



*Phil Mullin*

***Final Analysis***  
*Legislative Service Commission*

**Am. Sub. S.B. 164**  
125th General Assembly  
(As Passed by the General Assembly)

**Sens. Schuler, Blessing, Dann, Robert Gardner, Fingerhut, Hagan**

**Reps. Trakas, Barrett, Carano, Daniels, DeGeeter, D. Evans, Harwood, Kearns, Niehaus, Seitz, Willamowski**

**Effective date:** \*

---

**ACT SUMMARY**

- Provides that spirituous liquor may be sold on Sunday by a person awarded a contract to operate a liquor agency store (1) if the sale of spirituous liquor on Sunday is authorized in the applicable precinct as the result of an election on specified Sunday liquor sales questions and (2) if the agency contract authorizes the sale of spirituous liquor on Sunday.
- Authorizes the sale of beer and wine under a D-4 permit under specified conditions after its location has been transferred.
- Generally authorizes B-2 permit holders to sell wine to retail permit holders and B-5 permit holders to sell wine to wholesale and retail permit holders.
- Generally requires retail permit holders to purchase beer, wine, and mixed beverages from manufacturers and wholesalers that are A or B permit holders and to purchase spirituous liquor from the Division of Liquor Control.
- Declares an emergency.

---

\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

---

## CONTENT AND OPERATION

### *Sunday sale of spirituous liquor by agency stores*

Continuing law generally prohibits any liquor permit holder or liquor agency store from selling intoxicating liquor after 2:30 a.m. on Sunday. Formerly, the only exception was if a liquor permit holder's permit authorized the Sunday sale of intoxicating liquor (see **COMMENT**).<sup>1</sup> (R.C. 4301.22(C).)

The act adds another exception: that any person awarded a contract to operate a liquor agency store may sell spirituous liquor on Sunday (1) if the sale of spirituous liquor is authorized in the applicable precinct as the result of an election on either of the following questions and (2) if the agency contract authorizes the sale of spirituous liquor on Sunday (R.C. 4301.22(C)(2)):

(a) The question that governs the sale of intoxicating liquor for consumption on the premises where sold between 1 p.m. and midnight on Sunday; or

(b) The question that governs the sale of intoxicating liquor for consumption on the premises where sold between 1 p.m. and midnight on Sunday at premises where the sale of food and other goods and services exceeds 50% of the total gross receipts of the permit holder at the premises.

This change takes effect on the 91st day after the act's effective date (Section 3).

### *Transfer of location of a D-4 permit*

Continuing law authorizes the D-4 permit to be issued to a club that generally has been in existence for three years or more before the issuance of the permit and is certified as being operated in the interest of the membership of a reputable organization that is maintained by a dues paying membership. It allows the permit holder to sell beer and any intoxicating liquor to its members only, in glass or container, for consumption on the premises where sold. (R.C.

---

<sup>1</sup> "Intoxicating liquor" includes wine, mixed beverages, and spirituous liquor. "Spirituous liquor" is defined to include all intoxicating liquors containing more than 21% of alcohol by volume (R.C. 4301.01(B)(5), not in the act).

*The D-6 liquor permit authorizes the Sunday sale of intoxicating liquor and is normally only issued to a permit holder if Sunday liquor sales have been approved in a local option election held on sales at the permit holder's premises or in the election precinct where the premises are located (R.C. 4303.182, not in the act).*

4303.17(A).) A D-4 permit, however, formerly *could not be issued* in any election precinct in which at the November 1933 general election a majority of the precinct's electors voted against repeal of the former Prohibition provisions of the Ohio Constitution, unless the sale of spirituous liquor by the glass was allowed in that precinct as the result of a local option election (R.C. 4303.29(C)(1), not in the act).

The act enacts an exception to the provision described in the immediately preceding sentence, and to other provisions of the Local Option Election Law, to allow the holder of a D-4 permit to transfer the location of the permit and sell beer and wine at the new location *if it is in an election precinct in which the sale of beer and wine, but not spirituous liquor, otherwise is permitted by law* (R.C. 4303.17(C)). This provision will go into immediate effect (Section 4).

### **Sale of wine by B-2 and B-5 permit holders**

Continuing law authorizes the B-2 permit to be issued to a wholesale wine distributor. Formerly, a B-2 permit holder was authorized to distribute or sell wine to the holders of A-1-A, 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, D-5k, and E permits. All of those permits authorize the retail sale of wine; some of them authorize sale for consumption both on and off the premises where sold, and some of them authorize sale for consumption only on those premises. Some retail permits, however, such as the F-2, F-4, F-5, and F-6 permits (allowing wine sales for consumption at festivals and other special events), were not included in this list of permits. The act eliminates this list of specific permits and instead generally authorizes the holder of a B-2 permit to sell wine to *retail* permit holders. (R.C. 4303.07.) This change takes effect on the 91st day after the act's effective date (Section 3).

Continuing law authorizes the B-5 permit to be issued to a wholesale wine distributor. Formerly, a B-5 permit holder was authorized to bottle wine for distribution and sale to the holders of A-1-A, B-2, B-3, B-5, 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, D-5k, and E permits. Except for the B-2, B-3, and B-5 permits, all of those permits authorize the retail sale of wine; some of them authorize sale for consumption both on and off the premises where sold, and some of them authorize sale for consumption only on those premises. The B-2, B-3, and B-5 permits authorize the wholesale sale of wine. Some retail permits, however, such as the F-2, F-4, F-5, and F-6 permits (wine sales for consumption at festivals and other special events), were not included in this list of permits. The act eliminates this list of specific permits and instead generally authorizes the holder of a B-5 permit to sell wine to *wholesale* and *retail* permit holders. (R.C. 4303.10.) This change takes effect on the 91st day after the act's effective date (Section 3).

**The purchase of beer, wine, and mixed beverages from manufacturers and wholesalers and the purchase of spirituous liquor from the Division of Liquor Control**

Former law prohibited holders of A-1-A, C-1, C-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, D-5k, F, F-3, F-5, and F-6 permits from purchasing any beer subject to the state taxes on beer and from purchasing any wine or mixed beverage subject to the state taxes on wine and mixed beverages, except from the holders of A (manufacturing) or B (wholesale) permits. The act eliminates this list of specific permits and instead prohibits holders of *retail* permits from purchasing any beer subject to the state taxes on beer and from purchasing any wine or mixed beverage subject to the state taxes on wine and mixed beverages, except from the holders of A or B permits. (R.C. 4303.35, first paragraph.) This change takes effect on the 91st day after the act's effective date (Section 3).

Former law also prohibited 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, D-5j, or D-5k permits from purchasing spirituous liquor for resale except from the Division of Liquor Control, unless with the Division's special consent under particular regulations and markup provisions prescribed by the Superintendent of Liquor Control. The act eliminates this list of specific permits and instead prohibits holders of *retail* permits from purchasing spirituous liquor for resale except from the Division of Liquor Control, unless with the Division's special consent as described above. (R.C. 4303.35, second paragraph.) This change takes effect on the 91st day after the act's effective date (Section 3).

---

**COMMENT**

The operator of a liquor agency store is authorized under a contract with the Division of Liquor Control in the Department of Commerce to sell spirituous liquor on behalf of the Division. A liquor agency store thus sells spirituous liquor under the authority of a contract with the Division, not under a permit issued by the Division.

---

**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	12-16-03	p. 1291
Reported, S. Agriculture	02-12-04	p. 1525
Passed Senate (28-5)	02-18-04	pp. 1563-1564
Reported, H. State Gov't	05-12-04	pp. 1897-1898



Passed House (80-19)	05-25-04	pp.	1975-1978
Senate concurred in House amendments (28-5)	05-26-05	pp.	2010-2011

04-sb164-125.doc/jc

