By:  Hancock S.B. No. 911

(In the Senate - Filed March 2, 2021; March 11, 2021, read first time and referred to Committee on Business & Commerce; March 26, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; March 26, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton                      X

Johnson              X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire             X

COMMITTEE SUBSTITUTE FOR S.B. No. 911 By:  Hancock

A BILL TO BE ENTITLED

AN ACT

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

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

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

(29)  "Restaurant" means a business that:

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

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

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

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

(1)  the permit holder is a restaurant; or

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

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

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

(1)  the permit holder is a restaurant; or

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

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

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

(1)  the permit holder is a restaurant; or

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

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

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

(1)  the license holder is a restaurant; or

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

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

CHAPTER 114. THIRD-PARTY FOOD DELIVERY SERVICES

Sec. 114.0001.  DEFINITIONS. In this chapter:

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

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

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

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

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

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

(3)  add a restaurant removed from the service under Section 114.0003 to the service unless the service has received written consent from the restaurant to add the restaurant to the service; or

(4)  charge a restaurant a fee or require 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 the fee under an agreement that meets the requirements of Section 114.0004.

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

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

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

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

(1)  be in writing;

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

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

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

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

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

(1)  injunctive relief; and

(2)  damages in an amount equal to:

(A)  the restaurant's actual damages arising from the violation; or

(B)  the service's profits arising from the violation.

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

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

(A)  the plaintiff's actual damages; and

(B)  the defendant's profits arising from the violation; and

(2)  the plaintiff's reasonable attorney's fees.

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

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

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

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

SECTION 9.  This Act takes effect January 1, 2022.

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