

By: Frullo

H.B. No. 2101

A BILL TO BE ENTITLED

1 AN ACT
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), (b-1), and (f) to read as follows:

8 (a) In this section:

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

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

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

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

24 (b-1) The commission shall adopt rules as necessary to

1 assure that the holder of a food and beverage certificate maintains
2 food service [~~as the primary business~~] on the premises for which a
3 food and beverage certificate has been issued. The commission may
4 exempt permittees who are concessionaires in public entertainment
5 venues such as sports stadiums and convention centers from
6 Subsection (b) [~~the requirement that food service be the primary~~
7 ~~business on the premises~~].

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

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

26 SECTION 2. Section 28.18, Alcoholic Beverage Code, is
27 amended by amending Subsections (a), (b), (d), and (e) and adding

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

2 (a) In this section:

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

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

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

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

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

21 (d) On receipt of an application for a renewal of a mixed
22 beverage permit by a holder who also holds a food and beverage
23 certificate, the commission [~~shall request certification by the~~
24 ~~comptroller to determine whether the holder is in compliance with~~
25 ~~Subsection (a). In determining compliance with Subsection (a), the~~
26 ~~comptroller]~~ shall compare the permittee's total [gross] receipts
27 from the sale of alcoholic beverages with the total receipts [tax

1 ~~reports with the permittee's sales tax reports]~~ for the premises.
2 If the commission [~~comptroller~~] does not certify that the holder is
3 in compliance with Subsection (a-1) [~~(a)~~], the commission may not
4 renew the certificate. The holder of a mixed beverage permit who is
5 denied the renewal of a food and beverage certificate may request
6 reconsideration of the nonrenewal by the commission not later than
7 the 30th day after the date the commission denies the renewal. If
8 the permit holder requests reconsideration of the nonrenewal of the
9 certificate, the permit holder shall provide additional
10 information to the commission. Chapter 2001, Government Code, does
11 not apply to a request for reconsideration under this section.

12 (e) A certificate issued under this section expires on the
13 expiration of the primary mixed beverage permit. A holder of a
14 mixed beverage permit who is denied renewal of a certificate may not
15 apply for a new certificate until the day after the first
16 anniversary of the determination of the commission [~~comptroller~~]
17 under Subsection (d).

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

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

24 (a) In this section:

25 (1) "Premises" means the designated physical address
26 of the private club registration permit and includes all areas at
27 the address where the permit holder may serve or deliver alcoholic

1 beverages for immediate consumption.

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

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

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

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

16 (d) On receipt of an application for a renewal of a private
17 club registration permit by a holder who also holds a food and
18 beverage certificate, the commission [~~shall request certification~~
19 ~~by the comptroller to determine whether the holder is in compliance~~
20 ~~with Subsection (a). In determining compliance with Subsection~~
21 ~~(a), the comptroller]~~ shall compare the permittee's total [gross]
22 receipts from the service of alcoholic beverages with the total
23 receipts [tax reports with the permittee's sales tax reports] for
24 the premises. If the commission [comptroller] does not certify
25 that the holder is in compliance with Subsection (a-1) [(a)], the
26 commission may not renew the certificate. The holder of a private
27 club registration permit who is denied the renewal of a food and

1 beverage certificate may request reconsideration of the nonrenewal
2 by the commission not later than the 30th day after the date the
3 commission denies the renewal. If the permit holder requests
4 reconsideration of the nonrenewal of the certificate, the permit
5 holder shall provide additional information to the commission.
6 Chapter 2001, Government Code, does not apply to a request for
7 reconsideration under this section.

8 (e) A certificate expires on the expiration of the primary
9 private club registration permit. A holder of a private club
10 registration permit who is denied renewal of a certificate may not
11 apply for a new certificate until the day after the first
12 anniversary of the determination of the commission [~~comptroller~~]
13 under Subsection (d).

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

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

20 (a) In this section:

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

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

27 (a-1) A holder of a retail dealer's on-premise license may

1 be issued a food and beverage certificate by the commission if the
2 commission finds that the total receipts from the sale of alcoholic
3 beverages for the premises are 50 percent or less of the total
4 receipts for [~~food service is the primary business being operated~~
5 ~~on~~] the premises [~~by the permittee~~].

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

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

17 (d) A certificate issued under this section expires on the
18 expiration of the primary retail dealer's on-premise license. A
19 certificate may be canceled at any time if the commission finds that
20 the holder of the certificate is in violation of Subsection (a-1) or
21 (b) or a rule adopted under Subsection (b-1) [~~not operating~~
22 ~~primarily as a food service establishment. For the purposes of this~~
23 ~~section, it shall be presumed that a permittee is not primarily~~
24 ~~operating as a food service establishment if alcohol sales are in~~
25 ~~excess of 50 percent of the gross receipts of the premises~~]. The
26 commission [~~may impose a fine not to exceed \$5,000 on the holder of~~
27 ~~a food and beverage certificate not operating as a food service~~

1 ~~establishment and~~] may, upon finding that the licensee [~~permittee~~]
2 knowingly operated under a food and beverage certificate while not
3 complying with this section or a rule adopted under Subsection
4 (b-1), cancel the licensee's retail dealer's on-premise license.

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

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

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

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