

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2101  
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Business & Commerce  
5/22/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Alcoholic Beverage Code currently allows a restaurant with a mixed beverage permit to obtain a food and beverage certificate if the restaurant does not have mixed beverage sales greater than 50 percent of its gross receipts. A food and beverage certificate is vital in many jurisdictions where local option elections have been held allowing mixed beverages to be sold in restaurants. Since 2000, there have been 278 local option elections allowing for mixed beverage service in restaurants with 199 successful elections. This has created a significant positive economic impact for previously dry jurisdictions where many restaurants now operate and provide communities a more diverse choice of restaurants.

Currently, a food and beverage certificate requires mixed beverage sales less than 50 percent of gross receipts, food operation during all hours of alcohol service, and multiple entrée items available during food service. With the sharp rise in alcohol prices and customers' willingness to pay more for premium brand alcohol and craft beers, the total amount of alcohol gross receipts is nearing the 50 percent threshold. Restaurants with a food and beverage certificate that surpass the 50 percent alcohol threshold may lose their mixed beverage permit and their ability to sell mixed beverages. This will cause a significant negative economic impact on businesses and communities that enjoy having restaurants that serve mixed beverages. H.B. 2101 addresses this issue.

H.B. 2101 amends the Alcoholic Beverage Code to:

- Increase the alcohol sales threshold to 60 percent of total sales on the premises.
- Adopt uniform language on alcohol vs. non-alcohol sales calculation for all types of food and beverage permits and transfer the calculation to TABC to avoid confusion in calculations.
- Include due process language to allow a permittee to submit additional information if a food and beverage certificate is not renewed and to allow TABC to deny renewal of a food and beverage certificate at any time if permittee is in violation of the new threshold.
- Continue to allow concessionaires in public entertainment venues, sports stadiums, and conventions to operate without meeting food and beverage certificate requirements.
- Maintain the 1,000-foot rule relating to establishments with food and beverage certificates near public schools. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2101 amends current law relating to the issuance of a food and beverage certificate to holders of certain alcoholic beverage permits and licenses.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Alcoholic Beverage Commission is modified in SECTION 1 (Section 25.13, Alcoholic Beverage Code), SECTION 2 (Section 28.18, Alcoholic Beverage Code), SECTION 3 (Section 32.23, Alcoholic Beverage Code), and SECTION 4 (Section 69.16, Alcoholic Beverage Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 25.13, Alcoholic Beverage Code, by amending Subsections (a), (b), and (d) and adding Subsections (a-1) and (b-1), as follows:

(a) Defines "location."

(a-1) Creates this subsection from existing text. Authorizes a holder of a wine and beer retailer's permit to be issued a food and beverage certificate by the Texas Alcoholic Beverage Commission (TABC) if TABC finds that the receipts from the sale of beverages by the permit holder at the location are 60 percent or less of the total receipts from the location, rather than if food service is the primary business being operated on the premises by the permittee.

(b) Prohibits a food and beverage certificate from being issued unless the location has permanent food services facilities for the preparation and service of multiple entrees for consumption at the location. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Requires TABC to adopt rules requiring, the holder of a food and beverage certificate to assure that food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location, rather than requires TABC to adopt rules necessary to assure that the holder of a food and beverage certificate maintains food service as the primary business on the premises for which a food and beverage certificate has been issued. Authorizes TABC to exempt permittees who are concessionaires in certain public entertainment venues from Subsections (a-1) and (b), rather than from the requirement that food service be the primary business on the premises.

(d) Authorizes a certificate to be canceled at any time, and the renewal of a certificate to be denied, rather than authorizes a certificate to be canceled at any time, if TABC finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1), rather than is not operating primarily as a food service establishment. Authorizes TABC, on finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section (Food and Beverage Certificate) or a rule adopted under Subsection (b-1), to cancel or deny the renewal of the permittee's wine and beer retailer's permit. Prohibits the holder of a beer and wine retailer's permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection from applying for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied. Deletes existing text requiring that it be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises. Deletes existing text authorizing TABC to impose a certain fine on the holder of a food and beverage certificate not operating as a food service establishment and to cancel the permittee's wine and beer retailer's permit upon certain findings.

SECTION 2. Amends Sections 28.18, Alcoholic Beverage Code, by amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (b-1), as follows:

(a) Defines "location."

(a-1) Creates this subsection from existing text. Authorizes a holder of a mixed beverage permit to be issued a food and beverage certificate by TABC if TABC 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. Deletes existing text authorizing a holder of a mixed beverage permit to be issued a food and beverage certificate by TABC if the gross receipts of mixed beverages sold by the holder are 50 percent or less of the total gross receipts from the premises.

(b) Prohibits a food and beverage certificate from being issued unless the location has permanent food service facilities for the preparation and service of multiple entrees for consumption at the location. Deletes existing text requiring an applicant or a holder of a food and beverage certificate to have certain food service facilities.

(b-1) Requires TABC to adopt rules requiring the holder of a food and beverage certificate to assure that permanent food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location, rather than requires TABC to adopt rules as necessary to ensure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued. Authorizes TABC to exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b).

(e) Provides that a certificate issued under this section (Food and Beverage Certificate), rather than a certificate, expires on the expiration of the primary mixed beverage permit. Authorizes a certificate to be canceled at any time, and authorizes the renewal of a certificate to be denied, if TABC finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1). Authorizes TABC, on finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), to cancel or deny the renewal of the permittee's mixed beverage permit. Provides that a mixed beverage permit issued in an area where the legal sale of mixed beverages was authorized by a local option election under Section 501.035(b)(9) (relating to a ballot for the legalization of the sale of mixed beverages by food and beverage certificate holders), Election Code, is canceled or is not renewed. Prohibits the holder of a mixed beverage permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection, rather than who is denied renewal of a certificate, from applying for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied, rather than until the day after the first anniversary of the determination of the Texas comptroller of public accounts (comptroller) under Subsection (d) (relating to requiring the comptroller to certify a permittee's compliance with certain requirements).

SECTION 3. Amends Section 32.23, Alcoholic Beverage Code, by amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (b-1), as follows:

(a) Defines "location."

(a-1) Creates this subsection from existing text. Authorizes a holder of a private club registration permit to be issued a food and beverage certificate by TABC if TABC 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. Deletes existing text authorizing a holder of a private club registration permit to be issued a food and beverage certificate by TABC if the gross receipts of mixed beverages served by the holder are 50 percent or less of the total gross receipts from the premises.

(b) Prohibits a food and beverage permit from being issued unless the location has permanent food service facilities for the preparation and service of multiple entrees for consumption at the location. Deletes existing text requiring an applicant or a holder of a food and beverage certificate to have certain food service facilities.

(b-1) Requires TABC to adopt rules requiring the holder of a food and beverage certificate to assure that permanent food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location, rather than requires TABC to adopt rules as necessary to ensure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued. Authorizes TABC to exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b).

(e) Provides that a certificate issued under this section (Food and Beverage Certificate), rather than a certificate, expires on the expiration of the primary private club registration permit. Authorizes a certificate to be canceled at any time, and authorizes the renewal of a certificate to be denied, if TABC finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1). Authorizes TABC, on finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), to cancel or deny the renewal of the permittee's private club registration permit. Prohibits the holder of a private club registration permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection, rather than who is denied renewal of a certificate, from applying for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied, rather than until the day after the first anniversary of the determination of the comptroller under Subsection (d) (relating to requiring the comptroller to certify a permittee's compliance with certain requirements).

SECTION 4. Amends Section 69.16, Alcoholic Beverage Code, by amending Subsections (a), (b), and (d) and adding Subsections (a-1) and (b-1), as follows:

(a) Defines "location."

(a-1) Creates this subsection from existing text. Authorizes a holder of a retail dealer's on-premise license to be issued a food and beverage certificate by TABC if TABC 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, rather than if food service is the primary business being operated on the premises by the permittee.

(b) Prohibits a food and beverage certificate from being issued unless the location has permanent food service facilities for the preparation and service of multiple entrees for consumption at the location. Deletes existing text requiring an applicant or holder of a food and beverage certificate to have certain facilities.

(b-1) Creates this subsection from existing text. Requires TABC to adopt rules requiring the holder of a food and beverage certificate to assure that permanent food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location. Authorizes TABC to exempt licenses, rather than permittees, who are concessionaires in certain public entertainment venues from Subsections (a-1) and (b), rather than from the requirement that food service be the primary business on the premises. Deletes existing text requiring TABC to adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service as the primary business on the premises for which a food and beverage certificate has been issued.

(d) Authorizes a certificate to be canceled at any time, and the renewal of a certificate to be denied, rather than authorizes a certificate to be canceled at any time, if TABC finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1), rather than is not operating primarily as a food service establishment. Authorizes TABC, on finding that the licensee knowingly operated under a food and beverage certificate while not complying with this section (Food and Beverage Certificate) or a rule adopted under Subsection (b-1), rather than not complying with this section, to cancel or deny the renewal of, rather than to cancel, the licensee's retail dealer's on-premise license. Prohibits the holder of a retail dealer's on-premise license whose certificate has been canceled or who is denied renewal of a certificate under this subsection from applying for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied. Deletes existing text requiring that it be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises. Deletes existing text authorizing TABC to impose a certain fine.

SECTION 5. (a) Repealers: Sections 28.18(d) and 32.23(d), Alcoholic Beverage Code.

(b) Repealer: Section 411.204(e) (relating to providing that this section (Notice Required on Certain Premises) does not apply to a business that has a food and beverage certificate issued under the Alcoholic Beverage Code), Government Code.

SECTION 6. (a) Requires TABC, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement this Act.

(b) Provides that the changes in law made by this Act apply only to an application for a food and beverage certificate that is filed on or after the effective date of the rules adopted under Subsection (a) of this section.

SECTION 7. Effective date: September 1, 2017.