

BILL ANALYSIS

Senate Research Center

S.B. 911
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Alcoholic Beverage Code does not contain a definition for a restaurant. As a response to mitigating the spread of COVID-19, Governor Abbott defined a restaurant as an establishment that has less than 51 percent of its gross receipts come from the sale of alcoholic beverages. Therefore, restaurants that exceeded 51 percent were unable to operate dine-in services. The lack of regulatory consistencies within the restaurant industry has caused financial strain on the industry.

Third-party delivery companies have become the delivery middleman between consumers and restaurants, and the use of these services has significantly increased during COVID-19. Restaurants partner with delivery companies by signing a contract that provides a platform to facilitate the transmission of orders by consumers to restaurants for pickup or delivery by a contractor. When a restaurant is added to a delivery company's platform without a partnership, the company tasks the driver with ordering food ahead of time or at the restaurant before delivery. A restaurant that does not have an agreement with a delivery company must contact the delivery company and ask to be removed from the company's platform. It is not uncommon for a platform to remove the restaurant and add the restaurant back on to the platform. In these instances, restaurants have had to send cease and desist letters to these delivery companies.

Restaurants contend that the unauthorized use of a restaurant's menu or trademark misleads consumers into believing that there is an endorsement or agreement for use by the restaurants when no such agreement exists. Restaurants also state that the menus third-party delivery companies obtain from a restaurant's website run the risk of containing out-of-date prices or hours of operation. These problematic business practices are hurting restaurants and their consumers.

This bill creates a clear definition of a restaurant in the Alcoholic Beverage Code. Additionally, the bill prohibits third-party delivery companies from the following: using deceptive advertising to suggest the restaurant sponsors or endorses the service, shifting liability to a restaurant for harm caused by the third-party delivery service or its agents or employees, and prohibiting cities from enacting local regulations to the extent that they conflict with contractual agreements between third-party delivery services and restaurants. The bill also requires third-party delivery companies to remove non-contracted restaurants from their services within 10 days of receiving a removal request, provides a clear mechanism to express concerns directly to the delivery service, and creates an optional statewide education program for third-party delivery companies to utilize when training agents or employees.

S.B. 911 will provides businesses that qualify as a restaurant, under the newly created definition of a restaurant, an alternative way to obtain a food and beverage certificate.

S.B. 911 amends current law relating to the regulation of restaurants and third-party food delivery services, including the issuance of certain alcoholic beverage certificates to restaurants.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.04, Alcoholic Beverage Code, by adding Subdivision (29), to define "restaurant" for the Alcoholic Beverage Code.

SECTION 2. Amends Section 25.13(a-1), Alcoholic Beverage Code, as effective September 1, 2021, to authorize a holder of a wine and malt beverage retailer's permit to be issued a food and beverage certificate by the Texas Alcoholic Beverage Commission (TABC) if the permit holder is a restaurant. Makes nonsubstantive changes.

SECTION 3. Amends Section 28.18(a-1), Alcoholic Beverage Code, to authorize a holder of a mixed beverage permit to be issued a food and beverage certificate by TABC if the permit holder is a restaurant. Makes nonsubstantive changes.

SECTION 4. Amends Section 32.23(a-1), Alcoholic Beverage Code, to authorize a holder of a private club registration permit to be issued a food and beverage certificate by TABC if the permit holder is a restaurant. Makes nonsubstantive changes.

SECTION 5. Amends Sections 69.16(a-1), Alcoholic Beverage Code, to authorize a holder of a retail dealer's on-premise license to be issued a food and beverage certificate by TABC if the license holder is a restaurant. Makes nonsubstantive changes.

SECTION 6. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 114, as follows:

CHAPTER 114. THIRD-PARTY FOOD DELIVERY SERVICES

Sec. 114.0001. DEFINITIONS. Defines "mark," "trade name," "restaurant," and "third-party food delivery service."

Sec. 114.0002. PROHIBITED ACTS. Prohibits a third-party food delivery service from:

- (1) arranging 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) using 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) adding 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) charging a restaurant a fee or requiring 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. Requires a third-party food delivery service to:

- (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) Requires that an agreement between a third-party food delivery service and a restaurant be in writing, expressly authorize the service to arrange for the delivery or pickup of food or beverages from that restaurant, and 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) Prohibits the agreement from including 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) Provides that a provision in an agreement that violates Subsection (b) is void and unenforceable.

Sec. 114.0005. PRIVATE CAUSE OF ACTION. (a) Authorizes a restaurant aggrieved by the violation, if a third-party food delivery service violates this chapter, to bring an action against the service for injunctive relief, and damages in an amount equal to the restaurant's actual damages arising from the violation, or to the service's profits arising from the violation.

(b) Authorizes the court, if the court finds that the defendant committed the violation knowingly or in bad faith, to award the plaintiff the plaintiff's reasonable attorney's fees, and exemplary damages in an amount that is not more than three times the sum of the plaintiff's actual damages and the defendant's profits arising from the violation.

SECTION 7. Amends Chapter 250, Local Government Code, by adding Section 250.011, as follows:

Sec. 250.011. THIRD-PARTY FOOD DELIVERY SERVICES. (a) Defines "third-party food delivery service."

(b) Prohibits a municipality or county, notwithstanding any other law, from adopting or enforcing 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. Makes application of Section 114.0004, Business & Commerce Code, as added by this Act, prospective.

SECTION 9. Effective date: January 1, 2022.