

AN ACT

To amend sections 4301.62, 4301.639, 4303.182, and 4303.35 and to enact sections 2927.021, 2927.022, 4301.61, 4301.611, and 4303.203 of the Revised Code to grant liquor permit holders and sellers of tobacco products, and their agents and employees, an affirmative defense against a charge of selling or otherwise distributing cigarettes or other tobacco products, or selling beer, intoxicating liquor, or low-alcohol beverages, to an underage person if a transaction scan of the person's driver's or commercial driver's license or Ohio identification card indicates it is valid and the scan is reasonably relied upon; to restrict the use of the information obtained through a transaction scan; to require the Registrar of Motor Vehicles to adopt rules relating to the use of transaction scan devices; to authorize the holder of a D-6 permit issued to a sports facility to make sales between the hours of 11 a.m. and midnight on a Sunday on which certain professional sports games are being played at the sports facility; and to create the F-3 permit to be issued to certain nonprofit organizations to allow the serving of beer, wine, or mixed beverages at a convention facility or hotel for a period not to exceed five consecutive days.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4301.62, 4301.639, 4303.182, and 4303.35 be amended and sections 2927.021, 2927.022, 4301.61, 4301.611, and 4303.203 of the Revised Code be enacted to read as follows:

Sec. 2927.021. (A) As used in this section and section 2927.022 of the Revised Code:

(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes or other tobacco products from the seller, agent, or employee.

(2) "Identification card" means an identification card issued under sections 4507.50 to 4507.52 of the Revised Code.

(3) "Seller" means a seller of cigarettes or other tobacco products and includes any person whose gift of or other distribution of cigarettes or other tobacco products is subject to the prohibitions of section 2927.02 of the Revised Code.

(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes or other tobacco products.

(5) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(B)(1) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes or other tobacco products.

(2) If the information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes or other tobacco products to the card holder.

(3) division (B)(1) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products to the person

presenting the document.

(C) Rules adopted by the registrar of motor vehicles under division (C) of section 4301.61 of the Revised Code apply to the use of transaction scan devices for purposes of this section and section 2927.022 of the Revised Code.

(D)(1) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section, except for purposes of section 2927.022 of the Revised Code.

(3) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (B)(1) of this section.

(4) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by section 2927.022 or another section of the Revised Code.

(E) Nothing in this section or section 2927.022 of the Revised Code relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of cigarettes or other tobacco products.

(F) Whoever violates division (B)(2) or (D) of this section is guilty of engaging in an illegal tobacco product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars for each violation. The clerk of the court shall pay each collected civil penalty to the county treasurer for deposit into the county treasury.

Sec. 2927.022. (A) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of section 2927.02 of the Revised Code in which the age of the purchaser or other recipient of cigarettes or other tobacco products is an element of the alleged violation, if the seller,

agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(1) A card holder attempting to purchase or receive cigarettes or other tobacco products presented a driver's or commercial driver's license or an identification card.

(2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(3) The cigarettes or other tobacco products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (a) of this section, the trier of fact in the action for the alleged violation of section 2927.02 of the Revised Code shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of section 2927.02 of the Revised Code. For purposes of division (A)(3) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(1) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes cigarettes or other tobacco products is eighteen years of age or older;

(2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(C) In any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the action.

Sec. 4301.61. (A) As used in this section and section 4301.611 of the Revised Code:

(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a permit holder, or an agent or employee of a permit holder, for either of the purposes listed in

division (A)(4)(a) or (b) of this section.

(2) "Identification card" means an identification card issued under sections 4507.50 to 4507.52 of the Revised Code.

(3) "Permit holder" means the holder of a permit issued under Chapter 4303. of the Revised Code.

(4) "Transaction scan" means the process by which a permit holder or an agent or employee of a permit holder checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for doing either of the following:

(a) Purchasing any beer, intoxicating liquor, or low-alcohol beverage;

(b) Gaining admission to a premises that has been issued a liquor permit authorizing the sale of beer or intoxicating liquor for consumption on the premises where sold, and where admission is restricted to persons twenty-one years of age or older.

(5) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(B)(1) A permit holder or an agent or employee of a permit holder may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder for either of the purposes listed in division (A)(4)(a) or (b) of this section.

(2) If the information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the permit holder nor any agent or employee of the permit holder shall sell any beer, intoxicating liquor, or low-alcohol beverage to the card holder.

(3) Division (B)(1) of this section does not preclude a permit holder or an agent or employee of a permit holder from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition of a sale of beer, intoxicating liquor, or a low-alcohol beverage or of granting admission to a premises described in division (A)(4) of this section.

(C) The registrar of motor vehicles, with the approval of the liquor control commission, shall adopt, and may amend or rescind, rules in accordance with Chapter 119. of the Revised Code that do both of the following:

(1) Govern the recording and maintenance of information described in divisions (D)(1)(a) and (b) of this section and divisions (D)(1)(a) and (b) of section 2927.021 of the Revised Code;

(2) Ensure quality control in the use of transaction scan devices under this section and sections 2927.021, 2927.022, and 4301.611 of the Revised Code.

(D)(1) No permit holder or agent or employee of a permit holder shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No permit holder or agent or employee of a permit holder shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained by division (D)(1) of this section, except for purposes of section 4301.611 of the Revised Code.

(3) No permit holder or agent or employee of a permit holder shall use a transaction scan device for a purpose other than a purpose listed in division (A)(4)(a) or (b) of this section.

(4) No permit holder or agent or employee of a permit holder shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a permit holder or agent or employee of a permit holder may release that information pursuant to a court order or as specifically authorized by section 4301.611 or another section of the Revised Code.

(E) Nothing in this section or section 4301.611 of the Revised Code relieves a permit holder or an agent or employee of a permit holder of any responsibility to comply with any other applicable state or federal laws or rules governing the sale of beer, intoxicating liquor, or low-alcohol beverages.

(F) Whoever violates division (B)(2) or (D) of this section is guilty of an illegal liquor transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars for each violation. The clerk of

the court shall pay each collected civil penalty to the county treasurer for deposit into the county treasury.

Sec. 4301.611. (A) A permit holder or an agent or employee of a permit holder may not be found guilty of a charge of a violation of this chapter or any rule of the liquor control commission in which the age of a purchaser of any beer, intoxicating liquor, or low-alcohol beverage is an element of the alleged violation, if the permit holder, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(1) The card holder attempting to purchase any beer, intoxicating liquor, or low-alcohol beverage presented a driver's or commercial driver's license or an identification card.

(2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(3) The beer, intoxicating liquor, or low-alcohol beverage was sold to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a permit holder or an agent or employee of a permit holder has proven the affirmative defense provided by division (A) of this section, the liquor control commission or the trier of fact in a court of record shall consider any written policy that the permit holder has adopted and implemented and that is intended to prevent violations of division (A)(1) or (2) of section 4301.22 and of sections 4301.63 to 4301.636, 4301.69, and 4301.691 of the Revised Code. For purposes of division (A)(3) of this section, the commission or trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a permit holder or an agent or employee of a permit holder to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a permit holder or an agent or employee of a permit holder from exercising reasonable diligence to determine, the following:

(1) Whether a person to whom the permit holder or agent or employee of a permit holder sells any beer or intoxicating liquor is twenty-one years of age or older or sells any low-alcohol beverage is eighteen years of age or older;

(2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(C) The affirmative defense provided by division (A) of this section is in addition to the defense provided by section 4301.639 of the Revised

de.

(D) In any hearing before the liquor control commission and in any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the hearing or action.

Sec. 4301.62. (A) As used in this section:

(1) "Chauffeured limousine" means a vehicle registered under section 4503.24 of the Revised Code.

(2) "Street," "highway," and "motor vehicle" have the same meanings as in section 4511.01 of the Revised Code.

(B) No person shall have in the person's possession an opened container of beer or intoxicating liquor in any of the following circumstances:

(1) In a state liquor store;

(2) Except as provided in division (C) of this section, on the premises of the holder of any permit issued by the division of liquor control;

(3) In any other public place;

(4) Except as provided in division (D) of this section, while operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking;

(5) Except as provided in division (D) of this section, while being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(C)(1) A person may have in the person's possession an opened container of ~~beer~~ any of the following:

(a) Beer or intoxicating liquor that has been lawfully purchased for consumption on the premises where bought ~~of a~~ from the holder of an A-1-A, A-2, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, D-7, E, F, or F-2 permit, ~~or beer~~;

(b) Beer, wine, or mixed beverages served for consumption on the premises by the holder of an F-3 permit;

(c) Beer or intoxicating liquor consumed on the premises of a convention facility as provided in section 4303.201 of the Revised Code.

(2) A person may have in the person's possession on an F liquor permit premises an opened container of beer or intoxicating liquor that was not purchased from the holder of the F permit if the premises for which the F

permit is issued is a music festival and the holder of the F permit grants permission for ~~such that~~ possession on the premises during the period for which the F permit is issued. As used in this division, "music festival" means a series of outdoor live musical performances, extending for a period of at least three consecutive days and located on an area of land of at least forty acres.

(D) This section does not apply to a person who pays all or a portion of the fee imposed for the use of a chauffeured limousine pursuant to a prearranged contract, or the guest of the person, when all of the following apply:

(1) The person or guest is a passenger in the limousine.

(2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located.

(3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

Sec. 4301.639. (A) No permit holder, ~~his~~ the agent or employee of the permit holder, or any other person may be found guilty of a violation of any section of this chapter or any rule of the liquor control commission in which age is an element of the offense, if the liquor control commission or any court of record finds all of the following:

~~(A)~~(1) That the person buying, at the time of so doing, exhibited to the permit holder, ~~his~~ the agent or employee of the permit holder, or the other person a driver's or commercial driver's license or an identification card issued under sections 4507.50 to 4507.52 of the Revised Code showing that the person buying was then at least twenty-one years of age if ~~he~~ the person was buying beer as defined in section 4301.01 of the Revised Code or intoxicating liquor or that ~~he~~ the person was then at least eighteen years of age if ~~he~~ the person was buying any low-alcohol beverage;

~~(B)~~(2) That the permit holder, ~~his~~ the agent or employee of the permit holder, or the other person made a bona fide effort to ascertain the true age of the person buying by checking the identification presented, at the time of the purchase, to ascertain that the description on the identification compared with the appearance of the buyer and that the identification presented had not been altered in any way;

~~(C)~~(3) That the permit holder, ~~his~~ the agent or employee of the permit holder, or the other person had reason to believe that the person buying was of legal age.

(B) In any hearing before the liquor control commission and in any

action or proceeding before a court of record in which a defense is raised under division (A) of this section, the registrar of motor vehicles or ~~his~~ deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records, in ~~his~~ the registrar's or deputy's possession, of ~~such that~~ issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles at ~~such the~~ hearing, action, or proceeding.

(C) The defense provided by division (A) of this section is in addition to the affirmative defense provided by section 4301.611 of the Revised Code.

Sec. 4303.182. (A) Except as otherwise provided in divisions (B), (C), and (D) of this section, permit D-6 shall be issued to the holder of an A-1-A, A-2, C-2, D-2, D-3, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, or D-7 permit to allow sale under such permit between the hours of one p.m. and midnight on Sunday, if ~~such that~~ sale has been authorized under section 4301.361 or 4301.364 of the Revised Code and under the restrictions of ~~such that~~ authorization. ~~Permit~~

(B) Permit D-6 shall be issued to the holder of any permit, including a D-4a and D-5d permit, authorizing the sale of intoxicating liquor issued for a premises located at any publicly owned airport, as defined in section 4563.01 of the Revised Code, at which commercial airline companies operate regularly scheduled flights on which space is available to the public, to allow sale under such permit between the hours of one p.m. and midnight on Sunday, whether or not such that sale has been authorized under section 4301.361 or 4301.364 of the Revised Code. Permit

(C) Permit D-6 shall be issued to the holder of a D-5a permit, and to the holder of a D-3 or D-3a permit who is the owner or operator of a hotel or motel that is required to be licensed under section 3731.03 of the Revised Code containing, that contains at least fifty rooms for registered transient guests, and which that has on its premises a restaurant licensed pursuant to section 3717.43 of the Revised Code affiliated with the hotel or motel and within or contiguous to the hotel or motel and serving food within the hotel or motel, to allow sale under such permit between the hours of one p.m. and midnight on Sunday, whether or not such that sale has been authorized under section 4301.361 or 4301.364 of the Revised Code.

(D) The holder of a D-6 permit that is issued to a sports facility may make sales under the permit between the hours of eleven a.m. and midnight on any Sunday on which a professional baseball, basketball, football, hockey, or soccer game is being played at the sports facility. As used in this division, "sports facility" means a stadium or arena that has a seating capacity of at least four thousand and that is owned or leased by a

sional baseball, basketball, football, hockey, or soccer franchise or any combination of those franchises.

(E) If the restriction to licensed premises where the sale of food and other goods and services exceeds fifty per cent of the total gross receipts of the permit holder at the premises is applicable, the division of liquor control may accept an affidavit from the permit holder to show the proportion of the permit holder's gross receipts derived from the sale of food and other goods and services. If the liquor control commission determines ~~such~~ that affidavit to have been false, it shall revoke the permits of the permit holder at the premises concerned.

(F) The fee for the D-6 permit is two hundred fifty dollars when it is issued to the holder of an A-1-A, A-2, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, or D-7 permit. The fee for the D-6 permit is two hundred dollars when it is issued to the holder of a C-2 permit.

Sec. 4303.203. (A) As used in this section:

(1) "Convention facility" and "nonprofit corporation" have the same meanings as in section 4303.201 of the Revised Code.

(2) "Hotel" means a hotel described in section 3731.01 of the Revised Code that has at least fifty rooms for registered transient guests and that is required to be licensed pursuant to section 3731.03 of the Revised Code.

(B) An F-3 permit may be issued to an organization whose primary purpose is to support, promote, and educate members of the beer, wine, or mixed beverage industries, to allow the organization to bring beer, wine, or mixed beverages in their original packages or containers into a convention facility or hotel for consumption in the facility or hotel, if all of the following requirements are met:

(1) The superintendent of liquor control is satisfied that the organization is a nonprofit organization and that the organization's membership is in excess of two hundred fifty persons.

(2) The general manager or the equivalent officer of the convention facility or hotel provides a written consent for the use of a portion of the facility or hotel by the organization and a written statement that the facility's or hotel's permit privileges will be suspended in the portion of the facility or hotel in which the F-3 permit is in force.

(3) The organization provides a written description that clearly sets forth the portion of the convention facility or hotel in which the F-3 permit will be used.

(4) The organization provides a written statement as to its primary purpose and the purpose of its event at the convention facility or hotel.

(5) Division (C) of this section does not apply.

(C) No F-3 permit shall be issued to any nonprofit organization that is created by or for a specific manufacturer, supplier, distributor, or retailer of beer, wine, or mixed beverages.

(D) Notwithstanding division (E) of section 4301.22 of the Revised Code, a holder of an F-3 permit may obtain by donation beer, wine, or mixed beverages from any manufacturer or producer of beer, wine, or mixed beverages.

(E) Nothing in this chapter prohibits the holder of an F-3 permit from bringing into the portion of the convention facility or hotel covered by the permit beer, wine, or mixed beverages otherwise not approved for sale in this state.

(F) Notwithstanding division (E) of section 4301.22 of the Revised Code, no holder of an F-3 permit shall make any charge for any beer, wine, or mixed beverage served by the drink, or in its original package or container, in connection with the use of the portion of the convention facility or hotel covered by the permit.

(G) The division of liquor control shall prepare and make available an F-3 permit application form and may require applicants for the permit to provide information, in addition to that required by this section, that is necessary for the administration of this section.

(H) An F-3 permit shall be effective for a period not to exceed five consecutive days. The division of liquor control shall not issue more than three F-3 permits per calendar year to the same nonprofit organization. The fee for an F-3 permit is one hundred fifty dollars.

Sec. 4303.35. No holders of A-1-A, C-1, C-2, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, ~~or~~ F, or F-3 permits shall purchase any beer or malt beverage subject to the tax imposed by sections 4301.42 and 4305.01 of the Revised Code or any wine or mixed beverage subject to the tax imposed by section 4301.43 of the Revised Code for resale, except from holders of A or B permits.

No holders of A-1-A, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, or D-5j permits shall purchase spirituous liquor for resale except from the division of liquor control, unless with the special consent of the division under particular regulations and markup provisions prescribed by the superintendent of liquor control.

SECTION 2. That existing sections 4301.62, 4301.639, 4303.182, and 4303.35 of the Revised Code are hereby repealed.

SECTION 3. Section 4303.182 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 223 and Am. Sub. H.B. 283 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 200

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____