

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 417

Representative Driehaus

**Cosponsors: Representatives Murray, Fende, Stautberg, Foley, Ujvagi,
Hagan**

—

A B I L L

To amend sections 4301.04, 4303.26, 4303.292, and 1
4303.99 and to enact section 4303.294 of the 2
Revised Code to revise the appeal procedures for 3
the refusal to issue, renew, or transfer a retail 4
liquor permit and to require permit holders that 5
violate the laws governing liquor control to file 6
the names and addresses of their employees with 7
the Division of Liquor Control. 8

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

Section 1. That sections 4301.04, 4303.26, 4303.292, and 9
4303.99 be amended and section 4303.294 of the Revised Code be 10
enacted to read as follows: 11

Sec. 4301.04. (A) The liquor control commission has the 12
following powers, which it may exercise by the vote of a majority 13
of the commissioners: 14

~~(A)(1)~~ To suspend, revoke, and cancel permits. A majority of 15
the commissioners constitutes a quorum for the transaction of any 16
business, for the performance of any duty, or for the exercise of 17
any power of the commission. No vacancy in the commission shall 18

impair the right of the remaining commissioners to exercise all 19
powers of the commission. The act of a majority of the commission, 20
when in session, is the act of the commission. A finding, order, 21
or decision of the commission to suspend a permit shall state and 22
fix the effective date of the commencement and the period of 23
duration of ~~such the~~ suspension. ~~Such~~ A finding, order, or 24
decision of the commission to revoke or cancel a permit shall 25
state and fix the effective date thereof. 26

~~(B)(2)~~ To consider, hear, and determine all appeals 27
authorized by Chapters 4301. and 4303. of the Revised Code, to be 28
taken from any decision, determination, or order of the division 29
of liquor control, and all complaints for the revocation of 30
permits. The liquor control commission shall accord a hearing to 31
any person appealing or complained against, at which ~~such the~~ 32
person has the right to be present, to be represented by counsel, 33
to provide for the submission of briefs, to offer evidence, and to 34
require the attendance of witnesses. 35

Except as otherwise provided in division (A)(2) of this 36
section, with regard to the hearing of an appeal from any decision 37
rendered by the division on the issuance, renewal, or transfer of 38
a permit under section 4303.292 of the Revised Code, the 39
commission shall be confined to the record as certified to it by 40
the division under that section. However, unless otherwise 41
provided by law, the commission may grant a request for the 42
admission of additional evidence when it is satisfied that the 43
additional evidence is newly discovered and could not have been 44
ascertained with reasonable diligence prior to the hearing before 45
the division. 46

After a hearing that is held under this division, the 47
commission may affirm the decision, determination, or order of the 48
division if it finds, upon consideration of the entire record and 49
any additional evidence that the commission has admitted, that the 50

decision, determination, or order is supported by reliable, 51
probative, and substantial evidence and is in accordance with law. 52
In the absence of such a finding, the commission may reverse, 53
vacate, or modify the decision, determination, or order or make 54
another ruling that is supported by reliable, probative, and 55
substantial evidence and is in accordance with law. 56

~~(C)~~(3) To adopt, repeal, and amend bylaws in relation to its 57
meetings and the transaction of its business and regulating its 58
procedure on appeal. 59

~~(D)~~(4) To consider and make recommendations upon any matter 60
~~which that~~ the superintendent of liquor control submits to it for 61
recommendation and determine any matter ~~which that~~ the 62
superintendent submits to it for determination. 63

~~(E)~~(5) To require of the superintendent and of any officer, 64
department, board, or commission of the state and of any county, 65
township, or municipal officer in this state, information with 66
respect to the social and economic effects of ~~such those~~ chapters; 67
and all such officers, departments, boards, and commissions shall 68
furnish such information when requested in writing by the liquor 69
control commission. 70

~~(F)~~(6) To submit to the governor amendments to any laws 71
affecting the sale of intoxicating liquor in this state when it 72
deems desirable. 73

~~(G)~~(B) For the purpose of any hearing or investigation ~~which~~ 74
that they are respectively authorized or required by ~~such those~~ 75
chapters to conduct, the liquor control commission or any member 76
thereof, the superintendent, or any agent of the division 77
designated in writing for that purpose, may administer oaths, take 78
depositions, issue subpoenas, and compel the attendance of 79
witnesses and the production of books, accounts, papers, records, 80
documents, and testimony. In case of disobedience of any person 81

with respect to an order of the commission or a subpoena issued by 82
the liquor control commission or any member thereof, the 83
superintendent, or such an agent, or on the refusal of a witness 84
to testify to any matter regarding which the witness may be 85
lawfully interrogated, a judge of the court of common pleas of the 86
county in which the person resides, on application of any member 87
of the liquor control commission or the superintendent, shall 88
compel obedience by attachment proceedings as for contempt, as in 89
the case of disobedience with respect to the requirements of a 90
subpoena issued from ~~such that~~ court or a refusal to testify in 91
~~such that~~ court. Each officer who serves such a subpoena shall 92
receive the same fees as a sheriff, and each witness who appears, 93
in obedience to a subpoena, before the liquor control commission 94
or any member thereof, or the superintendent, shall receive for 95
attendance the fees and mileage provided for under section 119.094 96
of the Revised Code, which shall be audited and paid upon 97
presentation of proper vouchers approved by any two members of the 98
commission. No witness subpoenaed at the instance of a party other 99
than the liquor control commission or any member thereof, the 100
superintendent, or such an agent, is entitled to compensation 101
unless the commission certifies that the testimony of the witness 102
was material to the matter investigated. 103

Sec. 4303.26. (A) Applications for regular permits authorized 104
by sections 4303.02 to 4303.23 of the Revised Code may be filed 105
with the division of liquor control. No permit shall be issued by 106
the division until fifteen days after the application for it is 107
filed. An applicant for the issuance of a new permit shall pay a 108
processing fee of one hundred dollars when filing the application 109
for the permit, if the permit is then available, or shall pay the 110
processing fee when a permit becomes available, if it is not 111
available when the applicant initially files the application. When 112
an application for a new class C or D permit is filed, when class 113

C or D permits become available, or when an application for 114
transfer of ownership of a class C or D permit or transfer of a 115
location of a class C or D permit is filed, no permit shall be 116
issued, nor shall the location or the ownership of a permit be 117
transferred, by the division until the division notifies the 118
legislative authority of the municipal corporation, if the 119
business or event is or is to be located within the corporate 120
limits of a municipal corporation, or the clerk of the board of 121
county commissioners and the fiscal officer of the board of 122
township trustees in the county in which the business or event is 123
or is to be conducted, if the business is or is to be located 124
outside the corporate limits of a municipal corporation, and an 125
opportunity is provided officials or employees of the municipal 126
corporation or county and township, who shall be designated by the 127
legislative authority of the municipal corporation or the board of 128
county commissioners or board of township trustees, for a complete 129
hearing upon the advisability of the issuance, transfer of 130
ownership, or transfer of location of the permit. In this hearing, 131
no objection to the issuance, transfer of ownership, or transfer 132
of location of the permit shall be based upon noncompliance of the 133
proposed permit premises with local zoning regulations ~~which~~ that 134
prohibit the sale of beer or intoxicating liquor, in an area zoned 135
for commercial or industrial uses, for a permit premises that 136
would otherwise qualify for a proper permit issued by the 137
division. 138

When the division sends notice to the legislative or 139
executive authority of the political subdivision, as required by 140
this section, the division shall also so notify, by certified 141
mail, return receipt requested, or by personal service, the chief 142
peace officer of the political subdivision. Upon the request of 143
the chief peace officer, the division shall send the chief peace 144
officer a copy of the application for the issuance or the transfer 145
of ownership or location of the permit and all other documents or 146

materials filed by the applicant or applicants in relation to the 147
application. The chief peace officer may appear and testify, 148
either in person or through a representative, at any hearing held 149
on the advisability of the issuance, transfer of ownership, or 150
transfer of location of the permit. The hearing shall be held in 151
the central office of the division, except that upon written 152
request of the legislative authority of the municipal corporation 153
or the board of county commissioners or board of township 154
trustees, the hearing shall be held in the county seat of the 155
county where the applicant's business is or is to be conducted. 156

If the business or event specified in an application for the 157
issuance, transfer of ownership, or transfer of location of any 158
regular permit authorized by sections 4303.02 to 4303.23 of the 159
Revised Code, except for an F-2 permit, is, or is to be operated, 160
within five hundred feet from the boundaries of a parcel of real 161
estate having situated on it a school, church, library, public 162
playground, or township park, no permit shall be issued, nor shall 163
the location or the ownership of a permit be transferred, by the 164
division until written notice of the filing of the application 165
with the division is served, by certified mail, return receipt 166
requested, or by personal service, upon the authorities in control 167
of the school, church, library, public playground, or township 168
park and an opportunity is provided them for a complete hearing 169
upon the advisability of the issuance, transfer of ownership, or 170
transfer of location of the permit. In this hearing, no objection 171
to the issuance, transfer of ownership, or transfer of location of 172
the permit shall be based upon the noncompliance of the proposed 173
permit premises with local zoning regulations ~~which~~ that prohibit 174
the sale of beer or intoxicating liquor, in an area zoned for 175
commercial or industrial uses, for a permit premises that would 176
otherwise qualify for a proper permit issued by the division. Upon 177
the written request of any of these authorities, the hearing shall 178
be held in the county seat of the county where the applicant's 179

business is or is to be conducted. 180

A request for any hearing authorized by this section shall be 181
made no later than ~~thirty~~ sixty days from the time of notification 182
by the division. This ~~thirty-day~~ sixty-day period begins on the 183
date the division mails notice to the legislative authority or the 184
date on which the division mails notice to or, by personal 185
service, serves notice upon, the institution. The division shall 186
conduct a hearing if the request for the hearing is postmarked by 187
the deadline date. The division may allow, upon cause shown by the 188
requesting legislative authority or board, an extension of thirty 189
additional days for the legislative authority of the municipal 190
corporation, board of township trustees of the township, or board 191
of county commissioners of the county in which a permit premises 192
is or is to be located to object to the issuance, transfer of 193
ownership, or transfer of location of a permit. The request for 194
the extension shall be made by the legislative authority or board 195
to the division no later than thirty days after the time of 196
notification by the division. 197

(B)(1) When an application for transfer of ownership of a 198
permit is filed with the division, the division shall give notice 199
of the application to the department of taxation. Within twenty 200
days after receiving this notification, the department of taxation 201
shall notify the division of liquor control and the proposed 202
transferee of the permit if the permit holder owes to this state 203
any delinquent sales taxes or income taxes withheld from employee 204
compensation or has failed to file any sales tax returns or 205
employee income tax withholding returns, to the extent that the 206
delinquent taxes and delinquent returns are known to the 207
department of taxation at that time. The division shall not 208
transfer ownership of the permit until returns known to be 209
delinquent are filed and until the tax or withholding delinquency 210
is resolved. As used in this division, "resolved" means that the 211

tax or withholding delinquency has been paid or an amount 212
sufficient to satisfy the delinquency is in escrow for the benefit 213
of the state. The department of taxation shall notify the division 214
of the resolution. After the division has received the 215
notification from the department of taxation, the division may 216
proceed to transfer ownership of the permit. Nothing in this 217
division shall be construed to affect or limit the 218
responsibilities or liabilities of the transferor or the 219
transferee imposed by Chapter 5739. or 5747. of the Revised Code. 220

(2) Notwithstanding section 5703.21 of the Revised Code, 221
nothing prohibits the department of taxation from disclosing to 222
the division or to the proposed transferee or the proposed 223
transferee's designated agent any information pursuant to division 224
(B)(1) of this section. 225

(C) No F or F-2 permit shall be issued for an event until the 226
applicant has, by means of a form that the division shall provide 227
to the applicant, notified the chief peace officer of the 228
political subdivision in which the event will be conducted of the 229
date, time, place, and duration of the event. 230

(D) The division of liquor control shall notify an applicant 231
for a permit authorized by sections 4303.02 to 4303.23 of the 232
Revised Code of an action pending or judgment entered against a 233
liquor permit premises, of which the division has knowledge, 234
pursuant to section 3767.03 or 3767.05 of the Revised Code if the 235
applicant is applying for a permit at the location of the premises 236
that is the subject of the action under section 3767.03 or 237
judgment under section 3767.05 of the Revised Code. 238

Sec. 4303.292. (A) The division of liquor control may refuse 239
to issue, transfer the ownership of, or renew, and shall refuse to 240
transfer the location of, any retail permit issued under this 241
chapter if it finds either of the following: 242

(1) That the applicant, or any partner, member, officer, director, or manager of the applicant, or, if the applicant is a corporation or limited liability company, any shareholder owning five per cent or more of the applicant's capital stock in the corporation or any member owning five per cent or more of either the voting interests or membership interests in the limited liability company:

(a) Has been convicted at any time of a crime that relates to fitness to operate a liquor establishment;

(b) Has operated liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations, or local ordinances of this state or any other state;

(c) Has misrepresented a material fact in applying to the division for a permit; or

(d) Is in the habit of using alcoholic beverages or dangerous drugs to excess, or is addicted to the use of narcotics.

(2) That the place for which the permit is sought:

(a) Does not conform to the building, safety, or health requirements of the governing body of the county or municipal corporation in which the place is located. As used in division (A)(2)(a) of this section, "building, safety, or health requirements" does not include local zoning ordinances. The validity of local zoning regulations shall not be affected by this section.

(b) Is so constructed or arranged that law enforcement officers and duly authorized agents of the division are prevented from reasonable access to rooms within which beer or intoxicating liquor is to be sold or consumed;

(c) Is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace, or

good order would result from the issuance, renewal, transfer of 273
location, or transfer of ownership of the permit and operation 274
under it by the applicant; or 275

(d) Has been declared a nuisance pursuant to Chapter 3767. of 276
the Revised Code since the time of the most recent issuance, 277
renewal, or transfer of ownership or location of the liquor 278
permit. 279

(B) The division ~~of liquor control~~ may refuse to issue or 280
transfer the ownership of, and shall refuse to transfer the 281
location of, any retail permit issued under this chapter if it 282
finds either of the following: 283

(1) That the place for which the permit is sought is so 284
situated with respect to any school, church, library, public 285
playground, or hospital that the operation of the liquor 286
establishment will substantially and adversely affect or interfere 287
with the normal, orderly conduct of the affairs of those 288
facilities or institutions; 289

(2) That the number of permits already existent in the 290
neighborhood is such that the issuance or transfer of location of 291
a permit would be detrimental to and substantially interfere with 292
the morals, safety, or welfare of the public. In reaching a 293
conclusion in this respect, the division shall consider, in light 294
of the purposes of this chapter and Chapters 4301. and 4399. of 295
the Revised Code, the character and population of the 296
neighborhood, the number and location of similar permits in the 297
neighborhood, the number and location of all other permits in the 298
neighborhood, and the effect the issuance or transfer of location 299
of a permit would have on the neighborhood. 300

(C) The division ~~of liquor control~~ shall not transfer the 301
location or transfer the ownership and location of a permit under 302
division (B)(2)(b) of section 4303.29 of the Revised Code unless 303

the permit is transferred to an economic development project. 304

(D) The division ~~of liquor control~~ shall refuse to issue, 305
renew, transfer the ownership of, or transfer the location of a 306
retail permit under this chapter if the applicant is or has been 307
convicted of a violation of division (C)(1) of section 2913.46 of 308
the Revised Code. 309

(E) The division ~~of liquor control~~ shall refuse to transfer 310
the ownership of or transfer the location of a retail permit under 311
this chapter while criminal proceedings are pending against the 312
holder of the permit for a violation of division (C)(1) of section 313
2913.46 of the Revised Code. The department of public safety shall 314
notify the division whenever criminal proceedings have commenced 315
for a violation of division (C)(1) of section 2913.46 of the 316
Revised Code. 317

(F) The division ~~of liquor control~~ shall refuse to issue, 318
renew, or transfer the ownership or location of a retail permit 319
under this chapter if the applicant has been found to be 320
maintaining a nuisance under section 3767.05 of the Revised Code 321
at the premises for which the issuance, renewal, or transfer of 322
ownership or location of the retail permit is sought. 323

(G) In a proceeding for the refusal to issue, renew, transfer 324
the ownership of, or transfer the location of any retail permit 325
under this chapter, the division shall prepare, keep, and maintain 326
a complete record of the proceedings. If an applicant for 327
issuance, renewal, transfer of ownership, or transfer of the 328
location of a retail permit appeals the decision of the division 329
under section 4301.04 of the Revised Code, the division, within 330
thirty days of notice of receipt of the applicant's appeal, shall 331
prepare and certify a complete record of the proceedings in the 332
case to the liquor control commission. 333

Sec. 4303.294. (A) A person that has been issued a permit 334

under this chapter and that has violated this chapter or Chapter 335
4301. of the Revised Code or rules adopted by the liquor control 336
commission under section 4301.03 of the Revised Code shall file 337
with the division of liquor control a roster of the names and 338
addresses of the permit holder's current employees. If a name or 339
address on the roster changes, the permit holder shall notify the 340
division not later than five days after the change. If the permit 341
holder is a corporation, firm, association, or partnership, an 342
officer of the corporation, firm, association, or partnership 343
shall be responsible for notifying the division. 344

(B) No person that has been issued a permit under this 345
chapter shall fail to comply with this section. 346

Sec. 4303.99. (A) Whoever violates section 4303.28 of the 347
Revised Code shall be fined not less than one thousand nor more 348
than twenty-five hundred dollars or imprisoned not less than six 349
months nor more than one year. 350

(B) Whoever violates section 4303.36 of the Revised Code 351
shall be fined not less than twenty-five nor more than one hundred 352
dollars. 353

(C) Whoever violates section 4303.37 of the Revised Code 354
shall be fined not less than twenty-five nor more than fifty 355
dollars. 356

(D) Whoever violates division (B) of section 4303.202 or 357
division (C) of section 4303.208 of the Revised Code is guilty of 358
a misdemeanor of the fourth degree. 359

(E) Whoever violates section 4303.294 of the Revised Code is 360
guilty of a misdemeanor of the first degree. 361

Section 2. That existing sections 4301.04, 4303.26, 4303.292, 362
and 4303.99 of the Revised Code are hereby repealed. 363