

By: Frullo, Villalba

H.B. No. 2101

Substitute the following for H.B. No. 2101:

By: Kuempel

C.S.H.B. No. 2101

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the issuance of a food and beverage certificate to  
3 holders of certain alcoholic beverage permits and licenses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 (a) In this section, "location" means the designated  
9 physical address of the wine and beer retailer's permit and  
10 includes all areas at the address where the permit holder may sell  
11 or deliver alcoholic beverages for immediate consumption  
12 regardless of whether some of those areas are occupied by other  
13 businesses.

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

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

24 (b-1) The commission shall adopt rules requiring [~~as~~

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

11 (d) A certificate issued under this section expires on the  
12 expiration of the primary wine and beer retailer's permit. A  
13 certificate may be canceled at any time, and the renewal of a  
14 certificate may be denied, if the commission finds that the holder  
15 of the certificate is in violation of Subsection (a-1) or (b) or a  
16 rule adopted under Subsection (b-1) ~~[not operating primarily as a~~  
17 ~~food service establishment. For the purposes of this section, it~~  
18 ~~shall be presumed that a permittee is not primarily operating as a~~  
19 ~~food service establishment if alcohol sales are in excess of 50~~  
20 ~~percent of the gross receipts of the premises]~~. On ~~[The commission~~  
21 ~~may impose a fine not to exceed \$5,000 on the holder of a food and~~  
22 ~~beverage certificate not operating as a food service establishment~~  
23 ~~and may, upon]~~ finding that the permittee knowingly operated under  
24 a food and beverage certificate while not complying with this  
25 section or a rule adopted under Subsection (b-1), the commission  
26 may cancel or deny the renewal of the permittee's wine and beer  
27 retailer's permit. The holder of a beer and wine retailer's permit

1 whose certificate has been canceled or who is denied renewal of a  
2 certificate under this subsection may not apply for a new  
3 certificate until the day after the first anniversary of the date  
4 the certificate was canceled or the renewal of the certificate was  
5 denied.

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

9 (a) In this section, "location" means the designated  
10 physical address of the mixed beverage permit and includes all  
11 areas at the address where the permit holder may sell or deliver  
12 alcoholic beverages for immediate consumption regardless of  
13 whether some of those areas are occupied by other businesses.

14 (a-1) A holder of a mixed beverage permit may be issued a  
15 food and beverage certificate by the commission if the commission  
16 finds that the [~~gross~~] receipts from the sale of alcoholic [~~of~~  
17 mixed] beverages [~~sold~~] by the permit holder at the location are 60  
18 [50] percent or less of the total [~~gross~~] receipts from the location  
19 [premises].

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

24 (b-1) The commission shall adopt rules requiring [as  
25 necessary to assure that] the holder of a food and beverage  
26 certificate to assure that permanent [maintains] food service  
27 facilities for the preparation and service of multiple entrees for

1 consumption at the location are available at the location [~~on the~~  
2 ~~premises for which a food and beverage certificate has been~~  
3 ~~issued~~]. The commission may exempt permittees who are  
4 concessionaires in public entertainment venues such as sports  
5 stadiums and convention centers from Subsections (a-1) and (b).

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

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

1           (a) In this section, "location" means the designated  
2 physical address of the private club registration permit and  
3 includes all areas at the address where the permit holder may serve  
4 or deliver alcoholic beverages for immediate consumption  
5 regardless of whether some of those areas are occupied by other  
6 businesses.

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

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

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

26           (e) A certificate issued under this section expires on the  
27 expiration of the primary private club registration permit. A

1 certificate may be canceled at any time, and the renewal of a  
2 certificate may be denied, if the commission finds that the holder  
3 of the certificate is in violation of Subsection (a-1) or (b) or a  
4 rule adopted under Subsection (b-1). On finding that the permittee  
5 knowingly operated under a food and beverage certificate while not  
6 complying with this section or a rule adopted under Subsection  
7 (b-1), the commission may cancel or deny the renewal of the  
8 permittee's private club registration permit. The [A] holder of a  
9 private club registration permit whose certificate has been  
10 canceled or who is denied renewal of a certificate under this  
11 subsection may not apply for a new certificate until the day after  
12 the first anniversary of the date the certificate was canceled or  
13 the renewal of the certificate was denied [~~determination of the~~  
14 ~~comptroller under Subsection (d)~~].

15 SECTION 4. Section 69.16, Alcoholic Beverage Code, is  
16 amended by amending Subsections (a), (b), and (d) and adding  
17 Subsections (a-1) and (b-1) to read as follows:

18 (a) In this section, "location" means the designated  
19 physical address of the retail dealer's on-premise license and  
20 includes all areas at the address where the license holder may sell  
21 or deliver alcoholic beverages for immediate consumption  
22 regardless of whether some of those areas are occupied by other  
23 businesses.

24 (a-1) A holder of a retail dealer's on-premise license may  
25 be issued a food and beverage certificate by the commission if the  
26 commission finds that the receipts from the sale of alcoholic  
27 beverages by the license holder at the location are 60 percent or

1 less of the total receipts from the location [~~food service is the~~  
2 ~~primary business being operated on the premises by the permittee~~].

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

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

18 (d) A certificate issued under this section expires on the  
19 expiration of the primary retail dealer's on-premise license. A  
20 certificate may be canceled at any time, and the renewal of a  
21 certificate may be denied, if the commission finds that the holder  
22 of the certificate is in violation of Subsection (a-1) or (b) or a  
23 rule adopted under Subsection (b-1) [~~not operating primarily as a~~  
24 ~~food service establishment. For the purposes of this section, it~~  
25 ~~shall be presumed that a permittee is not primarily operating as a~~  
26 ~~food service establishment if alcohol sales are in excess of 50~~  
27 ~~percent of the gross receipts of the premises~~]. On [~~The commission~~

1 ~~may impose a fine not to exceed \$5,000 on the holder of a food and~~  
2 ~~beverage certificate not operating as a food service establishment~~  
3 ~~and may, upon]~~ finding that the licensee [~~permittee~~] knowingly  
4 operated under a food and beverage certificate while not complying  
5 with this section or a rule adopted under Subsection (b-1), the  
6 commission may cancel or deny the renewal of the licensee's retail  
7 dealer's on-premise license. The holder of a retail dealer's  
8 on-premise license whose certificate has been canceled or who is  
9 denied renewal of a certificate under this subsection may not apply  
10 for a new certificate until the day after the first anniversary of  
11 the date the certificate was canceled or the renewal of the  
12 certificate was denied.

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

15 SECTION 6. (a) As soon as practicable after the effective  
16 date of this Act, the Texas Alcoholic Beverage Commission shall  
17 adopt the rules necessary to implement this Act.

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

22 SECTION 7. This Act takes effect September 1, 2017.