

By: Denny (Senate Sponsor - Fraser) H.B. No. 1799
(In the Senate - Received from the House May 10, 2005;
May 12, 2005, read first time and referred to Committee on Business
and Commerce; May 19, 2005, reported adversely, with favorable
Committee Substitute by the following vote: Yeas 6, Nays 0;
May 19, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 1799 By: Lucio

A BILL TO BE ENTITLED
AN ACT

relating to a transfer and nonsubstantive revision of laws
governing the holding of local option elections regarding alcoholic
beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17
to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS
CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF
ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission,"
"liquor," "mixed beverage," and "wine and vinous liquor" have the
meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section
1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section
11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law
to an election or a local option election held under Chapter 251,
Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of
the Alcoholic Beverage Code that relate generally to a violation of
a provision of that code, including Chapter 101, Alcoholic Beverage
Code, apply to a violation of a provision of this chapter.

[Sections 501.004-501.020 reserved for expansion]

SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 501.021. ELECTION TO BE HELD. On proper petition by
the required number of voters of a county, justice precinct, or
municipality in the county, the commissioners court shall order a
local option election in the political subdivision to determine
whether the sale of alcoholic beverages of one or more of the
various types and alcoholic contents shall be prohibited or
legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION
TO HOLD ELECTION. (a) A political subdivision must have been in
existence for at least 18 months before a local option election to
legalize or prohibit the sale of liquor in the political
subdivision may be held.

(b) The political subdivision must include substantially
all the area encompassed by the political subdivision at the time of
its creation and may include any other area subsequently annexed by
or added to the political subdivision.

(c) This section does not apply to a municipality
incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more
qualified voters of any county, justice precinct, or municipality
file a written application and provide proof of publication in a
newspaper of general circulation in that political subdivision, the
county clerk of the county shall issue to the applicants a petition
to be circulated among the qualified voters of the political
subdivision for the signatures of those qualified voters who desire
that a local option election be called for the purpose of
determining whether the sale of alcoholic beverages of one or more

of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

(b) Not later than the fifth day after the date the petition is issued, the county clerk shall notify the commission and the secretary of state that the petition has been issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. (a) An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Prohibit."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. (a) An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Legalize."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.026. PETITION REQUIREMENTS. A petition must show the date the petition is issued by the county clerk and be serially numbered. Each page of a petition must bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. (a) Each page of the petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Prohibit."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. (a) Each page of the petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Legalize."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a) A person commits an offense if the person misrepresents the purpose or effect of a petition issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Sec. 501.030. COPIES OF PETITION. (a) The county clerk

shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Each copy must bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) The voter registrar of the county shall check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) A petition signature may not be counted unless the signature is the actual signature of the purported signer and the petition:

(1) contains in addition to the signature:

(A) the signer's printed name;

(B) the signer's date of birth;

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

(D) the signer's residence address; and

(E) the date of signing; and

(2) complies with any other applicable requirements prescribed by law.

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

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

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

(f) A signer may withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. A signer may not withdraw the signature from a petition on or after the date the petition is received by the registrar. A withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. The withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the voter registrar not later than the 60th day after the date the petition is issued and bears the actual signatures of a number of qualified voters of the political subdivision equal to at least:

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

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

(B) "The legal sale of all alcoholic beverages except mixed beverages.";

(C) "The legal sale of all alcoholic beverages including mixed beverages."; or

(D) "The legal sale of mixed beverages.";
 (2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters whose names appear on the list of registered voters with the notation "S," or a similar notation, shall be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a) The election order must state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order must state the issue to be voted on in the election.

Sec. 501.035. ISSUES. (a) In the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications, the ballot shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(c) In an area where the sale of all alcoholic beverages including mixed beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(d) In an area where the sale of all alcoholic beverages except mixed beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of wine on the premises of a holder of a winery permit."

(e) In an area where the sale of beverages containing alcohol not in excess of 17 percent by volume has been legalized, and those of higher alcoholic content are prohibited, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of wine on the premises of a holder of a winery permit."

(f) In an area where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. If the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. A local option election on a particular issue may not be held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Sections 501.039-501.100 reserved for expansion]

SUBCHAPTER C. HOLDING OF ELECTION

Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as provided by this chapter, the officers holding a local option election shall hold the election in the manner provided by the other provisions of this code.

Sec. 501.102. ELECTION PRECINCTS. (a) County election precincts shall be used for a local option election to be held in an entire county or in a justice precinct.

(b) Election precincts established by the governing body of the municipality for its municipal elections shall be used for a local option election to be held in a municipality. If the governing body has not established precincts for its municipal elections, the commissioners court shall prescribe the election precincts for the local option election under the law governing establishment of precincts for municipal elections.

Sec. 501.103. POLLING PLACES; NOTICE. (a) The election shall be held at the customary polling place in each election precinct. If the customary polling place is not available, the commissioners court shall designate another polling place.

(b) The notice for the election shall state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for a municipality.

Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election is conducted using printed ballots, the county clerk shall furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of registered voters in the precinct plus 10 percent of that number of voters.

Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to appear on the ballot for an election ordered by the commissioners court must be the same as the issue applied for and set out in the petition.

(b) The issue appropriate to the election shall be printed on the ballot in the exact language stated in Section 501.035.

Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local option election shall be counted and the report of the election submitted to the commissioners court within 24 hours after the time the polls close.

Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The county shall pay the expense of holding a local option election authorized by this chapter in the county, justice precinct, or municipality in that county except that:

(1) if an election is to be held only within the corporate limits of a municipality located wholly within the county, the county may require the municipality to reimburse the county for all or part of the expenses of holding the local option election;

(2) county payment of the expense of an election to legalize the sale of alcoholic beverages is limited to the holding of one election in a political subdivision during a one-year period; and

(3) county payment of the expense of an election to prohibit the sale of alcoholic beverages is limited to the holding of one election in a political subdivision during a one-year period.

Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a) If a county is not required to pay the expense of a local option election under Section 501.107, the county clerk shall require the applicants for a petition for a local option election to make a deposit before the issuance of the petition.

(b) The deposit must be in the form of a cashier's check in an amount equal to 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or municipality where the election is to be held.

(c) The money received shall be deposited in the county's general fund. A refund may not be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) The county clerk may not issue a petition to the

applicants unless a deposit required by this chapter is made.

(e) A person who violates Subsection (d) commits an offense. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$200 nor more than \$500;
 (2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

[Sections 501.110-501.150 reserved for expansion]

SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) On completing the canvass of the election returns, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) In a prohibitory election, if a majority of the votes cast do not favor the issue "The legal sale . . .," the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. The prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) In a legalization election, if a majority of the votes cast favor the issue "The legal sale . . .," the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option election held under this code.

(d) The local option status of a political subdivision does not change as a result of the election if:

(1) in an election described by Subsection (b), less than a majority of the votes cast do not favor the issue; and

(2) in an election described by Subsection (c), less than a majority of the votes cast favor the issue.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Not later than the third day after the date the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A commissioners court order declaring the result of a local option

election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) The enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) The result of an election contest finally settles all questions relating to the validity of that election. A person may not call the legality of that election into question again in any other suit or proceeding.

(c) If an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

SECTION 2. The heading to Chapter 251, Alcoholic Beverage Code, is amended to read as follows:

CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

SECTION 3. Section 251.71, Alcoholic Beverage Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of this code:

(1) a reference to a local option election means an election held under Chapter 501, Election Code; and

(2) a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

SECTION 4. Section 251.72, Alcoholic Beverage Code, is amended to read as follows:

Sec. 251.72. CHANGE OF STATUS. Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 501.035, Election Code [~~251.14 of this code~~], until that status is changed by a subsequent local option election in the same authorized voting unit.

SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is amended to read as follows:

(c) The provisions of Section 501.107, Election Code, [~~251.40 of this code~~] relating to the payment of local option election expenses shall apply to elections held in a territory that is defined in accordance with Subsection (a) of this section.

SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage Code, is amended by adding Section 251.82 to read as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the purposes of an election conducted under Section 501.109, Election Code, a reference in this code:

(1) to the county is considered to refer to the city or town;

(2) to the commissioners court is considered to refer to the governing body of the city or town;

(3) to the county clerk or registrar of voters is considered to refer to the secretary of the city or town or, if the city or town does not have a secretary, to the person performing the functions of a secretary of the city or town; and

(4) to the county judge is considered to refer to the mayor of the city or town or, if the city or town does not have a mayor, to the presiding officer of the governing body of the city or town.

SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, are repealed.

SECTION 8. The saving provisions of Section 311.031, Government Code, apply to:

(1) the repeal of Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, by this Act as if those provisions were statutes to which Section 311.031 applies; and

C.S.H.B. No. 1799
9-1 (2) the enactment of Title 17, Election Code, by this
9-2 Act as if this Act were a code governed by Chapter 311, Government
9-3 Code.
9-4 SECTION 9. This Act takes effect September 1, 2005.
9-5 * * * * *