

As Introduced

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H. B. No. 669

Representatives Swearingen, LaRe

**Cosponsors: Representatives Romanchuk, Jordan, Reineke, Seitz, Becker,
Abrams, Jones, Carfagna, Cross, Hambley, Lang, Antani, Weinstein**

A BILL

To amend sections 4301.10 and 4303.041 and to enact 1
sections 4303.185 and 4303.252 of the Revised 2
Code to enact provisions of law relative to the 3
sale and delivery of alcoholic beverages by 4
liquor permit holders and to declare an 5
emergency. 6

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

Section 1. That sections 4301.10 and 4303.041 be amended 7
and sections 4303.185 and 4303.252 of the Revised Code be 8
enacted to read as follows: 9

Sec. 4301.10. (A) The division of liquor control shall do 10
all of the following: 11

(1) Control the traffic in beer and intoxicating liquor in 12
this state, including the manufacture, importation, and sale of 13
beer and intoxicating liquor; 14

(2) Grant or refuse permits for the manufacture, 15
distribution, transportation, and sale of beer and intoxicating 16
liquor and the sale of alcohol, as authorized or required by 17

this chapter and Chapter 4303. of the Revised Code. A 18
certificate, signed by the superintendent of liquor control and 19
to which is affixed the official seal of the division, stating 20
that it appears from the records of the division that no permit 21
has been issued to the person specified in the certificate, or 22
that a permit, if issued, has been revoked, canceled, or 23
suspended, shall be received as prima-facie evidence of the 24
facts recited in the certificate in any court or before any 25
officer of this state. 26

(3) Put into operation, manage, and control a system of 27
state liquor stores for the sale of spirituous liquor at retail 28
and to holders of permits authorizing the sale of spirituous 29
liquor; however, the division shall not establish any drive-in 30
state liquor stores; and by means of those types of stores, and 31
any manufacturing plants, distributing and bottling plants, 32
warehouses, and other facilities that it considers expedient, 33
establish and maintain a state monopoly of the distribution of 34
spirituous liquor and its sale in packages or containers; and 35
for that purpose, manufacture, buy, import, possess, and sell 36
spirituous liquors as provided in this chapter and Chapter 4303. 37
of the Revised Code, and in the rules promulgated by the 38
superintendent of liquor control pursuant to those chapters; 39
lease or in any manner acquire the use of any land or building 40
required for any of those purposes; purchase any equipment that 41
is required; and borrow money to carry on its business, and 42
issue, sign, endorse, and accept notes, checks, and bills of 43
exchange; but all obligations of the division created under 44
authority of this division shall be a charge only upon the 45
moneys received by the division from the sale of spirituous 46
liquor and its other business transactions in connection with 47
the sale of spirituous liquor, and shall not be general 48

obligations of the state; 49

(4) Enforce the administrative provisions of this chapter 50
and Chapter 4303. of the Revised Code, and the rules and orders 51
of the liquor control commission and the superintendent relating 52
to the manufacture, importation, transportation, distribution, 53
and sale of beer or intoxicating liquor. The attorney general, 54
any prosecuting attorney, and any prosecuting officer of a 55
municipal corporation or a municipal court shall, at the request 56
of the division of liquor control or the department of public 57
safety, prosecute any person charged with the violation of any 58
provision in those chapters or of any section of the Revised 59
Code relating to the manufacture, importation, transportation, 60
distribution, and sale of beer or intoxicating liquor. 61

(5) Determine the locations of all state liquor stores and 62
manufacturing, distributing, and bottling plants required in 63
connection with those stores, subject to this chapter and 64
Chapter 4303. of the Revised Code; 65

(6) Conduct inspections of liquor permit premises to 66
determine compliance with the administrative provisions of this 67
chapter and Chapter 4303. of the Revised Code and the rules 68
adopted under those provisions by the liquor control commission. 69

Except as otherwise provided in division (A)(6) of this 70
section, those inspections may be conducted only during those 71
hours in which the permit holder is open for business and only 72
by authorized agents or employees of the division or by any 73
peace officer, as defined in section 2935.01 of the Revised 74
Code. Inspections may be conducted at other hours only to 75
determine compliance with laws or commission rules that regulate 76
the hours of sale of beer or intoxicating liquor and only if the 77
investigator has reasonable cause to believe that those laws or 78

rules are being violated. Any inspection conducted pursuant to 79
division (A) (6) of this section is subject to all of the 80
following requirements: 81

(a) The only property that may be confiscated is 82
contraband, as defined in section 2901.01 of the Revised Code, 83
or property that is otherwise necessary for evidentiary 84
purposes. 85

(b) A complete inventory of all property confiscated from 86
the premises shall be given to the permit holder or the permit 87
holder's agent or employee by the confiscating agent or officer 88
at the conclusion of the inspection. At that time, the inventory 89
shall be signed by the confiscating agent or officer, and the 90
agent or officer shall give the permit holder or the permit 91
holder's agent or employee the opportunity to sign the 92
inventory. 93

(c) Inspections conducted pursuant to division (A) (6) of 94
this section shall be conducted in a reasonable manner. A 95
finding by any court of competent jurisdiction that an 96
inspection was not conducted in a reasonable manner in 97
accordance with this section or any rules adopted by the 98
commission may be considered grounds for suppression of 99
evidence. A finding by the commission that an inspection was not 100
conducted in a reasonable manner in accordance with this section 101
or any rules adopted by it may be considered grounds for 102
dismissal of the commission case. 103

If any court of competent jurisdiction finds that property 104
confiscated as the result of an administrative inspection is not 105
necessary for evidentiary purposes and is not contraband, as 106
defined in section 2901.01 of the Revised Code, the court shall 107
order the immediate return of the confiscated property, provided 108

that property is not otherwise subject to forfeiture, to the 109
permit holder. However, the return of this property is not 110
grounds for dismissal of the case. The commission likewise may 111
order the return of confiscated property if no criminal 112
prosecution is pending or anticipated. 113

(7) Delegate to any of its agents or employees any power 114
of investigation that the division possesses with respect to the 115
enforcement of any of the administrative laws relating to beer 116
or intoxicating liquor, provided that this division does not 117
authorize the division to designate any agent or employee to 118
serve as an enforcement agent. The employment and designation of 119
enforcement agents shall be within the exclusive authority of 120
the director of public safety pursuant to sections 5502.13 to 121
5502.19 of the Revised Code. 122

(8) Collect the following fees: 123

(a) A biennial fifty-dollar registration fee for each 124
agent, solicitor, trade marketing professional, or salesperson, 125
registered pursuant to section 4303.25 of the Revised Code, of a 126
beer or intoxicating liquor manufacturer, supplier, broker, 127
trade marketing company, or wholesale distributor doing business 128
in this state; 129

(b) A fifty-dollar product registration fee for each new 130
beer or intoxicating liquor product sold in this state. The 131
product registration fee also applies to products sold in this 132
state by B-2a and S permit holders. The product registration fee 133
shall be accompanied by a copy of the federal label and product 134
approval for the new product. 135

(c) An annual three-hundred-dollar supplier registration 136
fee from each manufacturer or supplier that produces and ships 137

into this state, or ships into this state, intoxicating liquor 138
or beer, in addition to an initial application fee of one 139
hundred dollars. A manufacturer that produces and ships beer or 140
wine into this state and that holds only an S permit is exempt 141
from the supplier registration fee. A manufacturer that produces 142
and ships wine into this state and that holds a B-2a permit 143
shall pay an annual seventy-six-dollar supplier registration 144
fee. A manufacturer that produces and ships wine into this state 145
and that does not hold either an S or a B-2a permit, but that 146
produces less than two hundred fifty thousand gallons of wine 147
per year and that is entitled to a tax credit under 27 C.F.R. 148
24.278 shall pay an annual seventy-six-dollar supplier 149
registration fee. A B-2a or S permit holder that does not sell 150
its wine to wholesale distributors of wine in this state and an 151
S permit holder that does not sell its beer to wholesale 152
distributors of beer in this state shall not be required to 153
submit to the division territory designation forms. 154

Each supplier, agent, solicitor, trade marketing 155
professional, or salesperson registration issued under this 156
division shall authorize the person named to carry on the 157
activity specified in the registration. Each agent, solicitor, 158
trade marketing professional, or salesperson registration is 159
valid for two years or for the unexpired portion of a two-year 160
registration period. Each supplier registration is valid for one 161
year or for the unexpired portion of a one-year registration 162
period. Registrations shall end on their respective uniform 163
expiration date, which shall be designated by the division, and 164
are subject to suspension, revocation, cancellation, or fine as 165
authorized by this chapter and Chapter 4303. of the Revised 166
Code. 167

As used in this division, "trade marketing company" and 168

"trade marketing professional" have the same meanings as in	169
section 4301.171 of the Revised Code.	170
(9) Establish a system of electronic data interchange	171
within the division and regulate the electronic transfer of	172
information and funds among persons and governmental entities	173
engaged in the manufacture, distribution, and retail sale of	174
alcoholic beverages;	175
(10) Notify all holders of retail permits of the forms of	176
permissible identification for purposes of division (A) of	177
section 4301.639 of the Revised Code;	178
(11) Exercise all other powers expressly or by necessary	179
implication conferred upon the division by this chapter and	180
Chapter 4303. of the Revised Code, and all powers necessary for	181
the exercise or discharge of any power, duty, or function	182
expressly conferred or imposed upon the division by those	183
chapters.	184
(B) The division may do all of the following:	185
(1) Sue, but may be sued only in connection with the	186
execution of leases of real estate and the purchases and	187
contracts necessary for the operation of the state liquor stores	188
that are made under this chapter and Chapter 4303. of the	189
Revised Code;	190
(2) Enter into leases and contracts of all descriptions	191
and acquire and transfer title to personal property with regard	192
to the sale, distribution, and storage of spirituous liquor	193
within the state;	194
(3) Terminate at will any lease entered into pursuant to	195
division (B) (2) of this section upon first giving ninety days'	196
notice in writing to the lessor of its intention to do so;	197

(4) Fix the wholesale and retail prices at which the 198
various classes, varieties, and brands of spirituous liquor 199
shall be sold by the division. Those retail prices shall be the 200
same at all state liquor stores, except to the extent that a 201
price differential is required to collect a county sales tax 202
levied pursuant to section 5739.021 of the Revised Code and for 203
which tax the tax commissioner has authorized prepayment 204
pursuant to section 5739.05 of the Revised Code. In fixing 205
selling prices, the division shall compute an anticipated gross 206
profit at least sufficient to provide in each calendar year all 207
costs and expenses of the division and also an adequate working 208
capital reserve for the division. The gross profit shall not 209
exceed forty per cent of the retail selling price based on costs 210
of the division, and in addition the sum required by section 211
4301.12 of the Revised Code to be paid into the state treasury. 212
An amount equal to one and one-half per cent of that gross 213
profit shall be paid into the statewide treatment and prevention 214
fund created by section 4301.30 of the Revised Code and be 215
appropriated by the general assembly from the fund to the 216
department of mental health and addiction services as provided 217
in section 4301.30 of the Revised Code. 218

On spirituous liquor manufactured in this state from the 219
juice of grapes or fruits grown in this state, the division 220
shall compute an anticipated gross profit of not to exceed ten 221
per cent. 222

The wholesale prices fixed under this division shall be at 223
a discount of not less than six per cent of the retail selling 224
prices as determined by the division in accordance with this 225
section. 226

(C) ~~The~~ Except for an expansion governed by section 227

4303.185 of the Revised Code, the division may approve the 228
expansion or diminution of a premises to which a liquor permit 229
has been issued and may adopt standards governing such an 230
expansion or diminution. 231

Sec. 4303.041. (A) An A-3a permit may be issued to a 232
distiller that manufactures less than one hundred thousand 233
gallons of spirituous liquor per year. An A-3a permit holder may 234
sell to a personal consumer, in sealed containers for 235
consumption off the premises where manufactured, spirituous 236
liquor that the permit holder manufactures, ~~but~~. However, an A- 237
3a permit holder may make sales to the personal consumer may 238
~~occur~~ only by an in-person transaction at the permit premises or 239
via delivery made pursuant to section 4303.185 or 4303.252 of 240
the Revised Code. The A-3a permit holder shall not ship, send, 241
~~or use an H permit holder to deliver spirituous liquor to the~~ 242
~~personal consumer.~~ 243

"Distiller" means a person in this state who mashes, 244
ferments, distills, and ages spirituous liquor. 245

(B) (1) Except as otherwise provided in this section, no A- 246
3a permit shall be issued unless the sale of spirituous liquor 247
by the glass for consumption on the premises or by the package 248
for consumption off the premises is authorized in the election 249
precinct in which the A-3a permit is proposed to be located. 250

(2) Division (B) (1) of this section does not prohibit the 251
issuance of an A-3a permit to an applicant for such a permit who 252
has filed an application with the division of liquor control 253
before March 22, 2012. 254

(C) (1) An A-3a permit holder may offer for sale tasting 255
samples of spirituous liquor. The A-3a permit holder shall not 256

serve more than four tasting samples of spirituous liquor per 257
person per day. A tasting sample shall not exceed a quarter 258
ounce. Tasting samples shall be only for the purpose of allowing 259
a purchaser to determine, by tasting only, the quality and 260
character of the spirituous liquor. The tasting samples shall be 261
offered for sale in accordance with rules adopted by the 262
division of liquor control. 263

(2) An A-3a permit holder shall sell not more than one and 264
one-half liters of spirituous liquor per day from the permit 265
premises to the same personal consumer. 266

An A-3a permit holder may sell spirituous liquor in sealed 267
containers for consumption off the premises where manufactured 268
as an independent contractor under agreement, by virtue of the 269
permit, with the division of liquor control. The price at which 270
the A-3a permit holder shall sell each spirituous liquor product 271
to a personal consumer is to be determined by the division of 272
liquor control. For an A-3a permit holder to purchase and then 273
offer spirituous liquor for retail sale, the spirituous liquor 274
need not first leave the physical possession of the A-3a permit 275
holder to be so registered. The spirituous liquor that the A-3a 276
permit holder buys from the division of liquor control shall be 277
maintained in a separate area of the permit premises for sale to 278
personal consumers. The A-3a permit holder shall sell such 279
spirituous liquor in sealed containers for consumption off the 280
premises where manufactured as an independent contractor by 281
virtue of the permit issued by the division of liquor control, 282
but the permit holder shall not be compensated as provided in 283
division (A) (1) of section 4301.17 of the Revised Code. Each A- 284
3a permit holder shall be subject to audit by the division of 285
liquor control. 286

(D) The fee for the A-3a permit is two dollars per fifty-	287
gallon barrel.	288
(E) The holder of an A-3a permit may also exercise the	289
same privileges as the holder of an A-3 permit.	290
<u>Sec. 4303.185. (A) As used in this section:</u>	291
<u>(1) "Alcoholic beverage" means beer, wine, mixed</u>	292
<u>beverages, or spirituous liquor.</u>	293
<u>(2) "Personal consumer" means an individual who is at</u>	294
<u>least twenty-one years of age and intends to use a purchased</u>	295
<u>alcoholic beverage for personal consumption only and not for</u>	296
<u>resale or other commercial purposes.</u>	297
<u>(3) "Retail permit holder" means an A-1-A, A-1c, A-2, A-</u>	298
<u>2f, A-3a, or D class permit holder.</u>	299
<u>(B) Notwithstanding any other provision of law to the</u>	300
<u>contrary and in addition to any other sales authorized by a</u>	301
<u>retail permit holder's permit, a retail permit holder may do</u>	302
<u>both of the following:</u>	303
<u>(1) Sell alcoholic beverages by the individual drink in</u>	304
<u>closed containers to a personal consumer for off-premises</u>	305
<u>consumption, including via delivery to the location of the</u>	306
<u>personal consumer;</u>	307
<u>(2) Sell, via delivery, alcoholic beverages in sealed</u>	308
<u>original containers to a personal consumer.</u>	309
<u>(C) (1) A retail permit holder may only sell types of</u>	310
<u>alcoholic beverages under division (B) of this section that the</u>	311
<u>retail permit holder is otherwise authorized to sell under the</u>	312
<u>retail permit holder's permit.</u>	313

(2) Prior to delivering an alcoholic beverage to a 314
personal consumer under this section, a retail permit holder, or 315
an employee of the retail permit holder, shall make a bona fide 316
effort to ensure that the personal consumer is at least twenty- 317
one years of age. 318

(3) A retail permit holder need not use a person issued an 319
H permit under Chapter 4303. of the Revised Code to make 320
deliveries authorized under this section. 321

(4) An A-3a permit holder that sells spirituous liquor in 322
its original sealed container under division (B) of this section 323
shall otherwise comply with section 4303.041 of the Revised Code 324
regarding sales of spirituous liquor. 325

(D) (1) In addition to areas in which a retail permit 326
holder is authorized to sell alcoholic beverages under the 327
retail permit holder's permit, a retail permit holder may sell 328
alcoholic beverages by the individual drink for consumption as 329
follows: 330

(a) In any area of the retail permit holder's property in 331
which sales are not currently authorized and that is outdoors, 332
including the retail permit holder's parking area; 333

(b) In any outdoor area of public property that is 334
immediately adjacent to the retail permit holder's premises, 335
provided that the permit holder obtains written consent in 336
accordance with division (E) of this section; 337

(c) In any outdoor area of private property that is 338
immediately adjacent to the retail permit holder's premises, 339
provided that the permit holder obtains the written consent of 340
the owner of the private property. 341

(2) If a retail permit holder sells alcoholic beverages in 342

an outdoor area, the retail permit holder shall clearly 343
delineate the area where personal consumers may consume 344
alcoholic beverages. 345

(E) For purposes of division (D)(1)(b) of this section, a 346
retail permit holder shall obtain the written consent of either 347
of the following: 348

(1) If the public property is located in a municipal 349
corporation, the executive officer of the municipal corporation 350
or the executive officer's designee. If the executive officer or 351
the executive officer's designee denies consent, the retail 352
permit holder may appeal the denial to the legislative authority 353
of the municipal corporation. The legislative authority may 354
adopt a resolution requesting the executive officer to 355
reconsider the executive officer's denial. 356

(2) If the public property is located in the 357
unincorporated area of a township, the fiscal officer of the 358
township or the fiscal officer's designee. If the fiscal officer 359
or the fiscal officer's designee denies consent, the retail 360
permit holder may appeal the denial to the legislative authority 361
of the township. The legislative authority may adopt a 362
resolution consenting to the sale of alcoholic beverages. 363

(F) Section 4301.62 of the Revised Code does not apply to 364
either of the following: 365

(1) An alcoholic beverage in a closed container being 366
transported under this section to its final destination, 367
provided that, during such transport, no person consumes the 368
alcoholic beverage; 369

(2) The consumption of an alcoholic beverage in an outdoor 370
area described in division (D)(1) of this section. 371

Sec. 4303.252. (A) As used in this section: 372

(1) "Food delivery service" means an online business that 373
acts as an intermediary between multiple retail food 374
establishments or food service operations licensed under Chapter 375
3717. of the Revised Code and purchasers of food from those 376
establishments or operations by doing both of the following: 377

(a) Submitting food orders to participating retail food 378
establishments or food service operations on behalf of those 379
purchasers; 380

(b) Delivering food orders from retail food establishments 381
or food service operations to those purchasers. 382

(2) "Alcoholic beverage" and "personal consumer" have the 383
same meanings as in section 4303.185 of the Revised Code. 384

(B) A food delivery service may deliver alcoholic 385
beverages in sealed original containers or by the individual 386
drink in closed containers from an A-1-A, A-1c, A-2, A-2f, A-3a, 387
C class, or D class permit holder to a personal consumer, 388
provided the food delivery service registers with the division 389
of liquor control. The food delivery service shall register in a 390
manner that the superintendent of liquor control shall 391
prescribe. 392

(C) A permit holder shall provide alcoholic beverages for 393
delivery under this section to a food delivery service only of 394
the type that the permit holder is otherwise authorized to sell 395
under the permit holder's permit. 396

(D) Prior to delivering an alcoholic beverage to a 397
personal consumer under this section, a representative of a food 398
delivery service shall make a bona fide effort to ensure that 399
the personal consumer is at least twenty-one years of age. 400

(E) Section 4301.62 of the Revised Code does not apply to 401
an alcoholic beverage in a closed container being transported 402
under this section to its final destination, provided that, 403
during such transport, no person consumes the alcoholic 404
beverage. 405

Section 2. That existing sections 4301.10 and 4303.041 of 406
the Revised Code are hereby repealed. 407

Section 3. This act is hereby declared to be an emergency 408
measure necessary for the immediate preservation of the public 409
peace, health, and safety. The reason for such necessity is to 410
provide economic relief to liquor permit holders as a result of 411
the COVID-19 outbreak. Therefore, this act shall go into 412
immediate effect. 413