



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 392

130th General Assembly
(As Introduced)

Reps. Stinziano and Rosenberger, Dovilla, Fedor, Ramos, Reece, Sheehy, Stebelton

BILL SUMMARY

- Grants immunity to a person under 21 years of age for unlawful possession or consumption of low-alcohol beverage or unlawful possession, consumption, or being under the influence of beer or intoxicating liquor if law enforcement personnel became aware of the violation solely because of a request for medical assistance and certain conditions were met when seeking or obtaining the assistance.
- Grants immunity to a person under 21 years of age for unlawful possession or consumption of low-alcohol beverage or unlawful possession, consumption, or being under the influence of beer or intoxicating liquor if law enforcement personnel became aware of the violation solely because the person requested law enforcement assistance to report, prevent, or request the investigation of a criminal offense.

CONTENT AND OPERATION

Qualified immunity for offenses involving underage alcohol possession or consumption

The bill provides the following notwithstanding any provision of R.C. Title XXI (Juvenile Court Law) or XXIX (Criminal Code) or any other provision of law:¹

- A person under 21 years of age cannot be prosecuted, subjected to adjudication as an unruly child, or subjected to adjudication as a delinquent child for an "underage alcohol possession or consumption violation" if all of the following apply (see "**Definitions**"):

¹ R.C. 4301.79(B) and (C).

(1) "Law enforcement personnel" became aware of the person's possession or consumption of the low-alcohol beverage or the person's possession, consumption, or being under the influence of the beer or intoxicating liquor that is the basis of the violation solely because the person sought or obtained medical assistance for another individual; the person sought or obtained medical assistance for self; or another individual sought or obtained medical assistance for the person.

(2) If the person sought or obtained the medical assistance for another individual, when seeking or obtaining the assistance, the person acted in good faith upon a reasonable belief that the person was the first to call for assistance and the person remained with the individual needing the medical assistance until help arrived.

(3) If the person sought or obtained the medical assistance for another individual or for self, when seeking or obtaining the assistance, the person used the person's own name.

- A person under 21 years of age cannot be prosecuted, subjected to adjudication as an unruly child, or subjected to adjudication as a delinquent child for an underage alcohol possession or consumption violation if law enforcement personnel became aware of the person's possession or consumption of low-alcohol beverage or the person's possession, consumption, or being under the influence of the beer or intoxicating liquor that is the basis of the violation solely because the person, acting in good faith, requested law enforcement assistance by dialing the telephone number "9-1-1" or by other means, to report a criminal offense, prevent a possible criminal offense, or request the investigation of a criminal offense.

Underage alcohol possession or consumption prohibitions

The above provisions apply with respect to the prosecution, unruly child adjudication, or delinquent child adjudication of a person who violates any of the following prohibitions under current law, which are not changed by the bill:

- The prohibition against a person under 18 years of age knowingly possessing or consuming any low-alcohol beverage in any public or private place, unless accompanied by a parent, spouse who is not under 18 years of age, or legal guardian, or unless the low-alcohol beverage is

given by a physician in the regular line of the physician's practice or given for established religious purposes.²

- The prohibition against a person under 21 years of age knowingly possessing or consuming any beer or intoxicating liquor in any public or private place or knowingly being under the influence of any beer or intoxicating liquor in any public place.³
- The prohibition against any person under the age of 19 years consuming any beer or intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, in any public or private place.⁴
- The prohibition against any person under the age of 21 years from consuming any intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink.⁵

The prohibitions described in the three preceding paragraphs do not apply if the underage person is supervised by a parent, spouse who is not under 21 years of age, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes.

Definitions

The bill defines the following terms:⁶

"Law enforcement personnel" means peace officers, prosecutors, and members of a campus police department appointed by boards of trustees of private colleges or universities.

"Peace officer" means the same individuals considered a peace officer under the Criminal Procedure Law, which includes, among others, a sheriff, deputy sheriff, member of the organized police department of any municipal corporation, a police

² R.C. 4301.63(H) and (J).

³ R.C. 4301.69(E)(1) and (2)(c).

⁴ R.C. 4301.691(C) and (K).

⁵ R.C. 4301.691(D) and (K).

⁶ R.C. 4301.79(A).



officer of a township or joint police district, and a state university law enforcement officer.⁷

"**Prosecutor**" includes the county prosecuting attorney, assistant prosecutor, village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants.⁸

"**Underage alcohol possession or consumption violation**" means a person's violation of any prohibition described above in "**Underage alcohol possession or consumption prohibitions**" or of any ordinance of a municipal corporation that is substantially equivalent to any of those prohibitions.

COMMENT

The bill grants qualified immunity in the specified circumstances to persons *under the age of 21 years* who are subject to the prohibitions in R.C. 4301.631(H), 4301.69(E), and 4301.691(C) and (D). Under current law, unchanged by the bill, persons 18 years of age through 21 years of age are not subject to the prohibition in R.C. 4301.631(H) (possessing or consuming low-alcohol beverage in a public or private place), and persons 19 years of age through 21 years of age are not subject to the prohibition in R.C. 4301.691(C) (consuming beer or intoxicating liquor in a public or private place).

HISTORY

ACTION	DATE
Introduced	12-18-13

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⁷ By reference to R.C. 2935.01, not in the bill.

⁸ By reference to R.C. 2935.01, not in the bill.

