A BILL

To amend sections 4301.10 and 4303.041 and to enact sections 4303.185 and 4303.252 of the Revised Code to enact provisions of law relative to the sale and delivery of alcoholic beverages by liquor permit holders and to declare an emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4301.10 and 4303.041 be amended and sections 4303.185 and 4303.252 of the Revised Code be enacted to read as follows:

Sec. 4301.10. (A) The division of liquor control shall do all of the following:

(1) Control the traffic in beer and intoxicating liquor in this state, including the manufacture, importation, and sale of beer and intoxicating liquor;

(2) Grant or refuse permits for the manufacture, distribution, transportation, and sale of beer and intoxicating liquor and the sale of alcohol, as authorized or required by
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this chapter and Chapter 4303. of the Revised Code. A certificate, signed by the superintendent of liquor control and to which is affixed the official seal of the division, stating that it appears from the records of the division that no permit has been issued to the person specified in the certificate, or that a permit, if issued, has been revoked, canceled, or suspended, shall be received as prima-facie evidence of the facts recited in the certificate in any court or before any officer of this state.

(3) Put into operation, manage, and control a system of state liquor stores for the sale of spirituous liquor at retail and to holders of permits authorizing the sale of spirituous liquor; however, the division shall not establish any drive-in state liquor stores; and by means of those types of stores, and any manufacturing plants, distributing and bottling plants, warehouses, and other facilities that it considers expedient, establish and maintain a state monopoly of the distribution of spirituous liquor and its sale in packages or containers; and for that purpose, manufacture, buy, import, possess, and sell spirituous liquors as provided in this chapter and Chapter 4303. of the Revised Code, and in the rules promulgated by the superintendent of liquor control pursuant to those chapters; lease or in any manner acquire the use of any land or building required for any of those purposes; purchase any equipment that is required; and borrow money to carry on its business, and issue, sign, endorse, and accept notes, checks, and bills of exchange; but all obligations of the division created under authority of this division shall be a charge only upon the moneys received by the division from the sale of spirituous liquor and its other business transactions in connection with the sale of spirituous liquor, and shall not be general
obligations of the state;

(4) Enforce the administrative provisions of this chapter and Chapter 4303. of the Revised Code, and the rules and orders of the liquor control commission and the superintendent relating to the manufacture, importation, transportation, distribution, and sale of beer or intoxicating liquor. The attorney general, any prosecuting attorney, and any prosecuting officer of a municipal corporation or a municipal court shall, at the request of the division of liquor control or the department of public safety, prosecute any person charged with the violation of any provision in those chapters or of any section of the Revised Code relating to the manufacture, importation, transportation, distribution, and sale of beer or intoxicating liquor.

(5) Determine the locations of all state liquor stores and manufacturing, distributing, and bottling plants required in connection with those stores, subject to this chapter and Chapter 4303. of the Revised Code;

(6) Conduct inspections of liquor permit premises to determine compliance with the administrative provisions of this chapter and Chapter 4303. of the Revised Code and the rules adopted under those provisions by the liquor control commission.

Except as otherwise provided in division (A)(6) of this section, those inspections may be conducted only during those hours in which the permit holder is open for business and only by authorized agents or employees of the division or by any peace officer, as defined in section 2935.01 of the Revised Code. Inspections may be conducted at other hours only to determine compliance with laws or commission rules that regulate the hours of sale of beer or intoxicating liquor and only if the investigator has reasonable cause to believe that those laws or
rules are being violated. Any inspection conducted pursuant to division (A)(6) of this section is subject to all of the following requirements:

(a) The only property that may be confiscated is contraband, as defined in section 2901.01 of the Revised Code, or property that is otherwise necessary for evidentiary purposes.

(b) A complete inventory of all property confiscated from the premises shall be given to the permit holder or the permit holder's agent or employee by the confiscating agent or officer at the conclusion of the inspection. At that time, the inventory shall be signed by the confiscating agent or officer, and the agent or officer shall give the permit holder or the permit holder's agent or employee the opportunity to sign the inventory.

(c) Inspections conducted pursuant to division (A)(6) of this section shall be conducted in a reasonable manner. A finding by any court of competent jurisdiction that an inspection was not conducted in a reasonable manner in accordance with this section or any rules adopted by the commission may be considered grounds for suppression of evidence. A finding by the commission that an inspection was not conducted in a reasonable manner in accordance with this section or any rules adopted by it may be considered grounds for dismissal of the commission case.

If any court of competent jurisdiction finds that property confiscated as the result of an administrative inspection is not necessary for evidentiary purposes and is not contraband, as defined in section 2901.01 of the Revised Code, the court shall order the immediate return of the confiscated property, provided
that property is not otherwise subject to forfeiture, to the permit holder. However, the return of this property is not grounds for dismissal of the case. The commission likewise may order the return of confiscated property if no criminal prosecution is pending or anticipated.

(7) Delegate to any of its agents or employees any power of investigation that the division possesses with respect to the enforcement of any of the administrative laws relating to beer or intoxicating liquor, provided that this division does not authorize the division to designate any agent or employee to serve as an enforcement agent. The employment and designation of enforcement agents shall be within the exclusive authority of the director of public safety pursuant to sections 5502.13 to 5502.19 of the Revised Code.

(8) Collect the following fees:

(a) A biennial fifty-dollar registration fee for each agent, solicitor, trade marketing professional, or salesperson, registered pursuant to section 4303.25 of the Revised Code, of a beer or intoxicating liquor manufacturer, supplier, broker, trade marketing company, or wholesale distributor doing business in this state;

(b) A fifty-dollar product registration fee for each new beer or intoxicating liquor product sold in this state. The product registration fee also applies to products sold in this state by B-2a and S permit holders. The product registration fee shall be accompanied by a copy of the federal label and product approval for the new product.

(c) An annual three-hundred-dollar supplier registration fee from each manufacturer or supplier that produces and ships
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into this state, or ships into this state, intoxicating liquor or beer, in addition to an initial application fee of one hundred dollars. A manufacturer that produces and ships beer or wine into this state and that holds only an S permit is exempt from the supplier registration fee. A manufacturer that produces and ships wine into this state and that holds a B-2a permit shall pay an annual seventy-six-dollar supplier registration fee. A manufacturer that produces and ships wine into this state and that does not hold either an S or a B-2a permit, but that produces less than two hundred fifty thousand gallons of wine per year and that is entitled to a tax credit under 27 C.F.R. 24.278 shall pay an annual seventy-six-dollar supplier registration fee. A B-2a or S permit holder that does not sell its wine to wholesale distributors of wine in this state and an S permit holder that does not sell its beer to wholesale distributors of beer in this state shall not be required to submit to the division territory designation forms.

Each supplier, agent, solicitor, trade marketing professional, or salesperson registration issued under this division shall authorize the person named to carry on the activity specified in the registration. Each agent, solicitor, trade marketing professional, or salesperson registration is valid for two years or for the unexpired portion of a two-year registration period. Each supplier registration is valid for one year or for the unexpired portion of a one-year registration period. Registrations shall end on their respective uniform expiration date, which shall be designated by the division, and are subject to suspension, revocation, cancellation, or fine as authorized by this chapter and Chapter 4303. of the Revised Code.

As used in this division, "trade marketing company" and
"trade marketing professional" have the same meanings as in section 4301.171 of the Revised Code.

(9) Establish a system of electronic data interchange within the division and regulate the electronic transfer of information and funds among persons and governmental entities engaged in the manufacture, distribution, and retail sale of alcoholic beverages;

(10) Notify all holders of retail permits of the forms of permissible identification for purposes of division (A) of section 4301.639 of the Revised Code;

(11) Exercise all other powers expressly or by necessary implication conferred upon the division by this chapter and Chapter 4303. of the Revised Code, and all powers necessary for the exercise or discharge of any power, duty, or function expressly conferred or imposed upon the division by those chapters.

(B) The division may do all of the following:

(1) Sue, but may be sued only in connection with the execution of leases of real estate and the purchases and contracts necessary for the operation of the state liquor stores that are made under this chapter and Chapter 4303. of the Revised Code;

(2) Enter into leases and contracts of all descriptions and acquire and transfer title to personal property with regard to the sale, distribution, and storage of spirituous liquor within the state;

(3) Terminate at will any lease entered into pursuant to division (B)(2) of this section upon first giving ninety days' notice in writing to the lessor of its intention to do so;
(4) Fix the wholesale and retail prices at which the various classes, varieties, and brands of spirituous liquor shall be sold by the division. Those retail prices shall be the same at all state liquor stores, except to the extent that a price differential is required to collect a county sales tax levied pursuant to section 5739.021 of the Revised Code and for which tax the tax commissioner has authorized prepayment pursuant to section 5739.05 of the Revised Code. In fixing selling prices, the division shall compute an anticipated gross profit at least sufficient to provide in each calendar year all costs and expenses of the division and also an adequate working capital reserve for the division. The gross profit shall not exceed forty per cent of the retail selling price based on costs of the division, and in addition the sum required by section 4301.12 of the Revised Code to be paid into the state treasury. An amount equal to one and one-half per cent of that gross profit shall be paid into the statewide treatment and prevention fund created by section 4301.30 of the Revised Code and be appropriated by the general assembly from the fund to the department of mental health and addiction services as provided in section 4301.30 of the Revised Code.

On spirituous liquor manufactured in this state from the juice of grapes or fruits grown in this state, the division shall compute an anticipated gross profit of not to exceed ten per cent.

The wholesale prices fixed under this division shall be at a discount of not less than six per cent of the retail selling prices as determined by the division in accordance with this section.

(C) The Except for an expansion governed by section
4303.185 of the Revised Code, the division may approve the expansion or diminution of a premises to which a liquor permit has been issued and may adopt standards governing such an expansion or diminution.

Sec. 4303.041. (A) An A-3a permit may be issued to a distiller that manufactures less than one hundred thousand gallons of spirituous liquor per year. An A-3a permit holder may sell to a personal consumer, in sealed containers for consumption off the premises where manufactured, spirituous liquor that the permit holder manufactures, but. However, an A-3a permit holder may make sales to the personal consumer only by an in-person transaction at the permit premises or via delivery made pursuant to section 4303.185 or 4303.252 of the Revised Code. The A-3a permit holder shall not ship, send, or use an H permit holder to deliver spirituous liquor to the personal consumer.

"Distiller" means a person in this state who mashes, ferments, distills, and ages spirituous liquor.

(B)(1) Except as otherwise provided in this section, no A-3a permit shall be issued unless the sale of spirituous liquor by the glass for consumption on the premises or by the package for consumption off the premises is authorized in the election precinct in which the A-3a permit is proposed to be located.

(2) Division (B)(1) of this section does not prohibit the issuance of an A-3a permit to an applicant for such a permit who has filed an application with the division of liquor control before March 22, 2012.

(C)(1) An A-3a permit holder may offer for sale tasting samples of spirituous liquor. The A-3a permit holder shall not
serve more than four tasting samples of spirituous liquor per person per day. A tasting sample shall not exceed a quarter ounce. Tasting samples shall be only for the purpose of allowing a purchaser to determine, by tasting only, the quality and character of the spirituous liquor. The tasting samples shall be offered for sale in accordance with rules adopted by the division of liquor control.

(2) An A-3a permit holder shall sell not more than one and one-half liters of spirituous liquor per day from the permit premises to the same personal consumer.

An A-3a permit holder may sell spirituous liquor in sealed containers for consumption off the premises where manufactured as an independent contractor under agreement, by virtue of the permit, with the division of liquor control. The price at which the A-3a permit holder shall sell each spirituous liquor product to a personal consumer is to be determined by the division of liquor control. For an A-3a permit holder to purchase and then offer spirituous liquor for retail sale, the spirituous liquor need not first leave the physical possession of the A-3a permit holder to be so registered. The spirituous liquor that the A-3a permit holder buys from the division of liquor control shall be maintained in a separate area of the permit premises for sale to personal consumers. The A-3a permit holder shall sell such spirituous liquor in sealed containers for consumption off the premises where manufactured as an independent contractor by virtue of the permit issued by the division of liquor control, but the permit holder shall not be compensated as provided in division (A)(1) of section 4301.17 of the Revised Code. Each A-3a permit holder shall be subject to audit by the division of liquor control.
(D) The fee for the A-3a permit is two dollars per fifty-gallon barrel.

(E) The holder of an A-3a permit may also exercise the same privileges as the holder of an A-3 permit.

Sec. 4303.185. (A) As used in this section:

(1) "Alcoholic beverage" means beer, wine, mixed beverages, or spirituous liquor.

(2) "Personal consumer" means an individual who is at least twenty-one years of age and intends to use a purchased alcoholic beverage for personal consumption only and not for resale or other commercial purposes.

(3) "Retail permit holder" means an A-1-A, A-1c, A-2, A-2f, A-3a, or D class permit holder.

(B) Notwithstanding any other provision of law to the contrary and in addition to any other sales authorized by a retail permit holder's permit, a retail permit holder may do both of the following:

(1) Sell alcoholic beverages by the individual drink in closed containers to a personal consumer for off-premises consumption, including via delivery to the location of the personal consumer;

(2) Sell, via delivery, alcoholic beverages in sealed original containers to a personal consumer.

(C) (1) A retail permit holder may only sell types of alcoholic beverages under division (B) of this section that the retail permit holder is otherwise authorized to sell under the retail permit holder's permit.
(2) Prior to delivering an alcoholic beverage to a personal consumer under this section, a retail permit holder, or an employee of the retail permit holder, shall make a bona fide effort to ensure that the personal consumer is at least twenty-one years of age.

(3) A retail permit holder need not use a person issued an H permit under Chapter 4303. of the Revised Code to make deliveries authorized under this section.

(4) An A-3a permit holder that sells spirituous liquor in its original sealed container under division (B) of this section shall otherwise comply with section 4303.041 of the Revised Code regarding sales of spirituous liquor.

(D)(1) In addition to areas in which a retail permit holder is authorized to sell alcoholic beverages under the retail permit holder's permit, a retail permit holder may sell alcoholic beverages by the individual drink for consumption as follows:

(a) In any area of the retail permit holder's property in which sales are not currently authorized and that is outdoors, including the retail permit holder's parking area;

(b) In any outdoor area of public property that is immediately adjacent to the retail permit holder's premises, provided that the permit holder obtains written consent in accordance with division (E) of this section;

(c) In any outdoor area of private property that is immediately adjacent to the retail permit holder's premises, provided that the permit holder obtains the written consent of the owner of the private property.

(2) If a retail permit holder sells alcoholic beverages in
an outdoor area, the retail permit holder shall clearly delineate the area where personal consumers may consume alcoholic beverages.

(E) For purposes of division (D)(1)(b) of this section, a retail permit holder shall obtain the written consent of either of the following:

(1) If the public property is located in a municipal corporation, the executive officer of the municipal corporation or the executive officer's designee. If the executive officer or the executive officer's designee denies consent, the retail permit holder may appeal the denial to the legislative authority of the municipal corporation. The legislative authority may adopt a resolution requesting the executive officer to reconsider the executive officer's denial.

(2) If the public property is located in the unincorporated area of a township, the fiscal officer of the township or the fiscal officer's designee. If the fiscal officer or the fiscal officer's designee denies consent, the retail permit holder may appeal the denial to the legislative authority of the township. The legislative authority may adopt a resolution consenting to the sale of alcoholic beverages.

(F) Section 4301.62 of the Revised Code does not apply to either of the following:

(1) An alcoholic beverage in a closed container being transported under this section to its final destination, provided that, during such transport, no person consumes the alcoholic beverage;

(2) The consumption of an alcoholic beverage in an outdoor area described in division (D)(1) of this section.
Sec. 4303.252. (A) As used in this section:

(1) "Food delivery service" means an online business that acts as an intermediary between multiple retail food establishments or food service operations licensed under Chapter 3717. of the Revised Code and purchasers of food from those establishments or operations by doing both of the following:

(a) Submitting food orders to participating retail food establishments or food service operations on behalf of those purchasers;

(b) Delivering food orders from retail food establishments or food service operations to those purchasers.

(2) "Alcoholic beverage" and "personal consumer" have the same meanings as in section 4303.185 of the Revised Code.

(B) A food delivery service may deliver alcoholic beverages in sealed original containers or by the individual drink in closed containers from an A-1-A, A-1c, A-2, A-2f, A-3a, C class, or D class permit holder to a personal consumer, provided the food delivery service registers with the division of liquor control. The food delivery service shall register in a manner that the superintendent of liquor control shall prescribe.

(C) A permit holder shall provide alcoholic beverages for delivery under this section to a food delivery service only of the type that the permit holder is otherwise authorized to sell under the permit holder's permit.

(D) Prior to delivering an alcoholic beverage to a personal consumer under this section, a representative of a food delivery service shall make a bona fide effort to ensure that the personal consumer is at least twenty-one years of age.
(E) Section 4301.62 of the Revised Code does not apply to an alcoholic beverage in a closed container being transported under this section to its final destination, provided that, during such transport, no person consumes the alcoholic beverage.

Section 2. That existing sections 4301.10 and 4303.041 of the Revised Code are hereby repealed.

Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to provide economic relief to liquor permit holders as a result of the COVID-19 outbreak. Therefore, this act shall go into immediate effect.