a notice from the Division that the order has arrived, the Division may place the spirituous liquor in stock for general sale, and the purchaser forfeits the deposit. The bill maintains this current law with the exception that it *removes* the requirement that the purchaser make a *deposit* to secure the special order. (Sec. 4301.19.)

Payment and refund of liquor permit fees

Application fees and annual permit fees

Current law requires that, when an application for the issuance of a permit is filed, the applicant must remit to the Division of Liquor Control the annual liquor permit fee established by law. If the permit is not issued within 120 days from the date of remittance, the Division must return the fee to the applicant. If the Division eventually decides to issue the permit, it must notify the applicant or the applicant's agent by certified mail; then, the applicant, within 30 days after the mailing of the notice, must redeposit the fee, plus any fee increases that have occurred since the initial remittance of the fee. If the applicant fails to redeposit the fee, the applicant's application must be canceled. (Sec. 4303.24.)

The bill instead requires an applicant to remit an *application fee*, *but not the annual permit fee prescribed by law*, when the applicant applies for the issuance of a liquor permit. As under current law, the Division must notify the applicant or the applicant's agent by certified mail of its intention to grant the requested permit. Then, the applicant, within 30 days after the mailing of the notice, must *pay the*

entire amount of the requisite annual permit fee, if the permit is issued during the first six months of the year it covers, or one-half of that requisite fee, if the permit is issued during the last six months of the year it covers. If the applicant fails to pay the requisite amount within this 30-day period, the Division must cancel the applicant's application. (Sec. 4303.24.)

Canceled permits

Current law requires that, whenever the Division cancels a liquor permit, it generally must refund to the permit holder, the permit holder's executors, administrators, receivers, or trustees in bankruptcy, or an assignee for the benefit of the permit holder's creditors, a proportionate amount of the annual permit fee "representing the unexpired portion of the holder's permit year." The refund cannot exceed, however, 90% of the fee, and, if the unexpired portion of the permit year is less than 30 days, no refund can be made. The bill eliminates these refund provisions. (Sec. 4301.41.)

The bill also repeals related provisions that require a municipal corporation or township to refund to the Division 90% of the money that it has received from the Undivided Liquor Permit Fund in the state treasury and that is attributable to the unexpired portion of a liquor permit that is canceled because a local option election has prohibited sales under that permit (secs. 4301.30 and 4301.39(I) and (J)).

Uniform expiration dates

Under current law, when the Superintendent of Liquor Control considers it advisable to cancel the unexpired portion of a permit in order that the permit may be issued on a uniform expiration date the Superintendent designates, the Division may credit or refund the unexpired portion of permit fees outstanding or collect any additional amounts due resulting from the new uniform expiration date. The bill authorizes the Division to grant *a credit, and not a refund*, in this situation. (Secs. 4301.41 and 4303.27.)

Renewal of liquor permit fees

The bill provides that, if a permit holder applies in a timely manner for renewal, but the Division of Liquor Control cannot renew the permit because existing law forbids the renewal due to the permit holder's tax delinquencies or liabilities related to collection of the retail sales tax or personal income withholding tax, the Division may (1) forward the renewal fee to the Department of Taxation or (2) keep the fee if the permit holder (a) fails to appeal the rejection of renewal or (b) loses its appeal and the Division cancels the permit (sec. 4303.271(E)).

Elimination of required use of Ohio grapes and fruits by A-2 permit holders

The holder of an A-2 permit currently must manufacture wine from grapes or other fruits grown in Ohio, if they are obtainable in Ohio. If the grapes or other fruits are not so obtainable, the permit holder may import them from other states, but only after the permit holder submits an affidavit of nonavailability to the Division of Liquor Control. The bill repeals these provisions. (Sec. 4303.03.)

Sale of spirituous liquor in 50 milliliter sealed containers to airlines

Current law allows the Division of Liquor Control to sell spirituous liquor (intoxicating liquor containing more than 21% of alcohol by volume) at wholesale in 50 milliliter sealed containers to hotels that sell that liquor by means of a controlled access alcohol and beverage cabinet in individual rooms. The bill additionally authorizes the Division to sell these containers at wholesale to airlines that have been issued an E permit (authorizing on-premises sales by airlines and railroads). (Sec. 4301.19.)

Change in the required disclosures of applicants and permit holders

Application process

Under current law, if an applicant for a liquor permit is a corporation, the applicant must list on the application (among other items) the names of each officer of the corporation and of each person owning or controlling 10% or more of the corporation. The bill instead requires that if the applicant is a corporation *or limited liability company*, the applicant must list on the application whichever of the following apply: (1) the names of each officer of the corporation, (2) the names of *each officer* of the limited liability company, if it has officers, and the names of the *managing members* of the company or its *managers, if the management of the company is not reserved to its members*, (3) the names of each person owning or controlling *5% or more* of the capital stock of the corporation, and (4) the names of each person owning or controlling 5% or more of either the *voting interests* or *membership interests* in the limited liability company. (Sec. 4303.293(A).)

Ownership changes

Current law requires that, whenever the person to whom a permit has been issued is a corporation and any transfer of the corporation's stock is proposed that would change the owner of the majority of the shares of stock in the corporation, the proposed transfer must be considered a proposed transfer of ownership of the permit. The permit holder then must apply to the Division of Liquor Control for a transfer of ownership of the permit. The bill instead requires that whenever the

person to whom a permit has been issued is a corporation *or limited liability company* and any transfer of the corporation's stock *or the limited liability company's membership interests* is proposed that would change (1) the owner of the majority *or plurality* of the shares of stock in the corporation or (2) the owner of the majority or plurality of the limited liability company's *membership interests*, the proposed transfer of stock or membership interests must be considered a proposed transfer of ownership of the permit, causing its holder to apply to the Division for transfer of its ownership. (Sec. 4303.293(A).)

Division permit-related refusal authority

Current law authorizes the Division to refuse to issue, transfer the ownership of, or renew, and requires the Division to refuse to transfer the location of, any retail permit if it finds (among other grounds) that *any shareholder owning 10% or more of the applicant's capital stock* (1) has been convicted at any time of a crime that relates to fitness to operate a liquor establishment, (2) has operated liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations, or local ordinances of Ohio or any other state, (3) has misrepresented a material fact in applying to the Division for a permit, or (4) is in the habit of using alcoholic beverages or dangerous drugs to excess or is addicted to the use of narcotics (sec. 4303.292(A)(1)).

The bill instead authorizes the Division to refuse to issue, transfer the ownership of, or renew, and requires the Division to refuse to transfer the location of, any retail permit if it finds that either of the following falls into any of the categories described in items (1) to (4) above: (a) any shareholder of a corporation who owns *5% or more* of the applicant's capital stock or (b) any *member of a limited liability company* who owns 5% or more of either the applicant's *voting interests* or *membership interests* (sec. 4303.292(A)(1)).

Conflicts of interest by employees of the Liquor Control Commission and Division of Liquor Control

Current law prohibits the Superintendent of Liquor Control, any member of the Liquor Control Commission, or any appointee or employee of the Commission or the Division of Liquor Control from having any direct or indirect financial interest in the manufacture, distribution, or sale of beer or intoxicating liquor. The bill instead prohibits the Superintendent, any Commission member, or any Commission or Division *employee* from having any *direct* financial interest in, *or any interest otherwise prohibited by the Ohio Ethics Law* or related Criminal Code

statutes in, the manufacture, distribution, or sale of beer or intoxicating liquor. (Sec. 4301.07.)¹

Correction of outdated references

The bill changes several outdated references from the "Department of Liquor Control" to the "Division of Liquor Control" and from the "Director of Liquor Control" to the "Superintendent of Liquor Control" (secs. 307.697(D), 351.26(B), 924.51(A), 4301.07, 4301.30, 4301.424(A), and 4303.271(B)). The Department of Liquor Control was abolished and became a division within the Department of Commerce on July 1, 1997, and on that date the office of Director of Liquor Control became the office of Superintendent of Liquor Control.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-27-02	pp. 1476-1477
Reported, H. State Gov't	---	---

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¹ *The Criminal Code statutes relate to the offenses of having an unlawful interest in a public contract (sec. 2921.42) and soliciting improper compensation (sec. 2921.43).*