

1-1 By: Krusee, et al. (Senate Sponsor - Whitmire) H.B. No. 1199
1-2 (In the Senate - Received from the House April 25, 2003;
1-3 April 28, 2003, read first time and referred to Committee on
1-4 Business and Commerce; May 8, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; May 8, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1199 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to local option elections for the sale of alcoholic
1-11 beverages; providing a criminal penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 11.37, Alcoholic Beverage Code, is
1-14 amended by adding Subsection (c) to read as follows:

1-15 (c) Once a permit is issued, the certification that the
1-16 location or address is in a wet area may not be changed until after a
1-17 subsequent local option election to prohibit the sale of alcoholic
1-18 beverages.

1-19 SECTION 2. Section 61.37, Alcoholic Beverage Code, is
1-20 amended by adding Subsection (c) to read as follows:

1-21 (c) Once a license is issued, the certification that the
1-22 location or address is in a wet area may not be changed until after a
1-23 subsequent local option election to prohibit the sale of alcoholic
1-24 beverages.

1-25 SECTION 3. Section 251.03, Alcoholic Beverage Code, is
1-26 amended to read as follows:

1-27 Sec. 251.03. APPLICATION FOR PETITION. If 10 or more
1-28 qualified voters of any county, justice precinct, or incorporated
1-29 city or town file a written application and provide proof of
1-30 publication in a newspaper of general circulation in that political
1-31 subdivision, the county clerk of the county shall issue to the
1-32 applicants a petition to be circulated among the qualified voters
1-33 of that political subdivision for the signatures of those qualified
1-34 voters in the area who desire that a local option election be called
1-35 in that area for the purpose of determining whether the sale of
1-36 alcoholic beverages of one or more of the various types and
1-37 alcoholic contents shall be prohibited or legalized in the
1-38 political subdivision. Not later than the fifth day after the date
1-39 the petition is issued, the county clerk shall notify the
1-40 commission and the secretary of state that the petition has been
1-41 issued.

1-42 SECTION 4. Section 251.07, Alcoholic Beverage Code, is
1-43 amended to read as follows:

1-44 Sec. 251.07. HEADING AND STATEMENT ON PETITION TO PROHIBIT.
1-45 Each page of the [The] petition for a local option election seeking
1-46 to prohibit the sale of alcoholic beverages of one or more of the
1-47 various types and alcoholic contents shall be headed "Petition for
1-48 Local Option Election to Prohibit." The petition shall contain a
1-49 statement just ahead of the signatures of the petitioners, as
1-50 follows: "It is the hope, purpose and intent of the petitioners
1-51 whose signatures appear hereon to see prohibited the sale of
1-52 alcoholic beverages referred to in the issue set out above." The
1-53 petition must clearly state the issue to be voted on, and that issue
1-54 must be one of those issues set out in Section 251.14 of this code.

1-55 SECTION 5. Section 251.08, Alcoholic Beverage Code, is
1-56 amended to read as follows:

1-57 Sec. 251.08. HEADING AND STATEMENT ON PETITION TO LEGALIZE.
1-58 Each page of the [The] petition for a local option election seeking
1-59 to legalize the sale of alcoholic beverages of one or more of the
1-60 various types and alcoholic contents shall be headed "Petition for
1-61 Local Option Election to Legalize." The petition shall contain a
1-62 statement just ahead of the signatures of the petitioners, as
1-63 follows: "It is the hope, purpose and intent of the petitioners

2-1 whose signatures appear hereon to see legalized the sale of
2-2 alcoholic beverages referred to in the issue set out above." The
2-3 petition must clearly state the issue to be voted on, and that issue
2-4 must be one of those issues set out in Section 251.14 of this code.

2-5 SECTION 6. Subchapter A, Chapter 251, Alcoholic Beverage
2-6 Code, is amended by adding Section 251.081 to read as follows:

2-7 Sec. 251.081. OFFENSE: MISREPRESENTATION OF PETITION. A
2-8 person commits an offense if the person misrepresents the purpose
2-9 or effect of a petition issued under this chapter. An offense under
2-10 this section is a Class B misdemeanor.

2-11 SECTION 7. Section 251.10, Alcoholic Beverage Code, is
2-12 amended to read as follows:

2-13 Sec. 251.10. VERIFICATION OF PETITION. (a) The registrar
2-14 of voters of the county shall check the names of the signers of
2-15 petitions and the voting precincts in which they reside to
2-16 determine whether the signers of the petition were qualified voters
2-17 of the county, justice precinct, or incorporated city or town at the
2-18 time the petition was issued. The political subdivision may use a
2-19 statistical sampling method to verify the signatures. On written
2-20 request from a citizen in the political subdivision for which an
2-21 election is sought, the political subdivision shall verify each
2-22 signature on the petition. The citizen making the request shall pay
2-23 the reasonable cost of the verification. The registrar shall
2-24 certify to the commissioners court the number of qualified voters
2-25 signing the petition.

2-26 (b) A petition [No] signature may not be counted unless the
2-27 signature [either by the registrar or commissioners court, where
2-28 there is reason to believe that:

2-29 [~~(1) it~~] is [~~not~~] the actual signature of the
2-30 purported signer and the petition:

2-31 (1) contains in addition to the signature:

2-32 (A) the signer's printed name;

2-33 (B) the signer's date of birth;

2-34 (C) if the territory from which signatures must
2-35 be obtained is situated in more than one county, the county of
2-36 registration;

2-37 (D) the signer's residence address; and

2-38 (E) the date of signing; and

2-39 (2) complies with any other applicable requirements
2-40 prescribed by law[+]

2-41 [~~(2) the voter registration certificate number is not~~
2-42 correct;

2-43 [~~(3) the voter registration certificate number is not~~
2-44 in the actual handwriting of the signer;

2-45 [~~(4) it is a duplication either of a name or of~~
2-46 handwriting used in any other signature on the petition;

2-47 [~~(5) the residence address of the signer is not~~
2-48 correct or is not in the actual handwriting of the signer; or

2-49 [~~(6) the name of the voter is not signed exactly as it~~
2-50 appears on the official copy of the current list of registered
2-51 voters for the voting year in which the petition is issued].

2-52 (c) The use of ditto marks or abbreviations does not
2-53 invalidate a signature if the required information is reasonably
2-54 ascertainable.

2-55 (d) The omission of the state from the signer's residence
2-56 address does not invalidate a signature unless the political
2-57 subdivision from which the signature is obtained is situated in
2-58 more than one state. The omission of the zip code from the address
2-59 does not invalidate a signature.

2-60 (e) The signature is the only entry on the petition that is
2-61 required to be in the signer's handwriting.

2-62 (f) A signer may withdraw the signer's signature by deleting
2-63 the signature from the petition or by filing with the registrar of
2-64 voters an affidavit requesting that the signature be withdrawn from
2-65 the petition. A signer may not withdraw the signature from a
2-66 petition on or after the date the petition is received by the
2-67 registrar of voters. A withdrawal affidavit filed by mail is
2-68 considered to be filed at the time of its receipt by the registrar
2-69 of voters. The withdrawal of a signature nullifies the signature on

3-1 the petition and places the signer in the same position as if the
3-2 signer had not signed the petition.

3-3 SECTION 8. Section 251.11, Alcoholic Beverage Code, is
3-4 amended by amending Subsection (a) and adding Subsection (d) to
3-5 read as follows:

3-6 (a) ~~The [Except as provided by Subsection (b) or (c), the]~~
3-7 ~~commissioners court, at its next regular session on or after the~~
3-8 ~~30th day after the date the petition is filed, shall order a local~~
3-9 ~~option election to be held on the issue set out in the petition if~~
3-10 ~~the petition is filed with the registrar of voters not later than~~
3-11 ~~the 60th day [30 days] after the date the petition [it] is issued~~
3-12 ~~and bears [in the actual handwriting of the signers the following:~~

3-13 ~~[(1)] the actual signatures of a number of qualified~~
3-14 ~~voters of the political subdivision equal to:~~

3-15 ~~(1) 35 percent of the registered voters in the~~
3-16 ~~subdivision for a ballot issue that permits voting for or against:~~

3-17 ~~(A) "The legal sale of all alcoholic beverages~~
3-18 ~~for off-premise consumption only.";~~

3-19 ~~(B) "The legal sale of all alcoholic beverages,~~
3-20 ~~except mixed beverages.";~~

3-21 ~~(C) "The legal sale of all alcoholic beverages~~
3-22 ~~including mixed beverages."; or~~

3-23 ~~(D) "The legal sale of mixed beverages.";~~

3-24 ~~(2) 25 percent of the registered voters in the~~
3-25 ~~subdivision who voted in the most recent general election for a~~
3-26 ~~ballot issue that permits voting for or against "The legal sale of~~
3-27 ~~wine on the premises of a holder of a winery permit."; or~~

3-28 ~~(3) 35 percent of the registered voters in the~~
3-29 ~~subdivision who voted in the most recent gubernatorial election for~~
3-30 ~~an election on any other ballot issue [a notation showing the~~
3-31 ~~residence address of each of the signers; and~~

3-32 ~~[(3) each signer's voter registration certificate~~
3-33 ~~number].~~

3-34 ~~(d) Voters whose names appear on the list of registered~~
3-35 ~~voters with the notation "S," or a similar notation, shall be~~
3-36 ~~excluded from the computation of the number of registered voters of~~
3-37 ~~a particular territory.~~

3-38 SECTION 9. Section 251.18, Alcoholic Beverage Code, is
3-39 amended to read as follows:

3-40 Sec. 251.18. ELECTION IN CERTAIN CITIES AND TOWNS. (a)
3-41 This section applies only to an election to permit or prohibit the
3-42 legal sale of alcoholic beverages of one or more of the various
3-43 types and alcoholic contents[~~+~~

3-44 ~~[(1) mixed beverages by a food and beverage~~
3-45 ~~certificate holder] in an incorporated city or town that is located~~
3-46 ~~in more than one county[~~, or~~~~

3-47 ~~[(2) beer and wine in an incorporated city or town that~~
3-48 ~~does not permit beer and wine sales on September 1, 2001, and is~~
3-49 ~~located in:~~

3-50 ~~[(A) two counties:~~
3-51 ~~[(i) that each have a population of at least~~
3-52 ~~250,000 but not more than one million; and~~

3-53 ~~[(ii) one of which contains a city or town~~
3-54 ~~with a population of 125,000 or more; or~~

3-55 ~~[(B) three counties:~~
3-56 ~~[(i) that each have a population of not more~~
3-57 ~~than 300,000; and~~

3-58 ~~[(ii) one of which contains a city or town~~
3-59 ~~with a population of 20,000 or more].~~

3-60 (b) An election to which this section applies shall be
3-61 conducted by the city or town instead of the county. For the
3-62 purposes of an election conducted under this section, a reference
3-63 in this code [in this subchapter and Subchapters B and C]:

3-64 (1) [a reference] to the county is considered to refer
3-65 to the city or town;

3-66 (2) [a reference] to the commissioners court is
3-67 considered to refer to the governing body of the city or town;

3-68 (3) [a reference] to the county clerk or registrar of
3-69 voters is considered to refer to the secretary of the city or town

4-1 or, if the city or town does not have a secretary, to the person
4-2 performing the functions of a secretary of the city or town; and

4-3 (4) ~~[a reference]~~ to the county judge is considered to
4-4 refer to the mayor of the city or town or, if the city or town does
4-5 not have a mayor, to the presiding officer of the governing body of
4-6 the city or town.

4-7 (c) The city or town shall pay the expense of the election.

4-8 (d) An action to contest the election under Section 251.55
4-9 may be brought in the district court of any county in which the city
4-10 or town is located.

4-11 SECTION 10. Section 251.31(b), Alcoholic Beverage Code, is
4-12 amended to read as follows:

4-13 (b) The votes shall be counted ~~[after the polls are closed]~~
4-14 and the report of the election submitted to the commissioners court
4-15 within 24 hours after the closing of the polls.

4-16 SECTION 11. Section 251.35(c), Alcoholic Beverage Code, is
4-17 amended to read as follows:

4-18 (c) Election watchers may be appointed in accordance with
4-19 general law~~[, but they must be qualified voters of the election~~
4-20 ~~precinct where they serve].~~

4-21 SECTION 12. Sections 251.11(b), 251.19, 251.32, 251.33,
4-22 251.35(a), and 251.36, Alcoholic Beverage Code, and Section
4-23 251.11(c), Alcoholic Beverage Code, as added by Chapters 1001 and
4-24 1062, Acts of the 77th Legislature, Regular Session, 2001, are
4-25 repealed.

4-26 SECTION 13. The changes in law made by this Act apply only
4-27 to a local option election for which an application for a petition
4-28 is filed on or after the effective date of this Act. A local option
4-29 election for which an application for a petition is filed before the
4-30 effective date of this Act is governed by the law in effect
4-31 immediately before that date, and that law is continued in effect
4-32 for that purpose.

4-33 SECTION 14. An application for a permit to upgrade from the
4-34 sale of beer and wine to the sale of mixed beverages that was
4-35 pending certification under Section 11.37, Alcoholic Beverage
4-36 Code, before May 1, 2003, for an area for which a permit was issued
4-37 for the sale of mixed beverages and in which a local option election
4-38 to prohibit the sale of alcoholic beverages was not held subsequent
4-39 to the date of the original application for the upgrade and before
4-40 May 1, 2003, may be resubmitted, if necessary, regardless of any
4-41 previous action taken on the application. The application shall be
4-42 certified under Section 11.37, Alcoholic Beverage Code, if the
4-43 application otherwise meets the requirements prescribed by
4-44 applicable law. This section expires September 1, 2004.

4-45 SECTION 15. This Act takes effect September 1, 2003.

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