

**SUBJECT:** Sales reports by wholesalers and distributors of alcohol and tobacco

**COMMITTEE:** Ways and Means — favorable, without amendment

**VOTE:** 5 ayes — Keffer, Ritter, Flores, Paxton, Pitts

0 nays

4 absent — Otto, Bonnen, Y. Davis, Peña

**WITNESSES:** For — Rick Johnson, Texas Grocery and Convenience Association; Kevin Koch, McLane Company, Inc.; James LeBas, Wholesale Beer Distributors of Texas; Greg Mitchell, Toot n’ Totum Food Stores; (*Registered, but did not testify*: Doug DuBois, Texas Petroleum Marketers and Convenience Store Association; Shanna Igo, Texas Municipal League; Mike McKinney, Wholesale Beer Distributors of Texas; Karen Reagan, Texas Retailers Association)

Against — None

On — James E. Archer, Comptroller of Public Accounts; Richard Craig, Texas Comptroller’s Office; Otis Fields, Comptroller of Public Accounts

**BACKGROUND:** Tax Code, ch. 151 governs the imposition, collection, and reporting of state sales-and use-tax.

**DIGEST:** HB 11 would amend Tax Code, ch. 151 to allow the comptroller to require wholesalers and distributors of beer, wine, malt liquor, cigarettes, cigars, and tobacco products to file a monthly report of sales to retailers in this state. The information in the monthly report would have to include:

- name of the retailer and address of retail location for every delivery of beer, wine, malt liquor, cigarettes, cigars, and tobacco products;
- the retailer’s taxpayer number assigned by the comptroller;
- the retail outlet’s permit number; and
- the monthly net sales and quantity of products sold by the wholesaler or distributor to the retailer.

This information would be filed electronically with the comptroller unless another procedure was deemed more efficient or an individual wholesaler or distributor was unable to comply. The information would remain confidential and not subject to disclosure under the Texas Public Information Act.

Failure to submit this information would authorize the comptroller to suspend or cancel the sales tax permit issued to the noncompliant wholesaler or distributor. The comptroller also could impose criminal or civil penalties on the wholesaler or distributor for failure to report, as could the Texas Alcoholic Beverage Commission for entities under its jurisdiction.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

HB 11 would enhance the comptroller's ability to track down retailers of alcohol and tobacco products who commit sales-tax fraud. An increasing number of retailers are collecting sales tax that is not reported or remitted to the state. In fiscal 2005, out of 272 convenience stores audited by the state, 227 owed additional taxes totaling \$28.6 million. By allowing the comptroller to cross-reference sales reports by wholesalers and distributors with those of retailers, the bill would increase state revenue by an estimated total of \$289 million between fiscal 2008 and fiscal 2012, and other local taxing entities also would benefit substantially.

Beer, wine, and tobacco products represent a significant portion of convenience store sales. As such, these products serve as reliable predictors of overall sales at such stores. Consequently, data collected on the wholesale and distribution of these products would provide an important baseline from which the comptroller's office could determine which retailers were withholding sales tax from the state.

HB 11 would not require wholesalers and distributors to report an excessive amount of information. These data on retailers are readily available because the wholesale and distribution of these products occurs in highly regulated industries with compact distribution chains. Also, any burden on wholesalers and distributors would be further reduced because the information would be submitted electronically whenever possible.

The comptroller would not need additional staffing to process the information collected by wholesalers and distributors. Instead, HB 11

would serve to make the work conducted by the office more efficient by giving the comptroller's staff more reliable information with which to target potentially fraudulent retailers during auditing processes.

The bill would increase public confidence that sales tax paid by consumers would be received and used by the state to fund essential services. HB 11 also would benefit the majority of retailers who currently comply with sales tax collection procedures by leveling the playing field for the retail sale of beer, wine, and tobacco products.

**OPPONENTS  
SAY:**

HB 11 would place an extra reporting burden on wholesalers and distributors by forcing them to submit additional paperwork to the Comptroller's Office and exposing them to possible administrative fines. Instead, unscrupulous retailers should be penalized because they, rather than wholesalers and distributors, are causing the problem this bill seeks to address.

**OTHER  
OPPONENTS  
SAY:**

This bill would not be effective in facilitating sales tax collection from all retailers. Certain retailers buy alcohol and tobacco products from non-traditional wholesalers and distributors, who would not necessarily file the report required by the bill.

**NOTES:**

According to the Legislative Budget Board and the Comptroller's Office, HB 11 would generate an estimated increase in general revenue-related funds of \$27 million in fiscal 2008 and \$45.5 million in fiscal 2009. By fiscal 2012, the annual increase is projected to approach \$88 million.

HB 11 also would increase the sales tax revenue collected by other entities. In fiscal 2008-09, according to LBB estimates, city governments would gain \$13.9 million, transit authorities would gain \$4.8 million, and counties would gain \$1.8 million.

The companion bill, SB 1112 by Eltife, has been referred to the Senate Business and Commerce Committee.