

- SUBJECT:** Increasing criminal penalties for sale of alcohol in dry areas
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 6 ayes — Wilson, Yarbrough, Goolsby, Moreno, A. Reyna, Wise
0 nays
3 absent — Flores, Haggerty, D. Jones
- WITNESSES:** For — Thomas C. Deal, Gary M. Swindle, Tyler Police Department;
Registered but did not testify: Charles Wilkinson, Combined Law
Enforcement Association of Texas

Against — None

On — Jeannene Fox, Texas Alcoholic Beverage Commission
- BACKGROUND:** Alcoholic Beverage Code, sec. 1.05, establishes a general penalty for violations of provisions in the code that do not specify penalties.

Alcoholic Beverage Code, sec. 101.31, prohibits any person in a dry area from manufacturing, distilling, brewing, selling, importing into or exporting from the state, transporting, distributing, warehousing, storing, soliciting or taking orders for, or possessing alcohol with the intent to sell.

No specific penalty is given for violating sec. 101.31. Therefore, an offender selling alcohol in a dry area is subject to fines under sec. 1.05 of not less than \$100 or more than \$1,000, imprisonment for not more than a year, or both as determined by the court.
- DIGEST:** HB 269 would amend Alcoholic Beverage Code, sec. 101.31, to make it a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for a person to sell alcohol in a dry area. If a defendant was shown to have been convicted two or more times of a sec. 101.31 offense, the next offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

HB 269 would take effect September 1, 2001 and would apply only to offenses occurring after the effective date.

SUPPORTERS
SAY:

HB 269 would provide a community service for those who live in dry areas. Bootlegging operations, usually set up in residences, are community eyesores that attract parolees, drug dealers, prostitutes, and sellers of stolen property. Bootleggers only are concerned with making a profit and even sell alcohol to minors. By increasing the punishment for bootlegging offenses, HB 269 would help dry communities to discourage bootlegging operations, help rid their neighborhoods of undesirables, and help prevent teenage drinking.

Harsher criminal penalties would help deter offenders. The current penalty for a bootlegging offense ranges from a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). HB 269 would clearly set the penalty for a first offense at a class B misdemeanor. This effectively would double the possible fine for bootlegging offenses up to a maximum of \$2,000. The bill also would increase the punishment for repeat offenders to a state felony offense.

HB 269 would help dry counties put repeat offenders out of business by making it too expensive to get caught. Bootleggers bringing alcohol into dry counties from wet counties are able to sell the alcohol at three times the amount paid. Because bootlegging is so profitable, the fines are minor costs for the bootleggers. They also use their money to pay other people to run their bootlegging operations while they serve jail time. However, only chronic offenders would be subject to the state jail felony because it would require conviction for two or more offenses.

OPPONENTS
SAY:

Because a state jail felony is a serious offense, HB 269 should be clearer regarding the conditions for repeat offenses. Two prior convictions should mean that there was one arrest and a conviction levied in separate criminal episodes. HB 269 could be interpreted as allowing the two prior arrests and convictions for bootlegging that occurred as part of the same criminal episode or scheme.