

BILL ANALYSIS

C.S.H.B. 2101
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note the economic benefits afforded by a food and beverage certificate and that state law currently allows a restaurant with certain alcoholic beverage permits to obtain a food and beverage certificate if the restaurant's receipts from alcoholic beverage sales are not in excess of 50 percent of its gross receipts. These parties contend that an increase in alcohol prices has caused the total amount of alcohol sales in many establishments to near that threshold amount, jeopardizing those establishments' food and beverage certificates. C.S.H.B. 2101 seeks to address this issue by revising provisions relating to the issuance of a food and beverage certificate to holders of certain alcoholic beverage permits and licenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2101 amends the Alcoholic Beverage Code to remove the condition on the issuance of a food and beverage certificate to a wine and beer retailer's permit holder or to a retail dealer's on-premise license holder that food service be the primary business operated on the permitted or licensed premises, respectively. The bill removes the condition on the issuance of a food and beverage certificate to a mixed beverage permit holder or a private club registration permit holder that the gross receipts of mixed beverages sold or served by the applicable permit holder be 50 percent or less of the total gross receipts from the permitted premises. The bill instead conditions the issuance of a food and beverage certificate to the holder of a wine and beer retailer's permit, mixed beverage permit, private club registration permit, and retail dealer's on-premise license on the Texas Alcoholic Beverage Commission (TABC) finding that the total receipts from the sale or service of alcoholic beverages by the respective permittee or licensee at the applicable location, defined as the designated physical address of the permit or license, including all areas at the address where the permittee or licensee may sell or deliver alcoholic beverages for immediate consumption, as applicable, regardless of whether some of those areas are occupied by other businesses, are 60 percent or less of the total receipts from the location. The bill prohibits the issuance of a food and beverage certificate to such a permittee or licensee unless the permittee's or licensee's location has permanent food service facilities for the preparation and service of multiple entrees for consumption at the location.

C.S.H.B. 2101 requires TABC to adopt rules requiring the holder of a wine and beer retailer's permit, mixed beverage permit, private club registration permit, or retail dealer's on-premise

license to assure that the permanent food service facilities are available at the permit or license holder's location. The bill authorizes TABC to exempt the holder of a mixed beverage permit or private club registration permit who is a concessionaire in a public entertainment venue such as a sports stadium or convention center from the limitation on the receipts from the sale or service of alcoholic beverages and the permanent food service facilities requirement and revises the authorized exemption for the holder of a wine and beer retailer's permit or holder of a retail dealer's on-premise license who is a concessionaire in a public entertainment venue such as a sports stadium or convention center to so exempt such a licensee or permittee from that limitation and requirement.

C.S.H.B. 2101 includes a violation of that limitation or requirement or a TABC rule regarding the permanent food service facilities as grounds for cancellation of the food and beverage certificate issued to the holder of a wine and beer retailer's permit or a retail dealer's on-premise license and authorizes the renewal of such a certificate to be denied at any time if TABC finds that the certificate holder has committed such a violation. The bill removes the authorization for TABC to impose a fine on such a food and beverage certificate holder not operating as a food service establishment. The bill authorizes TABC to deny the renewal of such a licensee's wine and beer retailer's permit or retail dealer's on-premise license, as applicable, on finding that the permittee or licensee knowingly operated under a food and beverage certificate while not complying with applicable regulations. The bill prohibits the holder of a wine and beer retailer's permit or a retail dealer's on-premise license whose food and beverage certificate has been canceled or who is denied renewal of a certificate for any such violation from applying for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied.

C.S.H.B. 2101 repeals provisions relating to denying the renewal of a food and beverage certificate issued to the holder of a mixed beverage permit or a private club registration permit and instead authorizes such a certificate to be canceled at any time, and the renewal of such a certificate to be denied, if TABC finds that the permit holder is in violation of the limitation on the receipts from the sale of alcoholic beverages, the permanent food service facilities requirement, or a TABC rule regarding such facilities. The bill authorizes TABC to cancel or deny the renewal of a mixed beverage permit or a private club registration permit, as applicable, on a finding that the permittee knowingly operated under a food and beverage certificate while not complying with certain applicable regulations. The bill establishes that a mixed beverage permit issued in an area where the legal sale of mixed beverages was authorized by a local option election is canceled by operation of law if the food and beverage certificate is canceled or is not renewed. The bill prohibits a mixed beverage permit holder or a private club registration permit holder the renewal of whose food and beverage certificate has been so denied from applying for a new certificate until the day after the first anniversary of the date the renewal of the certificate was denied. The bill changes the date before which such a permittee whose certificate was canceled may not apply for a new certificate from the day after the first anniversary of the determination prompting the cancellation to the day after the first anniversary of the date the certificate was canceled.

C.S.H.B. 2101 requires TABC to adopt the rules necessary to implement the bill's provisions. The bill's provisions apply only to an application for a food and beverage certificate that is filed on or after the effective date of those rules.

C.S.H.B. 2101 repeals Section 28.18(d) and 32.23(d), Alcoholic Beverage Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2101 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 25.13, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (a-1), (b-1), and (f) to read as follows:

(a) In this section:

(1) "Premises" means the designated physical address of the wine and beer retailer's permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate consumption.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(a-1) A holder of a wine and beer retailer's permit may be issued a food and beverage certificate by the commission if the commission finds that the total receipts from the sale of alcoholic beverages for the premises are 50 percent or less of the total receipts for ~~[food service is the primary business being operated on]~~ the premises ~~[by the permittee].~~

(b) An applicant for or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees for on-premises consumption.

(b-1) The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service ~~[as the primary business]~~ on the premises for which a food and beverage certificate has been issued.

The commission may exempt permittees who are concessionaires in public entertainment venues such as sports

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 25.13, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (a-1) and (b-1) to read as follows:

(a) In this section,

"location" means the designated physical address of the wine and beer retailer's permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

No equivalent provision.

(a-1) A holder of a wine and beer retailer's permit may be issued a food and beverage certificate by the commission if the commission finds that the receipts from the sale of alcoholic beverages by the permit holder at the location are 60 percent or less of the total receipts from the location ~~[food service is the primary business being operated on the premises by the permittee].~~

(b) A ~~[An applicant or holder of a]~~ food and beverage certificate may not be issued unless the location has permanent ~~[shall have]~~ food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring ~~[as necessary to assure that]~~ the holder of a food and beverage certificate to assure that permanent ~~[maintains]~~ food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location ~~[as the primary business on the premises for which a food and beverage certificate has been issued].~~

The commission may exempt permittees who are concessionaires in public entertainment venues such as sports

stadiums and convention centers from Subsection (b) ~~[the requirement that food service be the primary business on the premises].~~

(d) A certificate issued under this section expires on the expiration of the primary wine and beer retailer's permit. A certificate may be canceled at any time

if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1) [not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises]. The commission ~~[may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and]~~ may, upon finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), cancel the permittee's wine and beer retailer's permit.

(f) A food and beverage certificate may not be issued or maintained for a premises on which a sexually oriented business is operated.

SECTION 2. Section 28.18, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (b-1), and (g) to read as follows:

(a) In this section:

(1) "Premises" means the designated physical address of the mixed beverage permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate

stadiums and convention centers from Subsections (a-1) and (b) ~~[the requirement that food service be the primary business on the premises].~~

(d) A certificate issued under this section expires on the expiration of the primary wine and beer retailer's permit. A certificate may be canceled at any time, and the renewal of a certificate may be denied,

if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1) [not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises]. On [The commission may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon] finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the permittee's wine and beer retailer's permit. The holder of a beer and wine retailer's permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied.

No equivalent provision.

SECTION 2. Section 28.18, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (b-1) to read as follows:

(a) In this section,

"location" means the designated physical address of the mixed beverage permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate consumption

consumption.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(a-1) A holder of a mixed beverage permit may be issued a food and beverage certificate by the commission if the commission finds that the total [gross] receipts from the sale of alcoholic [of mixed] beverages [sold] by the holder are 50 percent or less of the total [gross] receipts from the premises.

(b) An applicant for or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees for on-premises consumption.

(b-1) The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued.

(d) On receipt of an application for a renewal of a mixed beverage permit by a holder who also holds a food and beverage certificate, the commission [shall request certification by the comptroller to determine whether the holder is in compliance with Subsection (a). In determining compliance with Subsection (a), the comptroller] shall compare the permittee's total [gross] receipts from the sale of alcoholic beverages with the total receipts [tax reports with the permittee's sales tax reports] for the premises. If the commission [comptroller] does not certify that the holder is in compliance with Subsection (a-1) [(a)], the commission may not renew the certificate.

regardless of whether some of those areas are occupied by other businesses.

No equivalent provision.

(a-1) A holder of a mixed beverage permit may be issued a food and beverage certificate by the commission if the commission finds that the [gross] receipts from the sale of alcoholic [of mixed] beverages [sold] by the permit holder at the location are 60 [50] percent or less of the total [gross] receipts from the location [premises].

(b) A [An applicant or holder of a] food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location [on the premises for which a food and beverage certificate has been issued]. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b).

No equivalent provision, repealed in SECTION 5, below.

The holder of a mixed beverage permit who is denied the renewal of a food and beverage certificate may request reconsideration of the nonrenewal by the commission not later than the 30th day after the date the commission denies the renewal. If the permit holder requests reconsideration of the nonrenewal of the certificate, the permit holder shall provide additional information to the commission. Chapter 2001, Government Code, does not apply to a request for reconsideration under this section.

(e) A certificate issued under this section expires on the expiration of the primary mixed beverage permit.

A holder of a mixed beverage permit

who is denied renewal of a certificate may not apply for a new certificate until the day after the first anniversary of the determination of the commission [comptroller] under Subsection (d).

(g) A food and beverage certificate may not be issued or maintained for a premises on which a sexually oriented business is operated.

SECTION 3. Section 32.23, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (b-1), and (g) to read as follows:

85R 24047

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(e) A certificate issued under this section expires on the expiration of the primary mixed beverage permit. A certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1). On finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the permittee's mixed beverage permit. A mixed beverage permit issued in an area where the legal sale of mixed beverages was authorized by a local option election under Section 501.035(b)(9), Election Code, is canceled by operation of law if the food and beverage certificate is canceled or is not renewed. The [A] holder of a mixed beverage permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied [determination of the comptroller under Subsection (d)].

No equivalent provision.

SECTION 3. Section 32.23, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (b-1) to read as follows:

17.107.861

(a) In this section:

(1) "Premises" means the designated physical address of the private club registration permit and includes all areas at the address where the permit holder may serve or deliver alcoholic beverages for immediate consumption.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(a-1) A holder of a private club registration permit may be issued a food and beverage certificate by the commission if the commission finds that the total [gross] receipts from the service of alcoholic [mixed] beverages [served] by the holder are 50 percent or less of the total [gross] receipts from the premises.

(b) An applicant for or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees for on-premises consumption.

(b-1) The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued.

(d) On receipt of an application for a renewal of a private club registration permit by a holder who also holds a food and beverage certificate, the commission [shall request certification by the comptroller to determine whether the holder is in compliance with Subsection (a). In determining compliance with Subsection (a), the comptroller] shall compare the

(a) In this section,

"location" means the designated physical address of the private club registration permit and includes all areas at the address where the permit holder may serve or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

No equivalent provision.

(a-1) A holder of a private club registration permit may be issued a food and beverage certificate by the commission if the commission finds that the [gross] receipts from the service of alcoholic [mixed] beverages [served] by the permit holder at the location are 60 [50] percent or less of the total [gross] receipts from the location [premises].

(b) A [An applicant or holder of a] food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location [on the premises for which a food and beverage certificate has been issued]. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b).

No equivalent provision, repealed in SECTION 5, below.

permittee's total ~~[gross]~~ receipts from the service of alcoholic beverages with the total receipts ~~[tax reports with the permittee's sales tax reports]~~ for the premises. If the commission ~~[comptroller]~~ does not certify that the holder is in compliance with Subsection (a-1) ~~[(a)]~~, the commission may not renew the certificate. The holder of a private club registration permit who is denied the renewal of a food and beverage certificate may request reconsideration of the nonrenewal by the commission not later than the 30th day after the date the commission denies the renewal. If the permit holder requests reconsideration of the nonrenewal of the certificate, the permit holder shall provide additional information to the commission. Chapter 2001, Government Code, does not apply to a request for reconsideration under this section.

(e) A certificate expires on the expiration of the primary private club registration permit.

A holder of a private club registration permit

who is denied renewal of a certificate may not apply for a new certificate until the day after the first anniversary of the determination of the commission ~~[comptroller]~~ under Subsection (d).

(g) A food and beverage certificate may not be issued or maintained for a premises on which a sexually oriented business is operated.

SECTION 4. Section 69.16, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and adding

(e) A certificate issued under this section expires on the expiration of the primary private club registration permit. A certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1). On finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the permittee's private club registration permit. The [A] holder of a private club registration permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied [determination of the comptroller under Subsection (d)].

No equivalent provision.

SECTION 4. Section 69.16, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and adding

Subsections (a-1), (b-1), and (f) to read as follows:

(a) In this section:

(1) "Premises" means the designated physical address of the retail dealer's on-premise license and includes all areas at the address where the license holder may sell or deliver alcoholic beverages for immediate consumption.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(a-1) A holder of a retail dealer's on-premise license may be issued a food and beverage certificate by the commission if the commission finds that the total receipts from the sale of alcoholic beverages for the premises are 50 percent or less of the total receipts for ~~[food service is the primary business being operated on]~~ the premises [by the permittee].

(b) An applicant for or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees for on-premises consumption.

(b-1) The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service

~~[as the primary business] on the premises for which a food and beverage certificate has been issued. The commission may exempt licensees [permittees] who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsection (b) [the requirement that food service be the primary business on the premises].~~

(d) A certificate issued under this section expires on the expiration of the primary retail dealer's on-premise license. A certificate may be canceled at any time if

the commission finds that the holder of the

Subsections (a-1) and (b-1) to read as follows:

(a) In this section,

"location" means the designated physical address of the retail dealer's on-premise license and includes all areas at the address where the license holder may sell or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

No equivalent provision.

(a-1) A holder of a retail dealer's on-premise license may be issued a food and beverage certificate by the commission if the commission finds that the receipts from the sale of alcoholic beverages by the license holder at the location are 60 percent or less of the total receipts from the location ~~[food service is the primary business being operated on the premises by the permittee].~~

(b) A [An applicant or holder of a] food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location ~~[as the primary business on the premises for which a food and beverage certificate has been issued]. The commission may exempt licensees [permittees] who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b) [the requirement that food service be the primary business on the premises].~~

(d) A certificate issued under this section expires on the expiration of the primary retail dealer's on-premise license. A certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the

certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1) [not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises]. The commission ~~[may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and]~~ may, upon finding that the licensee [permittee] knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), cancel the licensee's retail dealer's on-premise license.

(f) A food and beverage certificate may not be issued or maintained for a premises on which a sexually oriented business is operated.

No equivalent provision, but see Sec. 28.18(d), SECTION 2 and Sec. 32.23(d), SECTION 3, above.

SECTION 5. (a) As soon as practicable after the effective date of this Act, the Texas Alcoholic Beverage Commission shall adopt the rules necessary to implement this Act.

(b) The changes in law made by this Act apply only to an application for a food and beverage certificate that is filed on or after the effective date of the rules adopted under Subsection (a) of this section.

SECTION 6. This Act takes effect September 1, 2017.

certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1) [not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises]. On [The commission may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon] finding that the licensee [permittee] knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the licensee's retail dealer's on-premise license. The holder of a retail dealer's on-premise license whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied.

No equivalent provision.

SECTION 5. Sections 28.18(d) and 32.23(d), Alcoholic Beverage Code, are repealed.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.