



Jeff Grim

*Bill Analysis*  
*Legislative Service Commission*

### **Sub. H.B. 209\***

126th General Assembly  
(As Reported by S. Agriculture)

**Reps. Combs, Carano, Chandler, C. Evans, Harwood, Martin, Perry, Trakas, Daniels, Fende, Yuko, Wolpert, Allen, Barrett, Blessing, Bocchieri, Brown, Distel, Domenick, D. Evans, Flowers, Hughes, Kearns, Key, Otterman, Reidelbach, Schneider, Seaver, Seitz, Webster, Yates**

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### **BILL SUMMARY**

- Allows manufacturers and wholesale distributors of beer or intoxicating liquor to provide to other manufacturers or wholesale distributors travel, lodging, food, and beverages and to provide to liquor permit holders food, beverages, and recreational activities.
- Qualifies the owner or operator of a community arts center or a community theater for issuance of a D-5h liquor permit.
- Creates an additional qualification under which a D-5j permit may be issued within a community entertainment district.
- Excludes wine sales from the total gross receipts requirement governing the issuance of a D-5i liquor permit.
- Modifies the population requirement for the issuance of a D-5i liquor permit.

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

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## CONTENT AND OPERATION

### *Gifts from manufacturers and wholesale distributors of beer or intoxicating liquor*

Current law prohibits a manufacturer from aiding or assisting the holder of any liquor permit for sale at wholesale, and a manufacturer or wholesale distributor from aiding or assisting the holder of any permit for sale at retail, by gift or loan of any money or property of any description or other valuable thing or by giving premiums or rebates.<sup>1</sup> It further prohibits a holder of any liquor permit from accepting any of those items, provided that the manufacturer or wholesale distributor may furnish to a retail permittee the inside signs or advertising and the tap signs and devices authorized by current law. (Sec. 4301.24.) The bill creates an exception to these prohibitions by allowing manufacturers and wholesale distributors to provide specified gifts to other manufacturers or wholesale distributors and liquor permit holders.

The bill states that notwithstanding the restrictions placed on manufacturers, wholesale distributors, and holders of liquor permits for sale at retail or wholesale under existing law, a manufacturer or wholesale distributor may engage in the following conduct, provided that the conduct does not lead to control of a permit holder by another person:

(1) A manufacturer or wholesale distributor may accept from or provide to a manufacturer or wholesale distributor travel, lodging, food, and beverages.

(2) A manufacturer or wholesale distributor may provide to a retail permit holder or the permit holder's employees or agents food, beverages, and recreational activities under either of the following circumstances:

(a) Food and beverages are provided by the manufacturer or wholesale distributor or the manufacturer's or wholesale distributor's employees or agents during a business meeting with a retail permit holder or the permit holder's employees or agents.

(b) Recreational activities are enjoyed in the presence of the retail permit holder or the permit holder's employees or agents and the manufacturer or

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<sup>1</sup> Existing law defines "manufacturer" as any person engaged in the business of manufacturing beer or intoxicating liquor (sec. 4301.01(B)(9), not in the bill). "Wholesale distributor" and "distributor" means a person engaged in the business of selling to retail dealers for purposes of resale (sec. 4301.01(B)(10), not in the bill).

wholesale distributor or the manufacturer's or wholesale distributor's employees or agents who are paying for the recreational activities. (Sec. 4301.242(A).)

Under the bill, "recreational activities" includes sporting events, concerts, theatrical performances, and other forms of entertainment (sec. 4301.242(B)).

**D-5h permit for nonprofit organization that operates fine arts museum community arts center, or community theater**

Current law allows the D-5h liquor permit to be issued to any nonprofit organization that: (1) is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code, (2) owns or operates a fine arts museum, and (3) has not less than 5,000 bona fide members possessing full membership privileges. The holder of a D-5h permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, but the permit holder cannot so sell beer or intoxicating liquor after 1 a.m. A D-5h permit cannot be transferred to another location, and no quota restrictions may be placed on the number of D-5h permits that can be issued. The fee for the D-5h permit is \$1,875. (Sec. 4303.181(H).)

Under the bill, a D-5h permit also may be issued to any nonprofit organization that is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code and that owns or operates either of the following:

(1) A community arts center. The bill defines "community arts center" as a facility that provides arts programming to the community in more than one arts discipline, including, but not limited to, exhibits of works of art and performances by both professional and amateur artists. (Sec. 4303.181(H)(2)(b).)

(2) A community theater, provided that the nonprofit organization is a member of the Ohio Arts Council and the American Community Theatre Association and has been in existence for not less than ten years. Under the bill, "community theater" means a facility that contains at least 150 seats and has a primary function of presenting live theatrical performances and providing recreational opportunities to the community. (Sec. 4303.181(H)(2)(c).)

**D-5j permit for retail food establishments or food service operations within community entertainment districts**

Existing law authorizes a D-5j permit to be issued to the owner or operator of a retail food establishment or a food service operation that is licensed under the Retail Food Establishments and Food Service Operations Law to sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the

container, for consumption on the premises where sold and to sell beer and intoxicating liquor in the same manner and amounts not for consumption on the premises where sold as may be sold by holders of D-1 (sales of beer for on-premises consumption) and D-2 (sales of wine or mixed beverages for on-premises consumption) permits. The holder of a D-5j permit may exercise the same privileges, and must observe the same hours of operation, as the holder of a D-5 permit (sales of beer or intoxicating liquor for on-premises consumption at restaurants or night clubs). The D-5j permit must be issued only within a community entertainment district that is designated under current law and that meets any one of three qualifications.

The bill establishes another qualification that specifies that a community entertainment district may be located in a municipal corporation with a population of at least 10,000, if not less than \$70 million will be invested in development and construction in the community entertainment district's area located in the municipal corporation. (Sec. 4303.181(J)(2).)

**D-5i permit for retail food establishments or food service operations that operate as restaurants**

Under current law, a D-5i permit may be issued to the owner or operator of a retail food establishment or food service operation that is licensed under the Retail Food Establishment and Food Service Operations Law, that operates as a restaurant for purposes of the Liquor Permits Law, and that meets certain requirements. Two of these requirements are that the restaurant's receipts from beer and liquor sales do not exceed 25% of its total gross receipts and that the restaurant is located in a municipal corporation or a township with a population of 75,000 or less. Under the bill, wine sales are excluded from total gross receipts for purposes of the first requirement. Additionally, the bill increases the population requirement from 75,000 or less to 100,000 or less. (Sec. 4303.181(I).)

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**COMMENT**

Subsection 501(c)(3) of the Internal Revenue Code concerns corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or education purposes, or to foster national or international amateur sports competition (with a caveat), or for the prevention of cruelty to children or animals--no part of the net earnings of which entity inures to the benefit of any private shareholder or individual; no substantial part of the activities of which entity is carrying on propaganda, or otherwise attempting, to influence legislation (with a caveat); and which entity does not participate in, or intervene in (including statement

publication or distribution), any political campaign on behalf of or in opposition to any candidate for public office.

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## HISTORY

| ACTION   | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced   | 04-20-05 | p. 678        |
| Reported, H. Local & Municipal<br>Gov't & Urban Revitalization | 06-14-05 | p. 950        |
| Passed House (99-0)  | 06-21-05 | pp. 1378-1380 |
| Reported, S. Agriculture                                       | ---      | ---           |

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