

1-1 By: Frullo, Villalba (Senate Sponsor - Creighton) H.B. No. 2101
 1-2 (In the Senate - Received from the House May 5, 2017;
 1-3 May 9, 2017, read first time and referred to Committee on Business
 1-4 & Commerce; May 22, 2017, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
 1-6 May 22, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2101 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the issuance of a food and beverage certificate to
 1-22 holders of certain alcoholic beverage permits and licenses.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 25.13, Alcoholic Beverage Code, is
 1-25 amended by amending Subsections (a), (b), and (d) and adding
 1-26 Subsections (a-1) and (b-1) to read as follows:

1-27 (a) In this section, "location" means the designated
 1-28 physical address of the wine and beer retailer's permit and
 1-29 includes all areas at the address where the permit holder may sell
 1-30 or deliver alcoholic beverages for immediate consumption
 1-31 regardless of whether some of those areas are occupied by other
 1-32 businesses.

1-33 (a-1) A holder of a wine and beer retailer's permit may be
 1-34 issued a food and beverage certificate by the commission if the
 1-35 commission finds that the receipts from the sale of alcoholic
 1-36 beverages by the permit holder at the location are 60 percent or
 1-37 less of the total receipts from the location [food service is the
 1-38 primary business being operated on the premises by the permittee].

1-39 (b) A [An applicant or holder of a] food and beverage
 1-40 certificate may not be issued unless the location has permanent
 1-41 [shall have] food service facilities for the preparation and
 1-42 service of multiple entrees for consumption at the location.

1-43 (b-1) The commission shall adopt rules requiring [as
 1-44 necessary to assure that] the holder of a food and beverage
 1-45 certificate to assure that permanent [maintains] food service
 1-46 facilities for the preparation and service of multiple entrees for
 1-47 consumption at the location are available at the location [as the
 1-48 primary business on the premises for which a food and beverage
 1-49 certificate has been issued]. The commission may exempt permittees
 1-50 who are concessionaires in public entertainment venues such as
 1-51 sports stadiums and convention centers from Subsections (a-1) and
 1-52 (b) [the requirement that food service be the primary business on
 1-53 the premises].

1-54 (d) A certificate issued under this section expires on the
 1-55 expiration of the primary wine and beer retailer's permit. A
 1-56 certificate may be canceled at any time, and the renewal of a
 1-57 certificate may be denied, if the commission finds that the holder
 1-58 of the certificate is in violation of Subsection (a-1) or (b) or a
 1-59 rule adopted under Subsection (b-1) [not operating primarily as a
 1-60 food service establishment. For the purposes of this section, it

2-1 ~~shall be presumed that a permittee is not primarily operating as a~~
2-2 ~~food service establishment if alcohol sales are in excess of 50~~
2-3 ~~percent of the gross receipts of the premises]. On [The commission~~
2-4 ~~may impose a fine not to exceed \$5,000 on the holder of a food and~~
2-5 ~~beverage certificate not operating as a food service establishment~~
2-6 ~~and may, upon] finding that the permittee knowingly operated under~~
2-7 ~~a food and beverage certificate while not complying with this~~
2-8 ~~section or a rule adopted under Subsection (b-1), the commission~~
2-9 ~~may cancel or deny the renewal of the permittee's wine and beer~~
2-10 ~~retailer's permit. The holder of a beer and wine retailer's permit~~
2-11 ~~whose certificate has been canceled or who is denied renewal of a~~
2-12 ~~certificate under this subsection may not apply for a new~~
2-13 ~~certificate until the day after the first anniversary of the date~~
2-14 ~~the certificate was canceled or the renewal of the certificate was~~
2-15 ~~denied.~~

2-16 SECTION 2. Section 28.18, Alcoholic Beverage Code, is
2-17 amended by amending Subsections (a), (b), and (e) and adding
2-18 Subsections (a-1) and (b-1) to read as follows:

2-19 (a) In this section, "location" means the designated
2-20 physical address of the mixed beverage permit and includes all
2-21 areas at the address where the permit holder may sell or deliver
2-22 alcoholic beverages for immediate consumption regardless of
2-23 whether some of those areas are occupied by other businesses.

2-24 (a-1) A holder of a mixed beverage permit may be issued a
2-25 food and beverage certificate by the commission if the commission
2-26 finds that the [gross] receipts from the sale of alcoholic [of
2-27 mixed] beverages [sold] by the permit holder at the location are 60
2-28 [50] percent or less of the total [gross] receipts from the location
2-29 [premises].

2-30 (b) A [An applicant or holder of a] food and beverage
2-31 certificate may not be issued unless the location has permanent
2-32 [shall have] food service facilities for the preparation and
2-33 service of multiple entrees for consumption at the location.

2-34 (b-1) The commission shall adopt rules requiring [as
2-35 necessary to assure that] the holder of a food and beverage
2-36 certificate to assure that permanent [maintains] food service
2-37 facilities for the preparation and service of multiple entrees for
2-38 consumption at the location are available at the location [on the
2-39 premises for which a food and beverage certificate has been
2-40 issued]. The commission may exempt permittees who are
2-41 concessionaires in public entertainment venues such as sports
2-42 stadiums and convention centers from Subsections (a-1) and (b).

2-43 (e) A certificate issued under this section expires on the
2-44 expiration of the primary mixed beverage permit. A certificate may
2-45 be canceled at any time, and the renewal of a certificate may be
2-46 denied, if the commission finds that the holder of the certificate
2-47 is in violation of Subsection (a-1) or (b) or a rule adopted under
2-48 Subsection (b-1). On finding that the permittee knowingly operated
2-49 under a food and beverage certificate while not complying with this
2-50 section or a rule adopted under Subsection (b-1), the commission
2-51 may cancel or deny the renewal of the permittee's mixed beverage
2-52 permit. A mixed beverage permit issued in an area where the legal
2-53 sale of mixed beverages was authorized by a local option election
2-54 under Section 501.035(b)(9), Election Code, is canceled by
2-55 operation of law if the food and beverage certificate is canceled or
2-56 is not renewed. The [A] holder of a mixed beverage permit whose
2-57 certificate has been canceled or who is denied renewal of a
2-58 certificate under this subsection may not apply for a new
2-59 certificate until the day after the first anniversary of the date
2-60 the certificate was canceled or the renewal of the certificate was
2-61 denied [determination of the comptroller under Subsection (d)].

2-62 SECTION 3. Section 32.23, Alcoholic Beverage Code, is
2-63 amended by amending Subsections (a), (b), and (e) and adding
2-64 Subsections (a-1) and (b-1) to read as follows:

2-65 (a) In this section, "location" means the designated
2-66 physical address of the private club registration permit and
2-67 includes all areas at the address where the permit holder may serve
2-68 or deliver alcoholic beverages for immediate consumption
2-69 regardless of whether some of those areas are occupied by other

3-1 businesses.

3-2 (a-1) A holder of a private club registration permit may be
 3-3 issued a food and beverage certificate by the commission if the
 3-4 commission finds that the [gross] receipts from the service of
 3-5 alcoholic [mixed] beverages [served] by the permit holder at the
 3-6 location are 60 [50] percent or less of the total [gross] receipts
 3-7 from the location [premises].

3-8 (b) A [An applicant or holder of a] food and beverage
 3-9 certificate may not be issued unless the location has permanent
 3-10 [shall have] food service facilities for the preparation and
 3-11 service of multiple entrees for consumption at the location.

3-12 (b-1) The commission shall adopt rules requiring [as
 3-13 necessary to assure that] the holder of a food and beverage
 3-14 certificate to assure that permanent [maintains] food service
 3-15 facilities for the preparation and service of multiple entrees for
 3-16 consumption at the location are available at the location [on the
 3-17 premises for which a food and beverage certificate has been
 3-18 issued]. The commission may exempt permittees who are
 3-19 concessionaires in public entertainment venues such as sports
 3-20 stadiums and convention centers from Subsections (a-1) and (b).

3-21 (e) A certificate issued under this section expires on the
 3-22 expiration of the primary private club registration permit. A
 3-23 certificate may be canceled at any time, and the renewal of a
 3-24 certificate may be denied, if the commission finds that the holder
 3-25 of the certificate is in violation of Subsection (a-1) or (b) or a
 3-26 rule adopted under Subsection (b-1). On finding that the permittee
 3-27 knowingly operated under a food and beverage certificate while not
 3-28 complying with this section or a rule adopted under Subsection
 3-29 (b-1), the commission may cancel or deny the renewal of the
 3-30 permittee's private club registration permit. The [A] holder of a
 3-31 private club registration permit whose certificate has been
 3-32 canceled or who is denied renewal of a certificate under this
 3-33 subsection may not apply for a new certificate until the day after
 3-34 the first anniversary of the date the certificate was canceled or
 3-35 the renewal of the certificate was denied [determination of the
 3-36 comptroller under Subsection (d)].

3-37 SECTION 4. Section 69.16, Alcoholic Beverage Code, is
 3-38 amended by amending Subsections (a), (b), and (d) and adding
 3-39 Subsections (a-1) and (b-1) to read as follows:

3-40 (a) In this section, "location" means the designated
 3-41 physical address of the retail dealer's on-premise license and
 3-42 includes all areas at the address where the license holder may sell
 3-43 or deliver alcoholic beverages for immediate consumption
 3-44 regardless of whether some of those areas are occupied by other
 3-45 businesses.

3-46 (a-1) A holder of a retail dealer's on-premise license may
 3-47 be issued a food and beverage certificate by the commission if the
 3-48 commission finds that the receipts from the sale of alcoholic
 3-49 beverages by the license holder at the location are 60 percent or
 3-50 less of the total receipts from the location [food service is the
 3-51 primary business being operated on the premises by the permittee].

3-52 (b) A [An applicant or holder of a] food and beverage
 3-53 certificate may not be issued unless the location has permanent
 3-54 [shall have] food service facilities for the preparation and
 3-55 service of multiple entrees for consumption at the location.

3-56 (b-1) The commission shall adopt rules requiring [as
 3-57 necessary to assure that] the holder of a food and beverage
 3-58 certificate to assure that permanent [maintains] food service
 3-59 facilities for the preparation and service of multiple entrees for
 3-60 consumption at the location are available at the location [as the
 3-61 primary business on the premises for which a food and beverage
 3-62 certificate has been issued]. The commission may exempt licensees
 3-63 [permittees] who are concessionaires in public entertainment
 3-64 venues such as sports stadiums and convention centers from
 3-65 Subsections (a-1) and (b) [the requirement that food service be the
 3-66 primary business on the premises].

3-67 (d) A certificate issued under this section expires on the
 3-68 expiration of the primary retail dealer's on-premise license. A
 3-69 certificate may be canceled at any time, and the renewal of a

4-1 certificate may be denied, if the commission finds that the holder
4-2 of the certificate is in violation of Subsection (a-1) or (b) or a
4-3 rule adopted under Subsection (b-1) [not operating primarily as a
4-4 food service establishment. For the purposes of this section, it
4-5 shall be presumed that a permittee is not primarily operating as a
4-6 food service establishment if alcohol sales are in excess of 50
4-7 percent of the gross receipts of the premises]. On [The commission
4-8 may impose a fine not to exceed \$5,000 on the holder of a food and
4-9 beverage certificate not operating as a food service establishment
4-10 and may, upon] finding that the licensee [permittee] knowingly
4-11 operated under a food and beverage certificate while not complying
4-12 with this section or a rule adopted under Subsection (b-1), the
4-13 commission may cancel or deny the renewal of the licensee's retail
4-14 dealer's on-premise license. The holder of a retail dealer's
4-15 on-premise license whose certificate has been canceled or who is
4-16 denied renewal of a certificate under this subsection may not apply
4-17 for a new certificate until the day after the first anniversary of
4-18 the date the certificate was canceled or the renewal of the
4-19 certificate was denied.

4-20 SECTION 5. (a) Sections 28.18(d) and 32.23(d), Alcoholic
4-21 Beverage Code, are repealed.

4-22 (b) Section 411.204(e), Government Code, is repealed.

4-23 SECTION 6. (a) As soon as practicable after the effective
4-24 date of this Act, the Texas Alcoholic Beverage Commission shall
4-25 adopt the rules necessary to implement this Act.

4-26 (b) The changes in law made by this Act apply only to an
4-27 application for a food and beverage certificate that is filed on or
4-28 after the effective date of the rules adopted under Subsection (a)
4-29 of this section.

4-30 SECTION 7. This Act takes effect September 1, 2017.

4-31

* * * * *