

**Unit Goal: Utilization of the provisions of the Texas Alcohol Beverage Code.**

**16.1. Define the following terms from the Alcoholic Beverage Code.**

- Alcoholic beverage – Alcoholic Beverage Code Chapter 1.04
- Distilled spirits- Alcoholic Beverage Code Chapter 1.04
- Malt beverage – Alcoholic Beverage Code Chapter 1.04
- Mixed beverage- Alcoholic Beverage Code Chapter 1.04
- Illicit beverage - Alcoholic Beverage Code Chapter 1.04
- Licensee - Alcoholic Beverage Code Chapter 1.04
- Permittee - Alcoholic Beverage Code Chapter 1.04
- General penalty- Alcoholic Beverage Code Chapter 1.05
- Minor - Alcoholic Beverage Code Chapter 106.01
- Premises defined; Designation of licensed premises - Alcoholic Beverage Code Chapter 11.49

**16.2. List the duties of peace officers as related to the Alcoholic Beverage Code.**

- Duty of peace officers - Alcoholic Beverage Code Chapter 101.07
- Arrest without warrant- Alcoholic Beverage Code Chapter 101.02
- Seizure of illicit beverages, etc.- Alcoholic Beverage Code Chapter 103.03
- Arrest of person in possession- Alcoholic Beverage Code Chapter 103.04
- Report of seizure- Alcoholic Beverage Code Chapter 103.05
- Beverages seized by peace officer – Alcoholic Beverage Code Chapter 103.06

**16.3. List the items that may be listed for a search warrant, who may issue the warrant, and explain the difference between a search and an inspection.**

- Search and seizure- Alcoholic Beverage Code Chapter 101.03
- Consent to inspection- Alcoholic Beverage Code Chapter 101.04

**Lecture Scenario:** In each of the following scenarios the student will:

- Identify if they are acting under the authority of an inspection or search.
- Identify authority to arrest, if appropriate.
- Identify any evidence to be seized and the authority.
- Articulate their actions in a report.

**Scenario #1:** Alcoholic Beverage Code Chapter - 101.04 Consent to Inspection

The officer and their partner are patrolling at 2345 near a bar that has been the source of frequent complaints from residents in the area. The complaints range from loud noise, intoxicated persons, fights, and drug use. The officer enters the bar with their partner to observe activities inside the bar and look for sources of the complaints. As they walk through the bar, they notice one of the bartenders acting extremely nervous and seeming to be trying to avoid their view. As they start to move behind the bar area, they see them quickly remove something from their pocket and drop it between some liquor bottles on a shelf under the bar. They check that area and find a small plastic baggie containing a white powdery substance.

**Scenario #2:** Alcoholic Beverage Code Chapter - Search and Seizure

The officer is dispatched to an investigation regarding a complaint that someone is selling beer from their home. Upon arrival, the officer is approached by a neighbor who states they are the complainant. The complainant explains that the house in question has a lot of foot traffic coming and going at all hours. They further state they have seen people approach the house empty handed but leave carrying a case of beer. As the officer is speaking to the complainant the officer observes exactly what the complainant has described, someone approaching the house in question empty handed and leaving with a case of beer. The officer approaches the house and knocks on the door, as it opens; the officer observed multiple cases of beer stacked in the living room. The officer asks to step inside to speak to the occupant, but the occupants say they have nothing to say and closes the door.

**16.4. Identify the offense and its punishment.**

- Possession of intoxicants on public school grounds – Education Code Chapter 37.122
- Sale or delivery to certain persons- Alcoholic Beverage Code Chapter 101.63
- Consumption of alcoholic beverages near schools - Alcoholic Beverage Code Chapter 101.75
- Open container – Alcoholic Beverage Code Chapter 109.35(e)
- Lewd, immoral, indecent conduct- Alcoholic Beverage Code Chapter 104.01
- Purchase of alcohol by minor - Alcoholic Beverage Code Chapter 106.02
- Attempt to purchase alcohol by minor - Alcoholic Beverage Code Chapter 106.025
- Sale of alcohol to a minor - Alcoholic Beverage Code Chapter 106.03
- Consumption of alcohol by minor - Alcoholic Beverage Code Chapter 106.04
- Driving or operating a watercraft under the influence of alcohol by minor - Alcoholic Beverage Code Chapter 106.041
- Possession of alcohol by minor - Alcoholic Beverage Code Chapter 106.05
- Purchase for or furnishing alcohol to a minor - Alcoholic Beverage Code Chapter 106.06
- Misrepresentation of age by minors - Alcoholic Beverage Code Chapter 106.07

**Lecture Scenario:** In each of the following scenarios the student will:

- Identify if they are acting under the authority of an inspection or search.
- Identify any offenses observed.
- Identify authority to arrest, if appropriate.
- Articulate their actions in a report.

**Scenario #1:** Alcoholic Beverage Code Chapter 101.63 Sale to Certain Persons

The officer and their partner are patrolling at 2345 near a bar that has been the source of frequent complaints from residents in the area. The complaints range from loud noise, intoxicated persons, fights, and drug use. The officer enters the bar with their partner to observe activities inside the bar and look for sources of the complaints. As the officer enters, they immediately notice a person standing next to the bar showing obvious signs of intoxication. Before they can approach the intoxicated person, the officer sees the bartender hand the customer a freshly opened bottle of beer. The customer pays the bartender and walks away from the bar.

**Scenario #2:** Alcoholic Beverage Code Chapter 104.01 Lewd, Immoral, Indecent Conduct

The officer and their partner are patrolling at 2345 near a bar that has been the source of frequent complaints from residents in the area. The complaints range from loud noise, intoxicated persons, fights, and drug use. The officer enters the bar with their partner to observe activities inside the bar and look for sources of the complaints. As the officer enters the bar, they observe a person who is showing obvious signs of intoxication walking toward them. The officer stops the intoxicated person and confirms they are intoxicated in their contact. During this interview, the officer finds that the intoxicated person is an employee of the bar who just got off duty and “had a couple of drinks at the end of my day”.

**Scenario #3:** Alcoholic Beverage Code Chapter 106.02 and 106.03 Purchase of Alcohol by Minor and Sale of Alcohol to Minor

The officer is working a late shift and stops by a local convenience store to get some coffee. As they enter the store, the officer sees what appears to be an underage person at the register purchasing some wine coolers. The officer waits outside and stops them as they exit the store and confirms that they are only 19 years old.

**Scenario #4:** Alcoholic Beverage Code Chapter 106.024 Attempt to Purchase Alcohol by Minor

The officer is working a late shift and stops by a local convenience store to get some coffee. As they enter the store, the officer sees what appears to be an underage person at the register purchasing some wine coolers. The person looks up and sees the officer. They quickly put their money away, leaves the wine coolers on the counter and heads to the door. The officer stops them and confirms they are 20 years old.

**Scenario #5:** Alcoholic Beverage Code Chapter Purchase for or Furnishing Alcohol to a Minor

The officer is dispatched to a loud party complaint. Upon arrival the officer is met at the door by a minor holding a beer in a clearly marked can. The minor states they are just here at a party and offers to get the homeowner. As you are waiting, you observe multiple persons who are obviously under the age of 21 in possession and drinking alcoholic beverages. The homeowner comes to the door and is identified as the parent of the minor who first opened the door. The homeowner explains that they are having a party for their child and the child’s friends. They further state they are the only adult present. When you inquire about the alcoholic beverages, the homeowner states that they are hosting the party to keep the kids “safe”, that they can be sure nothing bad will happen and “they are going to get alcohol anyway, so this is the safest way to do it.”

**16.5. List the legal hours of sale and/or consumption of alcoholic beverages as well as the penalty for violations.**

- Hours of Sale: Liquor- Alcoholic Beverage Code Chapter 105.01
- Hours of Sale: Mixed Beverages- Alcoholic Beverage Code Chapter 105.03
- Hours of Sale: Wine – Alcoholic Beverage Code Chapter 105.04
- Hours of Sale: Malt Beverages- Alcoholic Beverage Code Chapter 105.05
- Hours of Consumption- Alcoholic Beverage Code Chapter 105.06

- Hours of Sale and Consumption: Sports Venue- Alcoholic Beverage Code Chapter 105.07
- Hours of Sale and Consumption: Winery- Alcoholic Beverage Code Chapter 105.08
- Hours of Sale and Consumption: Certain Events- Alcoholic Beverage Code Chapter 105.09
- Penalty- Alcoholic Beverage Code Chapter 105.10

### **16.6. Differentiate between criminal and administrative actions.**

The Texas Alcoholic Beverage Code can be applied both criminally (to an individual) or civilly, through administrative, actions against a business. Since these are different actions, criminal and civil, double jeopardy does not apply, and the same event can result in both actions being taken. Generally, administrative actions result in the suspension or cancellation of a license or permit. In most cases, the offending business can pay a civil penalty (fine) based upon the number of days of suspension imposed. If a license or permit is cancelled, the licensee or permittee is generally prohibited from obtaining another license or permit for 2 years. The Texas Alcoholic Beverage Commission is the designated agency for filing administrative actions. To successfully prosecute an administrative case the TABC will need the following information:

- Dates/times
- Location to include permit or license number.
- Reason for being at licensed premise.
- Primary observation, nature of offense or violation observed.
- Standard for alcohol violations (criminal negligence)
- Identities of involved persons.
- Statements
- Evidence
- Arrest if made.
- Completion of reports
- Permittee listed on license.
- Licensee listed on license.

Upon receiving a report from a law enforcement agency, the TABC will begin a separate, parallel investigation, often in conjunction with the reporting agency to determine if administrative action can be taken. TABC will also conduct investigations into incidents involving death or serious bodily injury where intoxication was a contributing factor to determine the source of the alcoholic beverage and the legality of its sale or possession.

**Practical Scenario:** Using any of the scenarios above, have the student write a report with the details to allow TABC follow up with administrative action.