

1-1 By: Hancock S.B. No. 911  
1-2 (In the Senate - Filed March 2, 2021; March 11, 2021, read  
1-3 first time and referred to Committee on Business & Commerce;  
1-4 March 26, 2021, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 26, 2021,  
1-6 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 S.B. No. 911 By: Hancock

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

1-21 relating to the regulation of restaurants and third-party food  
1-22 delivery services, including the issuance of certain alcoholic  
1-23 beverage certificates to restaurants.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 1.04, Alcoholic Beverage Code, is  
1-26 amended by adding Subdivision (29) to read as follows:

1-27 (29) "Restaurant" means a business that:

1-28 (A) operates its own permanent food service  
1-29 facility with commercial cooking equipment on its premises; and

1-30 (B) prepares and offers to sell multiple entrees  
1-31 for consumption on or off the premises.

1-32 SECTION 2. Section 25.13(a-1), Alcoholic Beverage Code, as  
1-33 effective September 1, 2021, is amended to read as follows:

1-34 (a-1) A holder of a wine and malt beverage retailer's permit  
1-35 may be issued a food and beverage certificate by the commission if:

1-36 (1) the permit holder is a restaurant; or

1-37 (2) the commission finds that the receipts from the  
1-38 sale of alcoholic beverages by the permit holder at the location are  
1-39 60 percent or less of the total receipts from the location.

1-40 SECTION 3. Section 28.18(a-1), Alcoholic Beverage Code, is  
1-41 amended to read as follows:

1-42 (a-1) A holder of a mixed beverage permit may be issued a  
1-43 food and beverage certificate by the commission if:

1-44 (1) the permit holder is a restaurant; or

1-45 (2) the commission finds that the receipts from the  
1-46 sale of alcoholic beverages by the permit holder at the location are  
1-47 60 percent or less of the total receipts from the location.

1-48 SECTION 4. Section 32.23(a-1), Alcoholic Beverage Code, is  
1-49 amended to read as follows:

1-50 (a-1) A holder of a private club registration permit may be  
1-51 issued a food and beverage certificate by the commission if:

1-52 (1) the permit holder is a restaurant; or

1-53 (2) the commission finds that the receipts from the  
1-54 service of alcoholic beverages by the permit holder at the location  
1-55 are 60 percent or less of the total receipts from the location.

1-56 SECTION 5. Section 69.16(a-1), Alcoholic Beverage Code, is  
1-57 amended to read as follows:

1-58 (a-1) A holder of a retail dealer's on-premise license may  
1-59 be issued a food and beverage certificate by the commission if:

1-60 (1) the license holder is a restaurant; or

2-1           (2) the commission finds that the receipts from the  
2-2 sale of alcoholic beverages by the license holder at the location  
2-3 are 60 percent or less of the total receipts from the location.

2-4           SECTION 6. Subtitle C, Title 5, Business & Commerce Code, is  
2-5 amended by adding Chapter 114 to read as follows:

2-6           CHAPTER 114. THIRD-PARTY FOOD DELIVERY SERVICES

2-7           Sec. 114.0001. DEFINITIONS. In this chapter:

2-8           (1) "Mark" and "trade name" have the meanings assigned  
2-9 by Section 16.001.

2-10           (2) "Restaurant" has the meaning assigned by Section  
2-11 1.04, Alcoholic Beverage Code.

2-12           (3) "Third-party food delivery service" means a  
2-13 website, mobile application, or other service that acts as an  
2-14 intermediary between consumers and multiple restaurants not owned  
2-15 or operated by the service to arrange for the delivery or pickup of  
2-16 food or beverages from those restaurants.

2-17           Sec. 114.0002. PROHIBITED ACTS. A third-party food  
2-18 delivery service may not:

2-19           (1) arrange for the delivery or pickup of food or  
2-20 beverages from a restaurant in this state unless the service has  
2-21 filed a certificate of formation or registration with the secretary  
2-22 of state;

2-23           (2) use a restaurant's mark or trade name in connection  
2-24 with the service in a misleading way that suggests the restaurant  
2-25 sponsors or endorses the service;

2-26           (3) add a restaurant removed from the service under  
2-27 Section 114.0003 to the service unless the service has received  
2-28 written consent from the restaurant to add the restaurant to the  
2-29 service; or

2-30           (4) charge a restaurant a fee or require the  
2-31 restaurant to absorb a fee in connection with the service's  
2-32 arrangement of an order from that restaurant unless the restaurant  
2-33 has agreed to pay or absorb the fee under an agreement that meets  
2-34 the requirements of Section 114.0004.

2-35           Sec. 114.0003. REQUIREMENTS FOR SERVICE. A third-party  
2-36 food delivery service shall:

2-37           (1) provide a consumer a clearly identified mechanism  
2-38 for the consumer to express concerns or complaints directly to the  
2-39 service regarding an order arranged through the service; and

2-40           (2) remove a restaurant from the service not later  
2-41 than the 10th day after the date the service receives a request from  
2-42 the restaurant to be removed from the service if the service does  
2-43 not have an agreement with the restaurant that meets the  
2-44 requirements of Section 114.0004.

2-45           Sec. 114.0004. TERMS OF AGREEMENT WITH RESTAURANT. (a) An  
2-46 agreement between a third-party food delivery service and a  
2-47 restaurant must:

2-48           (1) be in writing;

2-49           (2) expressly authorize the service to arrange for the  
2-50 delivery or pickup of food or beverages from that restaurant; and

2-51           (3) clearly state each fee, including a commission or  
2-52 other charge, that the restaurant will be required to pay to the  
2-53 service or absorb in connection with an order arranged through the  
2-54 service.

2-55           (b) The agreement may not include any provision that  
2-56 requires the restaurant to indemnify the third-party food delivery  
2-57 service, including an employee or independent contractor of the  
2-58 service, for claims or liabilities resulting from acts or omissions  
2-59 of the service or of an employee or independent contractor of the  
2-60 service.

2-61           (c) A provision in an agreement that violates Subsection (b)  
2-62 is void and unenforceable.

2-63           Sec. 114.0005. PRIVATE CAUSE OF ACTION. (a) If a  
2-64 third-party food delivery service violates this chapter, a  
2-65 restaurant aggrieved by the violation may bring an action against  
2-66 the service for:

2-67           (1) injunctive relief; and

2-68           (2) damages in an amount equal to:

2-69           (A) the restaurant's actual damages arising from

3-1 the violation; or  
3-2 (B) the service's profits arising from the  
3-3 violation.

3-4 (b) If the court finds that the defendant committed the  
3-5 violation knowingly or in bad faith, the court may award the  
3-6 plaintiff:

3-7 (1) exemplary damages in an amount that is not more  
3-8 than three times the sum of:

3-9 (A) the plaintiff's actual damages; and

3-10 (B) the defendant's profits arising from the  
3-11 violation; and

3-12 (2) the plaintiff's reasonable attorney's fees.

3-13 SECTION 7. Chapter 250, Local Government Code, is amended  
3-14 by adding Section 250.011 to read as follows:

3-15 Sec. 250.011. THIRD-PARTY FOOD DELIVERY SERVICES. (a) In  
3-16 this section, "third-party food delivery service" has the meaning  
3-17 assigned by Section 114.0001, Business & Commerce Code.

3-18 (b) Notwithstanding any other law, a municipality or county  
3-19 may not adopt or enforce an ordinance or regulation to the extent  
3-20 that the ordinance or regulation affects the terms of agreements  
3-21 between third-party food delivery services and restaurants that  
3-22 meet the requirements of Section 114.0004(a), Business & Commerce  
3-23 Code.

3-24 SECTION 8. Section 114.0004, Business & Commerce Code, as  
3-25 added by this Act, applies only to an agreement entered into or  
3-26 renewed on or after the effective date of this Act.

3-27 SECTION 9. This Act takes effect January 1, 2022.

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