

By: Burrows

H.B. No. 2119

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation of restaurants and third-party food  
3 delivery services, including the issuance of certain permits to  
4 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. Sections 25.13(a-1), (b-1), and (d), Alcoholic  
14 Beverage Code, as effective September 1, 2021, are amended to read  
15 as follows:

16 (a-1) A holder of a wine and malt beverage retailer's permit  
17 that is a restaurant may be issued a food and beverage certificate  
18 by the commission if 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 (b-1) ~~[The commission shall adopt rules requiring the~~  
22 ~~holder of a food and beverage certificate to assure that permanent~~  
23 ~~food service facilities for the preparation and service of multiple~~  
24 ~~entrees for consumption at the location are available at the~~

1 ~~location.~~] The commission may exempt permittees who are  
2 concessionaires in public entertainment venues such as sports  
3 stadiums and convention centers from:

4 (1) the requirement that the permittee operate its own  
5 permanent food service facility with commercial cooking equipment  
6 on its premises; and

7 (2) the sales requirements under Subsection  
8 [Subsections] (a-1) [and (b)].

9 (d) A certificate issued under this section expires on the  
10 expiration of the primary wine and malt beverage retailer's permit.  
11 A certificate may be canceled at any time, and the renewal of a  
12 certificate may be denied, if the commission finds that the holder  
13 of the certificate is in violation of Subsection (a-1) ~~[or (b) or a~~  
14 ~~rule adopted under Subsection (b-1)]~~. On finding that the  
15 permittee knowingly operated under a food and beverage certificate  
16 while not complying with this section ~~[or a rule adopted under~~  
17 ~~Subsection (b-1)]~~, the commission may cancel or deny the renewal of  
18 the permittee's wine and malt beverage retailer's permit. The  
19 holder of a wine and malt beverage retailer's permit whose  
20 certificate has been canceled or who is denied renewal of a  
21 certificate under this subsection may not apply for a new  
22 certificate until the day after the first anniversary of the date  
23 the certificate was canceled or the renewal of the certificate was  
24 denied.

25 SECTION 3. Sections 28.18(a-1), (b-1), and (e), Alcoholic  
26 Beverage Code, are amended to read as follows:

27 (a-1) A holder of a mixed beverage permit that is a

1 restaurant may be issued a food and beverage certificate by the  
2 commission if the commission finds that the receipts from the sale  
3 of alcoholic beverages by the permit holder at the location are 60  
4 percent or less of the total receipts from the location.

5 (b-1) [~~The commission shall adopt rules requiring the~~  
6 ~~holder of a food and beverage certificate to assure that permanent~~  
7 ~~food service facilities for the preparation and service of multiple~~  
8 ~~entrees for consumption at the location are available at the~~  
9 ~~location.~~] The commission may exempt permittees who are  
10 concessionaires in public entertainment venues such as sports  
11 stadiums and convention centers from:

12 (1) the requirement that the permittee operate its own  
13 permanent food service facility with commercial cooking equipment  
14 on its premises; and

15 (2) the sales requirements under Subsection  
16 [Subsections] (a-1) [and (b)].

17 (e) A certificate issued under this section expires on the  
18 expiration of the primary mixed beverage permit. A certificate may  
19 be canceled at any time, and the renewal of a certificate may be  
20 denied, if the commission finds that the holder of the certificate  
21 is in violation of Subsection (a-1) [~~or (b) or a rule adopted under~~  
22 ~~Subsection (b-1)]]. On finding that the permittee knowingly  
23 operated under a food and beverage certificate while not complying  
24 with this section [~~or a rule adopted under Subsection (b-1)]], the  
25 commission may cancel or deny the renewal of the permittee's mixed  
26 beverage permit. A mixed beverage permit issued in an area where  
27 the legal sale of mixed beverages was authorized by a local option~~~~

1 election under Section 501.035(b)(9), Election Code, is canceled by  
2 operation of law if the food and beverage certificate is canceled or  
3 is not renewed. The holder of a mixed beverage permit whose  
4 certificate has been canceled or who is denied renewal of a  
5 certificate under this subsection may not apply for a new  
6 certificate until the day after the first anniversary of the date  
7 the certificate was canceled or the renewal of the certificate was  
8 denied.

9 SECTION 4. Sections 32.23(a-1), (b-1), and (e), Alcoholic  
10 Beverage Code, are amended to read as follows:

11 (a-1) A holder of a private club registration permit that is  
12 a restaurant may be issued a food and beverage certificate by the  
13 commission if the commission finds that the receipts from the  
14 service of alcoholic beverages by the permit holder at the location  
15 are 60 percent or less of the total receipts from the location.

16 (b-1) [~~The commission shall adopt rules requiring the~~  
17 ~~holder of a food and beverage certificate to assure that permanent~~  
18 ~~food service facilities for the preparation and service of multiple~~  
19 ~~entrees for consumption at the location are available at the~~  
20 ~~location.~~] The commission may exempt permittees who are  
21 concessionaires in public entertainment venues such as sports  
22 stadiums and convention centers from:

23 (1) the requirement that the permittee operate its own  
24 permanent food service facility with commercial cooking equipment  
25 on its premises; and

26 (2) the sales requirements under Subsection  
27 [~~Subsections~~] (a-1) [~~and (b)~~].

1           (e) A certificate issued under this section expires on the  
2 expiration of the primary private club registration permit. A  
3 certificate may be canceled at any time, and the renewal of a  
4 certificate may be denied, if the commission finds that the holder  
5 of the certificate is in violation of Subsection (a-1) [~~or (b) or a~~  
6 ~~rule adopted under Subsection (b-1)~~]. On finding that the  
7 permittee knowingly operated under a food and beverage certificate  
8 while not complying with this section [~~or a rule adopted under~~  
9 ~~Subsection (b-1)~~], the commission may cancel or deny the renewal of  
10 the permittee's private club registration permit. The holder of a  
11 private club registration permit whose certificate has been  
12 canceled or who is denied renewal of a certificate under this  
13 subsection may not apply for a new certificate until the day after  
14 the first anniversary of the date the certificate was canceled or  
15 the renewal of the certificate was denied.

16           SECTION 5. Sections 69.16(a-1), (b-1), and (d), Alcoholic  
17 Beverage Code, are amended to read as follows:

18           (a-1) A holder of a retail dealer's on-premise license that  
19 is a restaurant may be issued a food and beverage certificate by the  
20 commission if the commission finds that the receipts from the sale  
21 of alcoholic beverages by the license holder at the location are 60  
22 percent or less of the total receipts from the location.

23           (b-1) [~~The commission shall adopt rules requiring the~~  
24 ~~holder of a food and beverage certificate to assure that permanent~~  
25 ~~food service facilities for the preparation and service of multiple~~  
26 ~~entrees for consumption at the location are available at the~~  
27 ~~location.~~] The commission may exempt licensees who are

1 concessionaires in public entertainment venues such as sports  
2 stadiums and convention centers from:

3 (1) the requirement that the permittee operate its own  
4 permanent food service facility with commercial cooking equipment  
5 on its premises; and

6 (2) the sales requirements under Subsection  
7 [Subsections] (a-1) [and (b)].

8 (d) A certificate issued under this section expires on the  
9 expiration of the primary retail dealer's on-premise license. A  
10 certificate may be canceled at any time, and the renewal of a  
11 certificate may be denied, if the commission finds that the holder  
12 of the certificate is in violation of Subsection (a-1) ~~[or (b) or a~~  
13 ~~rule adopted under Subsection (b-1)]~~. On finding that the licensee  
14 knowingly operated under a food and beverage certificate while not  
15 complying with this section ~~[or a rule adopted under Subsection~~  
16 ~~(b-1)]~~, the commission may cancel or deny the renewal of the  
17 licensee's retail dealer's on-premise license. The holder of a  
18 retail dealer's on-premise license whose certificate has been  
19 canceled or who is denied renewal of a certificate under this  
20 subsection may not apply for a new certificate until the day after  
21 the first anniversary of the date the certificate was canceled or  
22 the renewal of the certificate was denied.

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

25 CHAPTER 114. THIRD-PARTY FOOD DELIVERY SERVICES

26 Sec. 114.0001. DEFINITIONS. In this chapter:

27 (1) "Mark" and "trade name" have the meanings assigned

1 by Section 16.001.

2 (2) "Restaurant" has the meaning assigned by Section  
3 1.04, Alcoholic Beverage Code.

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

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

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

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

18 (3) alter a restaurant's pricing for a food or beverage  
19 ordered from the restaurant on the service, except that the service  
20 may charge additional fees for use of the service if the fees are  
21 clearly expressed to the consumer as a separate charge from the  
22 price of the food or beverage ordered from the restaurant; or

23 (4) charge a restaurant a fee in connection with the  
24 service's delivery of food or beverages from that restaurant unless  
25 the restaurant has agreed to pay a fee to the service under an  
26 agreement under Section 114.0004.

27 Sec. 114.0003. REQUIREMENTS FOR SERVICE. A third-party

1 food delivery service shall:

2 (1) provide a consumer a clearly identified mechanism  
3 for the consumer to express concerns or complaints directly to the  
4 service regarding a delivery of food or beverages arranged through  
5 the service; and

6 (2) remove a restaurant from the service not later  
7 than the 10th day after the date the service receives a request from  
8 the restaurant to be removed from the service if the service does  
9 not have an agreement with the restaurant to provide the delivery  
10 service.

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

14 (1) be in writing;

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

17 (3) clearly state each fee, including a commission or  
18 other charge, that the restaurant will be required to pay or absorb  
19 in connection with the service's delivery of food from that  
20 restaurant.

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

27 (c) A provision in an agreement that violates Subsection (b)



1 is void and unenforceable.

2 Sec. 114.0005. PRIVATE CAUSE OF ACTION. (a) If a  
3 third-party food delivery service violates Section 114.0002 or  
4 114.0003, a restaurant aggrieved by the violation may bring an  
5 action against the service for:

6 (1) injunctive relief; and

7 (2) damages in an amount equal to:

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

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

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

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

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

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

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

21 SECTION 7. Subchapter D, Chapter 438, Health and Safety  
22 Code, is amended by adding Section 438.0432 to read as follows:

23 Sec. 438.0432. DELIVERY SERVICE FOOD SAFETY ACCREDITATION.

24 (a) In this section, "third-party food delivery service" has the  
25 meaning assigned by Section 114.0001, Business & Commerce Code.

26 (b) Notwithstanding Section 438.043, the department as  
27 provided by this section may accredit an education program on basic

1 food safety for third-party food delivery service employees and  
2 independent contractors who deliver food as authorized by Chapter  
3 114, Business & Commerce Code.

4 (c) The executive commissioner shall by rule define the  
5 training on basic food safety that must be included in a third-party  
6 food delivery service course curriculum. The course length may not  
7 exceed 30 minutes.

8 (d) An education program accredited under this section may  
9 require a participant to achieve a passing score on an examination  
10 to successfully complete the course for certification.

11 (e) An education program accredited under this section may  
12 be provided through the Internet or a mobile application.

13 (f) The department or a local health authority may not  
14 require a third-party food delivery service employee or independent  
15 contractor to complete an education program accredited under this  
16 section. A local health authority may not charge a fee to an  
17 employee or contractor who provides proof of completion of an  
18 education program accredited under this section.

19 SECTION 8. Chapter 250, Local Government Code, is amended  
20 by adding Section 250.011 to read as follows:

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

24 (b) Notwithstanding any other law, a municipality or county  
25 may not adopt or enforce an ordinance or regulation that:

26 (1) applies requirements to a third-party food  
27 delivery service that are more restrictive than the requirements

1 that apply to the service under Chapter 114, Business & Commerce  
2 Code;

3 (2) affects the fees charged to a restaurant by a  
4 third-party food delivery service; or

5 (3) affects the terms of an agreement between a  
6 third-party food delivery service and a restaurant required under  
7 Section 114.0004, Business & Commerce Code.

8 SECTION 9. The following sections of the Alcoholic Beverage  
9 Code are repealed:

10 (1) Section 25.13(b), as effective September 1, 2021;

11 (2) Section 28.18(b);

12 (3) Section 32.23(b); and

13 (4) Section 69.16(b).

14 SECTION 10. Section 114.0004, Business & Commerce Code, as  
15 added by this Act, applies only to an agreement entered into or  
16 renewed on or after the effective date of this Act.

17 SECTION 11. This Act takes effect September 1, 2021.