

## **BILL ANALYSIS**

C.S.H.B. 2119  
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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Third-party food delivery services have been growing in popularity, providing important new opportunities for many Texas businesses during the COVID-19 pandemic, as well as flexible work and pay for delivery drivers. However, there have been calls to alleviate frustration of restaurant owners and consumers caused by some business practices and costs. C.S.H.B. 2119 seeks to address this issue by providing for the appropriate regulation of third-party food delivery services.

### **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. 2119 amends the Business & Commerce Code, Local Government Code, and Alcoholic Beverage Code to regulate third-party food delivery services and revise certain Texas Alcoholic Beverage Commission (TABC) food and beverage certificate requirements.

C.S.H.B. 2119 amends the Business & Commerce Code to require a third-party food delivery service, as defined by the bill, to provide consumers with a clearly identified mechanism for the consumer to express concerns or complaints directly to the service regarding an applicable order. The bill requires a delivery service to remove a restaurant from the service not later than the 10th day after the service receives the restaurant's request to do so, unless the service has a written agreement with the restaurant that complies with the bill's provisions. The bill prohibits a delivery service from doing the following:

- arranging for the delivery or pickup of food or beverages from a restaurant in Texas, unless the delivery service has filed a certificate of formation or registration with the secretary of state;
- using a restaurant's mark or trade name in connection with the delivery service in a misleading way that suggests the restaurant sponsors or endorses the delivery service;
- adding a restaurant removed from the service at the restaurant's request unless the service has received written consent from the restaurant to add the restaurant to the service; or
- charging a restaurant a fee or requiring the restaurant to absorb a fee in connection with the service's arrangement of an order from that restaurant, unless the restaurant has agreed to pay or absorb a fee under a written agreement that complies with the bill's provisions.

C.S.H.B. 2119 requires an agreement between a delivery service and a restaurant to be in writing, expressly authorize the service to arrange for delivery or pickup from that restaurant, and clearly state each fee that the restaurant will be required to pay to the service or absorb in connection with an order arranged through the service. The agreement may not include any provision that requires the restaurant to indemnify the delivery service for claims or liabilities resulting from acts or omissions of the service, an employee, or an independent contractor. The bill makes such a prohibited agreement provision void and unenforceable.

C.S.H.B. 2119 authorizes a restaurant to bring an action against a delivery service, if the restaurant is aggrieved by the service's violation of the bill's provisions and authorizes the following remedies:

- injunctive relief;
- damages equal to the restaurant's actual damages arising from the violation or equal to the delivery service's profits arising from the violation; and
- in the case of a knowing or bad faith violation:
  - reasonable attorney's fees; and
  - exemplary damages in a maximum amount of three times the sum of the plaintiff's actual damages and the defendant's profits arising from the violation.

C.S.H.B. 2119 amends the Local Government Code to prohibit a municipality or county from adopting or enforcing an ordinance or regulation to the extent that the ordinance or regulation affects the terms required by the bill for an agreement between a delivery service and a restaurant.

C.S.H.B. 2119 amends the Alcoholic Beverage Code to define "restaurant," for purposes of that code and makes a restaurant that holds one of the following permits or licenses eligible for the issuance of a food and beverage certificate:

- a wine and malt beverage retailer's permit;
- a mixed beverage permit;
- a private club registration permit; or
- a retailer dealer's on-premise license.

#### **EFFECTIVE DATE**

January 1, 2022.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2119 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes arranging for the pickup of food or beverages in the definition of a third-party food delivery service and removes the qualification that the service be Internet based.

The substitute includes a prohibition against a delivery service adding a restaurant previously removed from the service at the restaurant's request, with an exception, and requiring the restaurant to absorb a fee in connection with an order.

The substitute includes a violation of the terms of agreement between the restaurant and the delivery service among the violations for which an aggrieved restaurant is authorized to bring an action against the service.

The substitute does not include the following provisions:

- a prohibition against a delivery service altering a restaurant's pricing;

- a prohibition against a municipality or county adopting or enforcing an ordinance or regulation that applies requirements to a delivery service that are more restrictive than the bill's requirements or that affects the fees charged to a restaurant by a delivery service;
- a provision relating to a Department of State Health Services basic food safety education program and accreditation for delivery service employees and independent contractors who deliver food;
- a provision repealing the requirement for certain permit holders to have permanent food service facilities for the preparation and service of multiple entrees for consumption to be eligible for a food and beverage certificate; and
- a provision removing the requirement for TABC to adopt certain rules relating to food and beverage certificate holder facility requirements.

The substitute changes the bill's effective date from September 1, 2021, to January 1, 2022.