

SUBJECT: Changing requirements for certain food and beverage certification

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Kuempel, Guillen, Goldman, Hernandez, Herrero, S. Thompson
0 nays
3 absent — Frullo, Geren, Paddie

WITNESSES: For — Jason Cooper, Brookshire Grocery Company; Roger Kaplan;
(*Registered, but did not testify:* Mike Hamilton, Brinkr International; John Gessner, Front Burner Restaurants, LP; Nelson Nease, Texas Craft Brewers Guild; Brian Sullivan, Texas Hotel and Lodging Association; Monty Wynn, Texas Municipal League; Jim Sheer, Texas Retailers Association; Morris Wilkes, United Supermarkets)

Against — None

On — (*Registered, but did not testify:* Amy Harrison, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code, secs. 25.13, 28.18, 32.23, and 69.16 set the requirements for retailers permitted to sell alcohol to hold a food and beverage certificate. Retailers who sell wine and beer or mixed beverages, private clubs, and on-premise retail dealers who wish to sell food must:

- derive 50 percent or less of their profits from sale of alcohol;
- maintain food service facilities; and
- pay a fee to cover the cost of issuing the certificate.

The Texas Alcoholic Beverage Commission (TABC) may impose a fine up to \$5,000 on holders of a wine and beer retailer's permit or retail dealer's on-premise license who are in violation of these requirements. TABC may cancel these permit and license holders' food and beverage

certificate at any time if they are found to violate the 50 percent requirement.

When TABC receives an application for renewal of a mixed beverage or private club registration permit who holds a food and beverage certificate, TABC must request certification from the comptroller that the holder is in compliance with the 50 percent requirement. Without such certification from the comptroller, TABC may not renew the certificate.

Given the increasing popularity of higher-priced craft beer and premium alcohol served at establishments in the state, some have raised concerns that gross sales of alcohol at some of these restaurants could rise above the 50 percent maximum threshold allowed under state law, making them ineligible for a food and beverage certificate.

DIGEST:

CSHB 2101 would increase the maximum alcohol profit threshold that alcohol retailers must meet in order to hold a food and beverage certificate from 50 percent to 60 percent. The bill would specify that the Texas Alcoholic Beverage Commission (TABC) must determine whether the business derives 60 percent or less of its profits from the sale of alcohol.

For purposes of this calculation, the bill would define "location" to mean the designated physical address of the retailer, including all areas at the address where the certificate holder may serve alcoholic beverages for immediate consumption.

The bill also would remove TABC's authority to impose a fine up to \$5,000 on holders of a wine and beer retailer's permit or retail dealer's on-premise license who are in violation of these requirements.

The bill would specify that in order to comply with the requirements for food and beverage certification, retailers of alcoholic beverages must maintain permanent food service facilities to prepare food for consumption at the retailer's location.

The bill would specify that any alcohol retailer whose food and beverage

certificate was canceled or denied renewal could not reapply for a certificate until one year after the certificate was canceled or denied. If a mixed beverage permit holder authorized to sell food by a local election that legalized the sale of mixed beverages by food and beverage certificate holders only were denied renewal, the certificate would be canceled by operation of law.

The bill would take effect September 1, 2017, and would apply only to an application for food and beverage certificate filed on or after that date. TABC would be required to adopt the rules necessary to implement this act as soon as practicable.