

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/27/2017

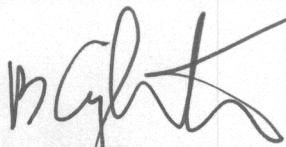
Date

Honorable Dan Patrick  
President of the Senate

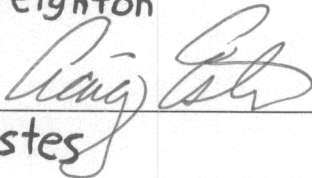
Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2101 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



Creighton



Estes

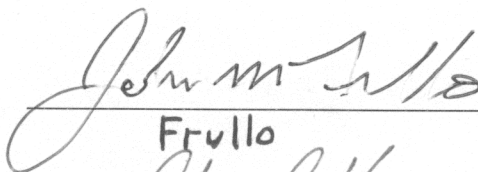
Miles



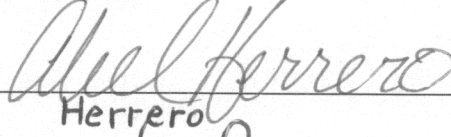
Taylor, Larry



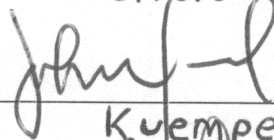
On the part of the Senate  
Whitmire



Frullo



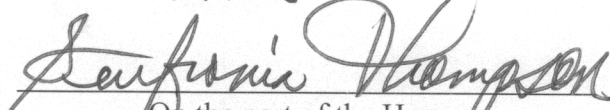
Herrero



Kuempel



Paddie



On the part of the House  
Thompson, Senfronia

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.



# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 2101

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a food and beverage certificate to holders of certain alcoholic beverage permits and licenses.

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

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

(a) In this section, "location" means the designated physical address of the wine and beer retailer's permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

(a-1) A holder of a wine and beer retailer's permit may be issued a food and beverage certificate by the commission if the commission 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 ~~[food service is the primary business being operated on the premises by the permittee]~~.

(b) A ~~[An applicant or holder of a]~~ food and beverage certificate may not be issued unless the location has permanent ~~[shall have]~~ food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring ~~[as~~

1 ~~necessary to assure that~~] the holder of a food and beverage  
2 certificate to assure that permanent ~~[maintains]~~ food service  
3 facilities for the preparation and service of multiple entrees for  
4 consumption at the location are available at the location ~~[as the~~  
5 ~~primary business on the premises for which a food and beverage~~  
6 ~~certificate has been issued]~~. The commission may exempt permittees  
7 who are concessionaires in public entertainment venues such as  
8 sports stadiums and convention centers from Subsections (a-1) and  
9 (b) ~~[the requirement that food service be the primary business on~~  
10 ~~the premises]~~.

11 (d) A certificate issued under this section expires on the  
12 expiration of the primary wine and beer retailer's permit. A  
13 certificate may be canceled at any time, and the renewal of a  
14 certificate may be denied, if the commission finds that the holder  
15 of the certificate is in violation of Subsection (a-1) or (b) or a  
16 rule adopted under Subsection (b-1) ~~[not operating primarily as a~~  
17 ~~food service establishment. For the purposes of this section, it~~  
18 ~~shall be presumed that a permittee is not primarily operating as a~~  
19 ~~food service establishment if alcohol sales are in excess of 50~~  
20 ~~percent of the gross receipts of the premises]~~. On ~~[The commission~~  
21 ~~may impose a fine not to exceed \$5,000 on the holder of a food and~~  
22 ~~beverage certificate not operating as a food service establishment~~  
23 ~~and may, upon]~~ finding that the permittee knowingly operated under  
24 a food and beverage certificate while not complying with this  
25 section or a rule adopted under Subsection (b-1), the commission  
26 may cancel or deny the renewal of the permittee's wine and beer  
27 retailer's permit. The holder of a wine and beer retailer's permit

1 whose certificate has been canceled or who is denied renewal of a  
 2 certificate under this subsection may not apply for a new  
 3 certificate until the day after the first anniversary of the date  
 4 the certificate was canceled or the renewal of the certificate was  
 5 denied.

6 SECTION 2. Section 28.18, Alcoholic Beverage Code, is  
 7 amended by amending Subsections (a), (b), and (e) and adding  
 8 Subsections (a-1) and (b-1) to read as follows:

9 (a) In this section, "location" means the designated  
 10 physical address of the mixed beverage permit and includes all  
 11 areas at the address where the permit holder may sell or deliver  
 12 alcoholic beverages for immediate consumption regardless of  
 13 whether some of those areas are occupied by other businesses.

14 (a-1) A holder of a mixed beverage permit may be issued a  
 15 food and beverage certificate by the commission if the commission  
 16 finds that the ~~[gross]~~ receipts from the sale of alcoholic ~~[of~~  
 17 ~~mixed]~~ beverages ~~[sold]~~ by the permit holder at the location are 60  
 18 [50] percent or less of the total ~~[gross]~~ receipts from the location  
 19 [premises].

20 (b) A ~~[An applicant or holder of a]~~ food and beverage  
 21 certificate may not be issued unless the location has permanent  
 22 ~~[shall have]~~ food service facilities for the preparation and  
 23 service of multiple entrees for consumption at the location.

24 (b-1) The commission shall adopt rules requiring ~~[as~~  
 25 ~~necessary to assure that]~~ the holder of a food and beverage  
 26 certificate to assure that permanent ~~[maintains]~~ food service  
 27 facilities for the preparation and service of multiple entrees for

1 consumption at the location are available at the location ~~[on the~~  
2 ~~premises for which a food and beverage certificate has been~~  
3 ~~issued]~~. The commission may exempt permittees who are  
4 concessionaires in public entertainment venues such as sports  
5 stadiums and convention centers from Subsections (a-1) and (b).

6 (e) A certificate issued under this section expires on the  
7 expiration of the primary mixed beverage permit. A certificate may  
8 be canceled at any time, and the renewal of a certificate may be  
9 denied, if the commission finds that the holder of the certificate  
10 is in violation of Subsection (a-1) or (b) or a rule adopted under  
11 Subsection (b-1). On finding that the permittee knowingly operated  
12 under a food and beverage certificate while not complying with this  
13 section or a rule adopted under Subsection (b-1), the commission  
14 may cancel or deny the renewal of the permittee's mixed beverage  
15 permit. A mixed beverage permit issued in an area where the legal  
16 sale of mixed beverages was authorized by a local option election  
17 under Section 501.035(b)(9), Election Code, is canceled by  
18 operation of law if the food and beverage certificate is canceled or  
19 is not renewed. The [A] holder of a mixed beverage 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 ~~[determination of the comptroller under Subsection (d)]~~.

25 SECTION 3. Section 32.23, Alcoholic Beverage Code, is  
26 amended by amending Subsections (a), (b), and (e) and adding  
27 Subsections (a-1) and (b-1) to read as follows:

(a) In this section, "location" means the designated physical address of the private club registration permit and includes all areas at the address where the permit holder may serve or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

(a-1) A holder of a private club registration permit may be issued a food and beverage certificate by the commission if the commission finds that the [gross] receipts from the service of alcoholic [mixed] beverages [served] by the permit holder at the location are 60 [50] percent or less of the total [gross] receipts from the location [premises].

(b) A [An applicant or holder of a] food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

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

(e) A certificate issued under this section expires on the expiration of the primary private club registration permit. A

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

15 SECTION 4. Section 69.16, Alcoholic Beverage Code, is  
 16 amended by amending Subsections (a), (b), and (d) and adding  
 17 Subsections (a-1) and (b-1) to read as follows:

18 (a) In this section, "location" means the designated  
 19 physical address of the retail dealer's on-premise license and  
 20 includes all areas at the address where the license holder may sell  
 21 or deliver alcoholic beverages for immediate consumption  
 22 regardless of whether some of those areas are occupied by other  
 23 businesses.

24 (a-1) A holder of a retail dealer's on-premise license may  
 25 be issued a food and beverage certificate by the commission if the  
 26 commission finds that the receipts from the sale of alcoholic  
 27 beverages by the license holder at the location are 60 percent or



1 less of the total receipts from the location ~~[food service is the~~  
2 ~~primary business being operated on the premises by the permittee]~~.

3 (b) A ~~[An applicant or holder of a]~~ food and beverage  
4 certificate may not be issued unless the location has permanent  
5 ~~[shall have]~~ food service facilities for the preparation and  
6 service of multiple entrees for consumption at the location.

7 (b-1) The commission shall adopt rules requiring ~~[as~~  
8 ~~necessary to assure that]~~ the holder of a food and beverage  
9 certificate to assure that permanent ~~[maintains]~~ food service  
10 facilities for the preparation and service of multiple entrees for  
11 consumption at the location are available at the location ~~[as the~~  
12 ~~primary business on the premises for which a food and beverage~~  
13 ~~certificate has been issued]~~. The commission may exempt licensees  
14 ~~[permittees]~~ who are concessionaires in public entertainment  
15 venues such as sports stadiums and convention centers from  
16 Subsections (a-1) and (b) ~~[the requirement that food service be the~~  
17 ~~primary business on the premises]~~.

18 (d) A certificate issued under this section expires on the  
19 expiration of the primary retail dealer's on-premise license. A  
20 certificate may be canceled at any time, and the renewal of a  
21 certificate may be denied, if the commission finds that the holder  
22 of the certificate is in violation of Subsection (a-1) or (b) or a  
23 rule adopted under Subsection (b-1) ~~[not operating primarily as a~~  
24 ~~food service establishment. For the purposes of this section, it~~  
25 ~~shall be presumed that a permittee is not primarily operating as a~~  
26 ~~food service establishment if alcohol sales are in excess of 50~~  
27 ~~percent of the gross receipts of the premises]~~. On ~~[The commission~~

1 ~~may impose a fine not to exceed \$5,000 on the holder of a food and~~  
2 ~~beverage certificate not operating as a food service establishment~~  
3 ~~and may, upon]~~ finding that the licensee ~~[permittee]~~ knowingly  
4 operated under a food and beverage certificate while not complying  
5 with this section or a rule adopted under Subsection (b-1), the  
6 commission may cancel or deny the renewal of the licensee's retail  
7 dealer's on-premise license. The holder of a retail dealer's  
8 on-premise license whose certificate has been canceled or who is  
9 denied renewal of a certificate under this subsection may not apply  
10 for a new certificate until the day after the first anniversary of  
11 the date the certificate was canceled or the renewal of the  
12 certificate was denied.

13 SECTION 5. Sections 28.18(d) and 32.23(d), Alcoholic  
14 Beverage Code, are repealed.

15 SECTION 6. (a) As soon as practicable after the effective  
16 date of this Act, the Texas Alcoholic Beverage Commission shall  
17 adopt the rules necessary to implement this Act.

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

22 SECTION 7. This Act takes effect September 1, 2017.

**House Bill 2101**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
SECTION 1. Section 25.13, Alcoholic Beverage Code, is amended.	SECTION 1. Same as House version.	SECTION 1. Substantially the same as House version.
SECTION 2. Section 28.18, Alcoholic Beverage Code, is amended.	SECTION 2. Same as House version.	SECTION 2. Same as House version.
SECTION 3. Section 32.23, Alcoholic Beverage Code, is amended.	SECTION 3. Same as House version.	SECTION 3. Same as House version.
SECTION 4. Section 69.16, Alcoholic Beverage Code, is amended.	SECTION 4. Same as House version.	SECTION 4. Same as House version.
SECTION 5. Sections 28.18(d) and 32.23(d), Alcoholic Beverage Code, are repealed.	SECTION 5. Same as House version except also repeals <i>Section 411.204(e), Government Code</i> .	SECTION 5. Same as House version.
SECTION 6. Transition and saving provisions.	SECTION 6. Same as House version.	SECTION 6. Same as House version.
SECTION 7. This Act takes effect September 1, 2017.	SECTION 7. Same as House version.	SECTION 7. Same as House version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 27, 2017**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2101** by Frullo (Relating to the issuance of a food and beverage certificate to holders of certain alcoholic beverage permits and licenses. ), **Conference Committee Report**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Alcoholic Beverage Code to allow the Texas Alcoholic Beverage Commission (TABC) to issue a food and beverage certificate to certain permit holders if the commission finds that total receipts from the sale of alcoholic beverages for the premises are 60 percent or less of the total receipts for the location.

The bill would also eliminate the commission's ability to impose a fine on the holder of a wine and beer retailer's permit or a retail dealer's on-premise license for not operating as a food service establishment.

The bill would also allow certain license and permit holders whose food and beverage certificates have been canceled or who are denied renewal of certificates to apply for new certificates no earlier than the day after the first anniversary of the date the certificates were canceled or the renewal of the certificates were denied.

The bill would also eliminate the requirement for TABC to renew a mixed beverage permit or a private club permit, upon certification from the Comptroller that the permit holder is in compliance with the allowed amount of alcohol sales.

The Comptroller of Public Accounts reports that although the bill's provisions could increase fee revenue associated with more businesses qualifying for a food and beverage certificate, and could reduce collections from fines, the amounts in the aggregate cannot be determined.

It is assumed the administrative costs to implement the provisions of the bill could be absorbed within existing resources.

The bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission  
**LBB Staff:** UP, CL, AI, FR

**Certification of Compliance with**  
**Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on HB 2101 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

John Tello  
(name)

5/27/17  
(date)

17R337(3)