



*Phil Mullin*

*Final Analysis*  
*Legislative Service Commission*

## **Sub. S.B. 23**

125th General Assembly  
(As Passed by the General Assembly)

**Sens. Goodman, Mumper, Dann**

**Reps. Carmichael, Cates, Distel, D. Evans, Flowers, Hughes, Martin, Reidelbach**

**Effective date: April 7, 2004**

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### **ACT SUMMARY**

- Requires the Liquor Control Commission, in considering whether to take specified actions against a permit holder, to consider whether the permit holder and the permit holder's employees have successfully completed a training program that includes specified instruction.
- Makes changes relating to the penalties that may be imposed for a permit holder's violation of the Liquor Control Law.
- Requires that liquor permit holders be notified after they have been the subject of a compliance check by a law enforcement agency or the Division of Liquor Control to enforce the Underage Drinking Law.
- Requires the Liquor Control Commission in disciplinary actions to consider whether such a compliance check was conducted with trickery, deceit, or deception involved.
- Creates the F-6 permit to be issued to a nonprofit organization to sell wine at an event the organization sponsors.
- Provides that if a particular location is allowed to sell beer, wine and mixed beverages, or intoxicating liquor on Sunday between 1 p.m. and midnight and a question allowing those sales from 10 a.m. to midnight is defeated, the location can continue sales between 1 p.m. and midnight on Sunday.

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## CONTENT AND OPERATION

### *Suspension or revocation of liquor permit--training program*

The act requires the Liquor Control Commission, in considering whether to suspend or revoke a permit issued under the Liquor Permit Law or to issue an order allowing a permit holder to elect to pay a forfeiture rather than have operations under the permit suspended (see below), to consider whether the permit holder and the permit holder's employees have successfully completed a training program that includes all of the following (sec. 4301.253):

- Instruction on the statutes and rules that govern the sale of beer, wine, mixed beverages, and intoxicating liquor;
- Instruction on the prevention of the illegal serving of beer, wine, mixed beverages, and intoxicating liquor to persons under 21 years of age;
- Use of conflict management skills in alcohol-related situations;
- Instruction on methods to safely evacuate the permit premises in an emergency.

These provisions apply to permit holders whose permit authorizes the sale of beer, wine, mixed beverages, or intoxicating liquor for consumption either on or off the premises where sold.

### *Payment of forfeitures by permit holders in lieu of suspension of operations*

#### *First change*

Ongoing law generally authorizes the Liquor Control Commission to allow a permit holder whose liquor permit will be suspended for a violation of the Liquor Control Law or a Commission rule to elect to pay a specified forfeiture for each day of the suspension, rather than to suspend operations under the permit holder's permit issued for the premises at which the violation occurred. The Commission formerly could not allow a permit holder to elect to pay a forfeiture if the Commission had disciplined the permit holder *more than twice during the preceding two years* for a particular violation at the permit premises. (Sec. 4301.252.)

The act instead provides that if a permit holder has violated at the premises for which the permit holder's permit was issued any provision of the Liquor Control Law or any Commission rule for violations of which the Commission has disciplined the permit holder more than twice during the preceding two years, the

Commission may suspend or revoke the permit issued for that premises (as under former law the act continues) or must *establish the amount of the forfeiture for each day of a suspension in an amount that cannot be less than \$500 for each day of the suspension* (added by the act). The Commission, and not the permit holder, must determine whether the permit holder must pay the forfeiture so established for a suspension instead of having the permit holder's permit suspended or revoked. (Sec. 4301.252(A)(1) and (2)(d).)

### **Second change**

Former law specified that if a permit holder committed at the premises for which the permit holder's permit was issued (1) a gambling offense or drug abuse offense, (2) any of various offenses related to prostitution or solicitation for prostitution, (3) a violation of the Underage Drinking Law, or (4) a violation of a municipal ordinance substantially equivalent to any of these offenses or violations, for which the permit holder had been disciplined by the Commission more than once, but not more than twice, during the preceding two years, the Commission could suspend or revoke the permit, and could not allow the permit holder to pay a forfeiture instead of suspending or revoking the permit. The act removes the prohibition against the Commission allowing a permit holder to pay a forfeiture in this situation. (Sec. 4301.25(A)(2)(e).)

### **Third change**

Former law required that permit holders pay the full amount of a forfeiture by certified check. The act also allows a permit holder to pay the full amount of a forfeiture by bank check or money order. (Sec. 4301.252(A)(3).)

### **Compliance checks**

The act provides that if a law enforcement agency or the Division of Liquor Control uses a confidential informant to conduct a compliance check, then, within a reasonable period of time after the conduct of the compliance check, the law enforcement agency or the Division, whichever conducted it, must send written documentation of the compliance check to the permit holder that was its subject.<sup>1</sup>

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<sup>1</sup> "Law enforcement agency" means an organization or unit made up of law enforcement officers authorized to enforce the Liquor Control Law and also includes the Investigative Unit of the Department of Public Safety (sec. 4301.635(A)(3)). "Confidential informant" means a person who is under 21 years of age and is engaged in conducting compliance checks (sec. 4301.635(A)(2)). "Compliance check" means an attempt on behalf of a law enforcement agency or the Division of Liquor Control to purchase any beer, wine, mixed beverages, or intoxicating liquor in the enforcement of any section of the Liquor Control Law or any Liquor Control Commission rule in which the age of the purchaser is an element of the offense (sec. 4301.635(A)(1)).

If the confidential informant who participated in the compliance check was able to purchase beer, wine, mixed beverages, or intoxicating liquor, the citation issued for the violation constitutes the documentation. If that confidential informant was unable to make such a purchase, the documentation must describe the date and time of the compliance check, the law enforcement agency that conducted it or, when applicable, that the Division of Liquor Control conducted it, and the permit holder or a general description of the permit holder's employee who refused to make the sale. (Sec. 4301.635.)

Relatedly, continuing law authorizes the Liquor Control Commission, when considering the length of the suspension of a permit, to consider the volume of the permit holder's business, so that the length of the suspension is in proportion to the seriousness of the offense and the permit holder's business in order that the suspension serves as a penalty and a deterrent. Under the act, when the Commission considers the length of a proposed suspension of a permit and the proposed suspension results from an offense that was committed during a compliance check, the Commission also may consider whether trickery, deceit, or deception was used in the conduct of the compliance check. (Sec. 4301.25(C).)

#### **Creation of the F-6 permit**

The act creates the F-6 permit and authorizes the Division of Liquor Control to issue it to a nonprofit organization exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code. The fee for the permit is \$50. The holder of an F-6 permit may sell wine at an event that is organized by, conducted by, and for the benefit of the nonprofit organization. The F-6 permit may only be issued to a nonprofit organization if the premises of the event for which the permit is sought is located in a precinct, or at a particular location in a precinct, in which the sale of wine is otherwise permitted by law. (Sec. 4303.206(A), (B), and (I).)

The premises of the event for which the F-6 permit is issued must be clearly defined and sufficiently restricted to allow proper enforcement of the permit by state and local law enforcement officers. If an F-6 permit is issued for all or a portion of the same premises for which another class of permit is issued, that permit holder's privileges will be suspended in that portion of the premises in which the F-6 permit is in effect. (Sec. 4303.206(B).)

An F-6 permit holder (1) may charge an admission price for the event which includes the consumption of wine or the sale of wine by the individual drink and (2) may sell wine in its original sealed container by auction at the event. Nothing in the Liquor Control Law or any rule adopted by the Liquor Control Commission prevents an F-6 permit holder from obtaining wine by donation from a manufacturer, supplier, or wholesale distributor of wine or from any person who

is not the holder of a permit issued by the Division. And, notwithstanding any contrary provision of the Liquor Control Law or any rule adopted by the Commission, employees of a manufacturer, supplier, or wholesale distributor may assist an F-6 permit holder in serving wine at the event for which the permit is issued. (Sec. 4303.206(C), (D), (E), and (F).)

An F-6 permit cannot be effective for more than 72 consecutive hours, and wine sales under the permit are confined to the same hours permitted to a D-2 (retail wine sales) permit holder (sec. 4303.206(H)).

The Division must prepare and make available an F-6 permit application form and may require applicants for the permit to provide information necessary for the administration of the F-6 permit law (sec. 4303.206(G)). The Division cannot issue more than six F-6 permits per calendar year to the same nonprofit organization (sec. 4303.206(H)).

Finally, the act amends provisions of the Liquor Control Law to reflect the creation of the F-6 permit (secs. 4301.62(C)(1)(b) and 4303.35).

**Sunday sales between the hours of 1 p.m. and midnight at a particular location when a question authorizing those sales between the hours of 10 a.m. and midnight at that location is defeated**

Continuing law authorizes a question to be submitted to the electors of a precinct asking whether the sale of beer, wine and mixed beverages, or intoxicating liquor on Sunday between the hours of 1 p.m. and midnight, or between the hours of 10 a.m. and midnight, should be allowed at a particular location within that precinct (sec. 4301.355(B)(2), not in the act).

Under the act, (1) if such a question for Sunday sales between the hours of 10 a.m. and midnight at a particular location is submitted to the voters in a precinct in which the same question relating to Sunday sales at that location--but between the hours of 1 p.m. and midnight--was previously submitted and approved and is still in effect, and (2) if a majority of the voters voting on the 10 a.m. to midnight question vote "no," Sunday sales will nevertheless continue to be allowed at the particular location between the hours of 1 p.m. and midnight. (Sec. 4301.365(B), (E), and (H).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-03	p. 94
Reported, S. Agriculture	02-26-03	pp. 145-146
Passed Senate (27-5)	03-25-03	pp. 206-207
Reported, H. State Government	10-15-03	p. 1116
Passed House (92-1)	11-13-03	pp. 1181-1182
Senate concurred in House amendments (31-1)	12-02-03	pp. 1218-1219

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