

By: Burrows

H.B. No. 2119

Substitute the following for H.B. No. 2119:

By: Thompson of Harris

C.S.H.B. No. 2119

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 (29) "Restaurant" means a business that:

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

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

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

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

17 (1) the permit holder is a restaurant; or

18 (2) the commission finds that the receipts from the
19 sale of alcoholic beverages by the permit holder at the location are
20 60 percent or less of the total receipts from the location.

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

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

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

2 (2) the commission finds that the receipts from the
3 sale of alcoholic beverages by the permit holder at the location are
4 60 percent or less of the total receipts from the location.

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

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

9 (1) the permit holder is a restaurant; or

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

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

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

17 (1) the license holder is a restaurant; or

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

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

23 CHAPTER 114. THIRD-PARTY FOOD DELIVERY SERVICES

24 Sec. 114.0001. DEFINITIONS. In this chapter:

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

27 (2) "Restaurant" has the meaning assigned by Section

1 1.04, Alcoholic Beverage Code.

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

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

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

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

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

20 (4) charge a restaurant a fee or require the
21 restaurant to absorb a fee in connection with the service's
22 arrangement of an order from that restaurant unless the restaurant
23 has agreed to pay or absorb the fee under an agreement that meets
24 the requirements of Section 114.0004.

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

27 (1) provide a consumer a clearly identified mechanism

1 for the consumer to express concerns or complaints directly to the
2 service regarding an order arranged through the service; and

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

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

11 (1) be in writing;

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

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

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

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

26 Sec. 114.0005. PRIVATE CAUSE OF ACTION. (a) If a
27 third-party food delivery service violates this chapter, a

1 restaurant aggrieved by the violation may bring an action against
2 the service for:

3 (1) injunctive relief; and

4 (2) damages in an amount equal to:

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

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

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

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

14 (A) the plaintiff's actual damages; and

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

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

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

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

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

1 Code.

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

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