

ALCOHOLIC BEVERAGE CODE
TITLE 6. LOCAL OPTION ELECTIONS
CHAPTER 251. LOCAL OPTION STATUS

SUBCHAPTER D. MISCELLANEOUS LOCAL OPTION PROVISIONS

Sec. 251.71. WET AND DRY AREAS. (a) An area is a "dry area" as to an alcoholic beverage of a particular type and alcohol content if the sale of that beverage is unlawful in the area. An area is a "wet area" as to an alcoholic beverage of a particular type and alcoholic content if the sale of that beverage is lawful in the area.

(b) Those areas that are wet or dry when this code takes effect retain that status until the status of the area is changed as provided in this code.

(c) All trial courts of this state shall take judicial notice of the wet or dry status of an area in a criminal prosecution.

(d) In an information, complaint, or indictment, an allegation that an area is a dry area as to a particular type of alcoholic beverage is sufficient, but a different status of the area may be urged and proved as a defense.

(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.

Acts 1977, 65th Leg., p. 555, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 975 (H.B. 1799), Sec. 3, eff. September 1, 2005.

Sec. 251.72. CHANGE OF STATUS. Except as provided in Sections 251.725, 251.726, 251.727, 251.73, and 251.80, 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, until that status is changed by a subsequent local option election in the same authorized voting unit.

Acts 1977, 65th Leg., p. 555, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 975 (H.B. 1799), Sec. 4, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1298 (H.B. 2818), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 241 (S.B. 680), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 463 (H.B. 2735), Sec. 1, eff. June 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(1), eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 309 (H.B. 1729), Sec. 1, eff. September 1, 2021.

Sec. 251.725. CHANGE OF STATUS FOR CERTAIN TERRITORY ANNEXED BY MUNICIPALITY. (a) This section applies only to a municipality whose local option status allows for the legal sale of malt beverages and wine for off-premise consumption only as a result of a local option election on the applicable ballot issue held on or after January 1, 1985.

(b) The governing body of a municipality described by Subsection (a) may adopt an ordinance authorizing the sale of malt beverages and wine for off-premise consumption in an area annexed by the municipality after that election if at the time the ordinance is adopted:

(1) the annexed area is not more than one percent of the total area covered by the municipality;

(2) all of the land in the annexed area is zoned for commercial use only; and

(3) the annexed area is not adjacent to residential, church, or school property.

Added by Acts 2015, 84th Leg., R.S., Ch. 463 (H.B. 2735), Sec. 2,

eff. June 15, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 382, eff. September 1, 2021.

Sec. 251.726. CHANGE OF STATUS FOR TERRITORY ANNEXED OR OWNED BY CERTAIN MUNICIPALITIES.

(a) This section applies only to a municipality that has within its boundaries all or part of an international airport operated jointly by two municipalities and:

(1) that is:

(A) partially located in three counties, two of which have a population of 2.1 million or more; and

(B) primarily located in a county with a population of 2.1 million or more; or

(2) that:

(A) is partially located in five counties, one of which:

(i) has a population of 2.1 million or more; and

(ii) is adjacent to a county with a population of 2.2 million or more;

(B) is subject to a limited purpose annexation and development agreement under Subchapter G, Chapter 212, Local Government Code; and

(C) may annex an area on request of the owners of land in the area under Subchapter C-3, Chapter 43, Local Government Code.

(b) Notwithstanding any other law:

(1) an area annexed to a municipality to which this section applies assumes the wet or dry status of that municipality; and

(2) an area contiguous to and owned by a municipality to which this section applies assumes the wet or dry status of that municipality.

Added by Acts 2015, 84th Leg., R.S., Ch. 241 (S.B. 680), Sec. 2, eff. September 1, 2015.

Redesignated from Alcoholic Beverage Code, Section 251.725 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(1), eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 302 (H.B. 4456), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 4, eff. September 1, 2023.

Sec. 251.727. CHANGE OF STATUS FOR TERRITORY ANNEXED BY MUNICIPALITIES IN CERTAIN COUNTIES. (a) This section applies only to:

(1) a municipality that contains U.S. Highway 287 and State Highway 294 and is located in a county with a population of not less than 57,000 and not more than 59,000 on September 1, 2021; or

(2) a municipality that:

(A) has a municipal boundary located not more than 1.5 miles from an automobile racetrack with a seating capacity of more than 100,000;

(B) has a population of more than 5,000 and less than 5,500; and

(C) is located entirely within a county with a population of more than 650,000 that is adjacent to two counties, each of which has a population of more than 1.8 million.

(b) Notwithstanding any other law, an area annexed to a municipality to which this section applies automatically assumes the wet or dry status of that municipality on annexation.

Added by Acts 2021, 87th Leg., R.S., Ch. 309 (H.B. 1729), Sec. 2, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 5, eff. September 1, 2023.

Sec. 251.73. PREVAILING STATUS: RESOLUTION OF CONFLICTS. To insure that each voter has the maximum possible control over the status of the sale of alcoholic beverages in the area where he

resides:

(1) the status that resulted from or is the result of a duly called election for an incorporated city or town prevails against the status that resulted from or is the result of a duly called election in a justice precinct or county in which the incorporated city or town, or any part of it is contained; and

(2) the status that resulted or is the result of a duly called election for a justice precinct prevails against the status that resulted from or is the result of a duly called election in an incorporated city or town in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

Acts 1977, 65th Leg., p. 555, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 251.74. AIRPORT AND STADIUM AS WET AREAS. (a) This section applies to any county:

(1) that has a population of more than 240,000, according to the most recent federal census;

(2) in which the sale of all alcoholic beverages has been legalized in all or any part of the county; and

(3) where, at the general election on November 3, 1970, the voters approved the constitutional amendment authorizing the sale of mixed beverages on a local option basis.

(b) In a county covered by this section, the commissioners court may designate as an area wet for the sale of mixed beverages only:

(1) the area encompassed by the building structure of a professional sports stadium, used wholly or partly for professional sporting events and having a seating capacity of at least 40,000, and not more than 125 acres of adjacent land used for the benefit of the stadium, regardless of ownership of the land, if no registered voters reside there; and

(2) the area encompassed by a regional airport.

(c) The order of the commissioners court authorizes the issuance of a mixed beverage permit.

Acts 1977, 65th Leg., p. 555, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by Acts 1983, 68th Leg., p. 1324, ch. 276, Sec. 1, eff. Aug. 29, 1983.

Sec. 251.741. CERTAIN AIRPORTS AS WET AREAS. In addition to those areas declared wet by order of the commissioners court under the authority of Section 251.74 of this code, in a county with a population of more than 175,000 according to the most recent federal census where the sale of mixed beverages only is legalized in the most populous city in the county by a local option election held after May 18, 1971, the area actually encompassed by any municipal airport under the jurisdiction of that city is wet for the sale of mixed beverages only. Subsequent local option elections held by that city do not affect the local option status of the airport unless the result of the election prohibits the sale of mixed beverages, in which case the provisions of this section do not apply.

Added by Acts 1977, 65th Leg., p. 1184, ch. 453, Sec. 14, eff. Sept. 1, 1977.

Sec. 251.742. MUNICIPAL ALCOHOLIC BEVERAGE ZONE. (a) In this section, "commercial area" means a contiguous area:

(1) in which 75 percent or more of the land area, excluding street rights-of-way, is devoted to or restricted to any combination of retail, restaurant, entertainment, office, government, or business uses; and

(2) that includes at least 20 commercial establishments.

(b) This section applies only to a municipality that:

(1) has a population of 15,000 or more; and

(2) is located in two counties one of which:

(A) has a population of 340,000 or more;

(B) contains a municipality in which at least 85 percent of the county's population resides; and

(C) borders the Gulf of Mexico.

(c) The governing body of a municipality by resolution may propose a zone within a commercial area of the municipality to be designated as a zone in which the legal sale of one or more prohibited types or classifications of alcoholic beverages may be considered in a local option election under this section. The

resolution must describe the boundaries of the proposed zone.

(d) The governing body of the municipality shall order an election on the issue and prepare the ballot for the election that describes the boundaries of the proposed zone and permits voting for or against one of the ballot issues prescribed by Section [501.035](#), Election Code, with respect to the proposed zone.

(e) The qualified voters of a municipality may petition the governing body of the municipality, in the manner prescribed by Chapter [501](#), Election Code, to order an election to alter the status of the sale of any type or classification of alcoholic beverages that has been legalized in a zone by an election conducted under this section.

(f) An election conducted under this section shall be conducted within the entire boundaries of the municipality in which an alcoholic beverage zone is proposed as those boundaries exist on the date of the election. The results of the election affect only the wet or dry status of the area within the boundaries of the zone.

(g) The provisions for conducting a local option election under Chapter [501](#), Election Code, apply to an election conducted under this section to the extent those provisions do not conflict with this section.

(h) The results of an election conducted under this section do not affect the legal sale of one or more types or classifications of alcoholic beverages that are permitted in the zone because of the zone's inclusion in a political subdivision.

Added by Acts 2021, 87th Leg., R.S., Ch. 124 (S.B. [1216](#)), Sec. 1, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. [4559](#)), Sec. 6, eff. September 1, 2023.

Sec. 251.75. CONTINUANCE OF OPERATION AS BREWER. Notwithstanding any other provision of this code, if the sale of malt beverages is prohibited in an area by a local option election, a holder of a brewer's license that was issued prior to the election may not be denied an original or renewal brewer's license for the same location on the ground that the local option

status of the area prohibits the sale of malt beverages. Except for the right to sell malt beverages contrary to the local option status of the area, the licensee may engage in all activities authorized by the license, including the brewing, possessing, storing, and packaging of malt beverages, and transporting the malt beverages to an area where the sale of malt beverages is legal. The licensee may deliver malt beverages at the licensee's premises to a purchaser from outside the state, an authorized carrier, or distributor. The purchaser, carrier, or distributor may not receive the malt beverages for transportation unless there has first been an order, acceptance, and payment or legal satisfaction of payment in an area where the sale of malt beverages is legal.

Acts 1977, 65th Leg., p. 556, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 383, eff. September 1, 2021.

Sec. 251.76. CONTINUANCE OF OPERATION AS DISTILLER AND RECTIFIER. Notwithstanding any other provision of this code, a person who has been issued a distiller's and rectifier's permit may not subsequently be denied an original or renewal distiller's and rectifier's permit for the same location on the ground that the sale of distilled spirits has been prohibited in the area by a local option election. A person holding a permit at the time of the election or issued a permit under this section may exercise all privileges granted by this code to the holder of a distiller's and rectifier's permit, including the manufacturing, possessing, storing, packaging, and bottling of distilled spirits and the transportation of them to areas in which their sale is legal.

Acts 1977, 65th Leg., p. 556, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by Acts 1983, 68th Leg., p. 1354, ch. 278, Sec. 58, eff. Sept. 1, 1983.

Sec. 251.77. CONTINUANCE OF OPERATION AS DISTRIBUTOR.
(a) Notwithstanding any other provision of this code, if the sale of malt beverages is prohibited by local option election, a licensed distributor of malt beverages whose warehouse or other

facilities used in connection with the distributorship are located in the area affected, has the right to continue to operate as a distributor in that area and maintain the necessary premises and facilities for distribution. The distributor continues to enjoy all the rights and privileges incident to distributorship, including the right to possess, store, warehouse, and sell malt beverages in that area, and deliver malt beverages into and out of that area.

(b) A distributor in the area affected may sell or deliver malt beverages only to licensed outlets located where the sale of malt beverages is legal.

Acts 1977, 65th Leg., p. 556, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 384, eff. September 1, 2021.

Sec. 251.78. CONTINUANCE OF OPERATION AS WHOLESALER. (a) Notwithstanding any other provision of this code, if the sale of the type or types of liquor authorized to be sold by the holder of a wholesaler's permit whose warehouse or other facility used in connection with the wholesale operation is prohibited in an area by local option election, the holder of the wholesaler's permit shall have the right to continue to operate as a wholesaler in that area and maintain the necessary premises and facilities for the wholesale operation. The wholesaler shall enjoy all the rights and privileges incident to the permit, including the right to possess, store, warehouse, sell, deliver, and receive liquor.

(b) A wholesaler in the area affected may only sell or deliver liquor to permittees located where the sale of liquor is legal.

Acts 1977, 65th Leg., p. 556, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 251.79. AREAS IN WHICH CERTAIN PERMITS AND LICENSES MAY BE ISSUED. Notwithstanding any other provision of this code, a wholesaler's permit, general class B wholesaler's permit, or general or branch distributor's license may be issued and licensed premises maintained in any area where the sale of any alcoholic

beverage is legal. A person issued a permit or license under this section may exercise all rights and privileges of other permittees and licensees of the same class.

Acts 1977, 65th Leg., p. 557, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 385, eff. September 1, 2019.

Sec. 251.80. CHANGE IN PRECINCT BOUNDARIES. (a) A local option election held in a justice precinct shall be held in the territory comprising the justice precinct at the time the election is held. If a justice precinct has established a local option status as a result of a previous local option election in the justice precinct, such status shall remain in effect until the status is changed as the result of a subsequent local option election in the precinct. If the boundaries of the justice precinct have changed since such status was established, a subsequent local option election will only change the local option status in the territory that is part of the justice precinct on the date of the subsequent local option election.

(a-1) For purposes of a local option election, a newly created justice precinct shall be considered to have not held a local option election on the sale of alcoholic beverages. Any local option status established in the territory comprising the new justice precinct that resulted from a local option election held in the territory when the territory was part of another justice precinct remains in effect until that status is changed by a local option election held in the new justice precinct.

(b) Nothing in this section is intended to affect the operation of Section 251.73 of this code.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1298, Sec. 6, eff. September 1, 2013.

Added by Acts 1989, 71st Leg., ch. 435, Sec. 2, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 975 (H.B. 1799), Sec. 5, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1298 (H.B. 2818), Sec. 5, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1298 (H.B. [2818](#)), Sec. 6, eff. September 1, 2013.

Sec. 251.81. SALE OF WINE. (a) If the sale of wine was approved in an area by a local option election, other than a local option election that approved the sale of all alcoholic beverages, before September 1, 1999, an alcoholic beverage license or permit holder may not sell in that area wine containing more than 14 percent alcohol by volume unless a subsequent local option election approves the sale of wine or wine and other alcoholic beverages.

(b) The commission shall, on the face of each alcoholic beverage license or permit, indicate whether the holder may sell wine and, if the license or permit holder may sell wine, whether the holder may sell wine up to 14 percent alcohol or 17 percent alcohol by volume.

Added by Acts 1999, 76th Leg., ch. 418, Sec. 8, eff. Sept. 1, 1999.

Sec. 251.811. SALE OF MALT BEVERAGES. (a) If before September 1, 2021, the sale of beer was approved in an area by a local option election that approved the sale of beer only, an alcoholic beverage license or permit holder may not sell in that area malt beverages containing more than five percent alcohol by volume unless a subsequent local option election approves the sale of malt beverages or malt beverages and other alcoholic beverages.

(b) The commission shall, on the face of each retail license, indicate whether the holder may only sell malt beverages that do not exceed five percent alcohol by volume.

Added by Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 386, eff. September 1, 2021.

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.

Added by Acts 2005, 79th Leg., Ch. 975 (H.B. [1799](#)), Sec. 6, eff. September 1, 2005.