

**More towns go “wet” to boost local revenue**

# New Laws Impact Communities, License/Permit Holders

Some cheered and some sneered when the ink dried on new laws affecting the regulation of alcoholic beverages passed during the last legislative session.

**LOCAL-OPTION ELECTIONS**

On October 22, the Justice Department approved changes made to Texas law regarding local-option elections that change a community’s wet/dry status.

The new law allows Texas voters to gather petitions with fewer signatures and gives them more time to do it before they hold the election.

“I’d anticipate a large wave of local-option elections all over as a result of the new law,” said Roy Hale, TABC program specialist.

Currently, 89% of Texas counties are “dry” or “partially dry.” Already, many dry communities across the state have started petition drives so they can buy and sell alcoholic beverages.

Some citizens see the law change as “pro-business” versus “pro-alcohol.”

“Particularly now with the downturn in the economy, a lot of municipalities are hurting for revenue,” said Tim Reeves, consultant hired to lead Duncanville’s petition effort (AP).

Another new law states that if a license was issued in error because the county clerk certified the location was in a wet area when it wasn’t, the license remains valid until an election is held prohibiting the sale of alcoholic beverages at that location.

**PRIVATE CLUBS**

Private clubs can now prevent their permits from being suspended when an employee serves to a nonmember of the club *if all* employees have successfully completed a TABC-approved seller/server training course.

Another new law prohibits private club registration permits from being issued to or maintained by a club located in a dry area if the club operates a sexually oriented business on the premises.

**BOATS**

Alcoholic beverage permits can now be issued to boats regularly used for voyages in international waters regardless of whether the sale of mixed beverages is lawful in the area of the home port.

**CRIMINAL VIOLATIONS**

Applicants convicted of a felony and/or various misdemeanor charges are not eligible to hold a license or permit until **five** years after completing the sentence. Previously, the waiting period was three years.



## New Laws, Amended Rules, Revised Forms

*Changes to the Texas Alcoholic Beverage Code during the last legislative session meant changes to Commission rules and forms to ensure compliance with the new laws.*

These charts summarize the changes to the TABC Code, rules and forms. For the most current information about new and amended rules and the availability of revised forms, refer to the agency website at [www.tabc.state.tx.us](http://www.tabc.state.tx.us)

Bill	Relating to	Summary
HB 295	Security no longer required to contest an application for certain alcoholic beverage licenses	Amends Sec. 61.39 to prohibit a person from being required to pay security for costs related to contesting a license if the case is decided in favor of the applicant.
HB 671	Restroom requirements for small restaurants less than 2,500 ft.	Amends Sec. 61.43 (a) and Sec. 61.71(a) to allow restaurants with 2,500 square feet or less that derive less than 50% of gross revenue from sale of alcoholic beverages and a 50-person occupancy limit, to have only one properly identified restroom to get a Beer Retailer’s On-Premise License.
HB 724	Civil liability of alcoholic beverage providers	Amends Sec. 2.03. Providers are now liable for the actions of “employees” who are or become intoxicated.

Bill	Relating to	Summary
HB 941	Export of certain beer, malt liquor and ale	<p>Amends Chaps. 19-21, 64-66. Now all classes of beer distributors and wholesalers have the authority to receive and store brands and container sizes of beer, ale, or malt liquor intended for export to another state where the distributor or wholesaler has been assigned a territory for those brands even though the brands and container sizes aren't lawful for sale in Texas.</p> <p><b>New Rule 41.55. Malt Beverages for Export</b> was adopted Oct. 27, 2003, and became effective Dec. 14, 2003. This rule details registration and reporting requirements, and applies to Secs. 19.05, 20.03, 21.03, 64.09, 65.08 and 66.11 of the Code.</p>
HB 1056	Employment of minors at locations authorized to sell alcoholic beverages for on-premise consumption	<p>Allows holder of on-premise license or permit to hire an employee younger than 18 to work in any capacity except selling, preparing or serving alcoholic beverages. If licensee or permittee also holds a Food and Beverage Certificate, then the licensee or permittee may hire someone younger than 18 to work as a cashier for transactions involving the service of alcoholic beverages as long as they are served by someone 18 or older.</p>
HB 1114	Criminal offense of selling to a habitual drunk, intoxicated or insane person	<p>Amends Sec. 101.63(a) reducing burden of proof on law enforcement to prove an unlawful sale of alcoholic beverages to an habitual drunk, intoxicated or insane person. Now law enforcement must prove that seller failed to use a degree of care an ordinary person would use under similar conditions instead of having to prove that the seller knew the purchaser was an habitual drunk, intoxicated or insane.</p>
HB 1199	Local-option elections for the sale of alcoholic beverages	<p>Amends Secs. 11.27 and 61.27 stating if a license or permit was issued because of an error on the county clerk's certification of the location—being in a wet area when it wasn't—the license will remain valid until an election is held to prohibit the sale of alcoholic beverages at that location. Also changed the requirements for the petition and election for a local-option election.</p>
HB 1510	Changes in requirements and authority of Package Store Tasting Permits	<p>Amends Sec. 52.01(b),(e),(i), and (k) by no longer requiring 72-hour prior written notice to TABC. Now, notice can be posted on the licensed premise 48 hours before to announce the tasting. Also, bill allows:</p> <ul style="list-style-type: none"> <li>• for the tasting of 20 different products at the same time</li> <li>• opened alcoholic beverage containers used in tasting to be stored in a locked secure area on the licensed premises or removed from premise</li> <li>• allows use of electronic mail or posting on the permittee's Internet website to announce the tasting</li> </ul>
HB 1625	Issuance of temporary wine and beer retailer's permit outside the county of the basic wine and beer retailer's on-premise permit	<p>Amends Ch. 27, subchapter A, allowing the holder of a Wine and Beer Retail Dealer's On-premise Permit to obtain a Temporary Wine and Beer Retailer's Permit for a location outside the county where their permanent location is. Product must be purchased from distributor who services the temporary area.</p> <p><b>TABC Rule 33.11. Application and Issuance</b> was amended Oct. 27, 2003, and became effective Dec. 14, 2003, to comply with the new law. The rule details the process and requirements.</p>
HB 2005	License qualifications and completion of sentence for criminal violations	<p>Before an applicant can qualify to hold a license or permit, it must be five years (instead of two or three) since the completion of a sentence for a felony conviction.</p> <p><b>TABC Rule 33.1. Final Conviction or Deferred Adjudication</b> was amended Oct. 27, 2003, and became effective Dec. 14, 2003. This rule relates to Secs. 11.46, 25.06, 61.43, 69.06, and 109.532 of the Code and was amended to reflect the change in the new law.</p>
HB 2112	Benefits of Seller/Server Training	<p>Adds service of alcoholic beverages to a nonmember of a private club to a list of violations protecting the permittee from suspension of their permit if all employees have successfully completed a server training course approved by the TABC and employees are not directly or indirectly encouraged to violate the law.</p> <p>Bill grants the permittee protection from the suspension of their permit if an employee who has successfully completed a server training course approved by the TABC if that employee serves to a nonmember of the private club.</p>
HB 2156	Minimum capacity for miniature liquor containers	<p>Establishes minimum capacity for miniature containers of liquor using milliliters rather than ounces.</p> <p>Allows persons to import, transport, possess, or sell liquor in containers of not less than 20 milliliters rather than the current 1.6 fluid ounces.</p>
HB 2376	Removing obsolete bond requirements for TABC employees	<p>Bill removed obsolete requirement of TABC to obtain bonds for the administrator, assistant administrator and other agency representatives.</p>

Bill	Relating to	Summary
HB 2579	Extended hours of sale for mixed beverages and beer in certain cities	Amends Secs. 105.03 and 105.05 of the Code extending hours for sale and on-premise consumption of beer and mixed beverages to 2 A.M. in cities with a population of 500,000 or greater according to the last census.
HB 2593	Sale and purchase of wine by winery permittees in Texas	<p>Amends Ch. 16 of the Code to allow all wineries, whether in a wet or dry area, to:</p> <ul style="list-style-type: none"> <li>• purchase wine from permittees authorized to purchase and sell</li> <li>• sell wine for on-premise consumption</li> <li>• sell up to 35,000 gallons (up from 25,000) for off-premise consumption</li> </ul> <p>For wineries in a dry area to sell wine for on-premise consumption, dispense free wine and sell up to 35,000 gallons of wine for off-premise consumption:</p> <ul style="list-style-type: none"> <li>• the wine must be manufactured in this state</li> <li>• at least 75% by volume must be from grapes or other fruit grown in the state</li> </ul>
HB 855	Funding for Texas Wine Marketing Assistance Program	Amends Sec. 5.55 of the Code by continuing the \$250,000 annual funding for the Texas Wine Marketing Assistance Program indefinitely.
HB 935	Private Club Exemption Certificate Permits	<p>Bill added another fraternal organization that qualifies to hold a Private Club Exemption Certificate Permit.</p> <p>Bill amends Sec. 32.11 of the Code by adding to the definition of <i>fraternal organization</i> a chapter or other local unit of an American national fraternal organization that promotes the moral, educational, social, and recreational welfare of merchant seafarers that operates in at least 12 states, has a minimum of four local units in Texas with one of those units having existed for more than 15 years and in Texas for one year to qualify for a Private Club Exemption Permit.</p>
SB 1251	Electronic filing of applications for original and renewal applications for licenses and permits	Currently, TABC accepts paper applications. The new bill allows TABC to have another agency issue permits electronically through the Internet. TABC may only charge a fee to those applicants who apply via Internet and prohibits a similar fee for those who do not use the Internet.
SB 1273	Changes in criteria used to determine the amount of civil penalty paid in lieu of suspension for violations of the Code	<p>Amends Secs. 11.61 and 11.64 of the Code by adding that the length of a suspension or civil penalty paid in lieu of suspension must be appropriate for the nature and seriousness of the violation. In determining the length of suspension or amount of civil penalty paid in lieu of suspension, TABC shall consider:</p> <ul style="list-style-type: none"> <li>• type of permit held</li> <li>• any aggravating or ameliorating circumstances</li> <li>• type of violation</li> <li>• licensee's previous record</li> </ul> <p>TABC may not consider:</p> <ul style="list-style-type: none"> <li>• volume of alcoholic beverages sold</li> <li>• taxes paid</li> <li>• business receipts</li> <li>• financial condition of licensee/permittee</li> </ul>
SB 1380	Advertising and promotion of alcoholic beverages in public entertainment facilities	<p>Amends Ch. 108 of the Code by adding Subchapter C creating industry public entertainment facilities.</p> <p>Allows for upper levels of the alcoholic beverage industry to promote and advertise where alcoholic beverages are sold when specific requirements are met:</p> <ul style="list-style-type: none"> <li>• public entertainment facility must be a separate entity from the business of selling alcoholic beverages at retail</li> <li>• business selling at retail shall not directly or indirectly receive monetary benefit from advertising, promotions, or sponsorships generated by the operation of a public entertainment facility</li> </ul> <p>Sets forth:</p> <ul style="list-style-type: none"> <li>• prohibitions and authorization for placement of signs advertising alcoholic beverages at the location</li> <li>• procedures for review of all agreements and appeals from any decisions made by the administrator concerning the agreements</li> </ul> <p>TABC Rule 45.100 repealed Oct. 27, 2003, effective Dec. 14, 2003. Section 3(a)(1) of SB 1380 supersedes this rule.</p>