

BILL ANALYSIS

Senate Research Center
82R10482 MXM-F

H.B. 11
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Administration
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Alcohol sales in Texas work under a three-tiered system. Manufacturers of liquor must sell their product to distributors, who then sell the product to retail package stores. Package stores sell the product directly to consumers or to bars, restaurants, and clubs. The system of taxing alcohol is layered on top of this three-tiered system.

The sale of alcohol is carefully tracked and reported at the wholesale level and beyond that to the liquor stores. However, once it reaches the liquor stores, these stores are not required to report the final destination of the product—whether it is sold to the consumer or to restaurants, bars, and clubs.

Using state tax collection data compared to industry sales, it appears likely that the state is losing tax revenue. H.B. 11 requires additional reporting by wholesalers of distilled spirits and package stores selling to bars and restaurants. This reporting is similar to what is currently required for sales of beer, wine, or malt liquor. The additional reporting required in H.B. 11 will improve auditing and tax collection by the state comptroller of public accounts.

H.B. 11 amends current law relating to reports filed with the comptroller regarding certain alcoholic beverage sales and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 (Section 151.463, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 111.006, Tax Code, by adding Subsections (h) and (i), as follows:

(h) Requires the comptroller of public accounts (comptroller) to disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

(1) the person requesting the information holds a permit or license under Chapter 19 (Wholesaler's Permit), 20 (General Class B Wholesaler's Permit), 21 (Local Class B Wholesaler's Permit), 37 (Nonresident Seller's Permit), 64 (General Distributor's License), 65 (Local Distributors License), or 66 (Branch Distributor's License), Alcoholic Beverage Code; and

(2) the request relates only to information regarding the sale of a product distributed by the person making the request.

(i) Provides that a disclosure made under Subsection (h) is not considered a disclosure of competitively sensitive, proprietary, or confidential information.

SECTION 2. Amends Chapter 151, Tax Code, by adding Subchapter I-1, and adding a heading to that subchapter to read as follows:

SUBCHAPTER I-1. REPORTS BY PERSONS INVOLVED IN THE MANUFACTURE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES

SECTION 3. Amends Subchapter I-1, Chapter 151, Tax Code, by adding Sections 151.462, 151.463, 151.464, 151.465, 151.466, 151.467, 151.468, 151.469, 151.470, and 151.471, and transferring Section 151.433, Tax Code, to Subchapter I-1, Chapter 151, Tax Code, redesignating it as Section 151.461, Tax Code, and amending it as follows:

Sec. 151.461. New heading: DEFINITIONS. Redesignates existing Section 151.433 as Section 151.461. Deletes existing Subsection (a) designation. Defines "brewer" and "manufacturer" and redefines "distributor," "package store local distributor," "retailer," and "wholesaler" in this subchapter.

Sec. 151.462. REPORTS BY BREWERS, MANUFACTURERS, WHOLESALERS, AND DISTRIBUTORS. (a) Redesignates existing Section 151.433(b) as Section 151.462. Requires the comptroller to require each brewer, manufacturer, wholesaler distributor, or package store local distributor to file with the comptroller a report each month of alcoholic beverage sales to retailers in this state. Deletes existing text authorizing the comptroller, when considered necessary by the comptroller for the administration of a tax under this chapter, to require each wholesaler, or distributor of beer, wine, or malt liquor to file with the comptroller a report each month of sales to retailers in this state.

(b) Redesignates existing Section 151.433(c) as Section 151.462(b). Requires each brewer, manufacturer, wholesaler, distributor, or package store local distributor to file a separate report for each permit or license held on or before the 25th day of each month, rather than requiring the wholesaler or distributor to file the report on or before the 25th day of each month. Requires that the report contain the following information for the preceding calendar month's sales in relation to each retailer:

(1) the brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's name, address, taxpayer number and outlet number assigned by the comptroller, and alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission (TABC);

(2) the retailer's name and address, including street name and number, city, and zip code taxpayer number assigned by the comptroller; and alphanumeric permit or license number issued by TABC for each separate retail location or outlet to which the brewer, manufacturer, wholesaler, distributor, or package store local distributor sold the alcoholic beverages that are listed on the report; and

(3) the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each outlet or location covered by a separate retail permit or license issued by TABC, including separate line items for:

(A) the number of units of alcoholic beverages;

(B) the individual container size and pack of each unit;

(C) the brand name;

(D) the type of beverage, such as distilled spirits, wine, or malt beverage;

(E) the universal product code of the alcoholic beverage; and

(F) the net selling price of the alcoholic beverage.

Deletes existing text requiring the report to contain for the preceding calendar month's sales in relation to each retailer the retailer' name and address, including street name and number, city, and zip code taxpayer number assigned by the comptroller; and alphanumeric permit or license number issued by TABC for each separate retail location or outlet to which the brewer, manufacturer, wholesaler, distributor, or package store local distributor sold the alcoholic beverages that are listed on the report the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code; the taxpayer number assigned by the comptroller to the retailer, if the wholesaler or distributor is in possession of the number; the permit or license number assigned to the retailer by TABC; and the monthly net sales made to the retailer by outlet by the wholesaler or distributor, including the quantity and units of beer, wine, and malt liquor sold to the retailer.

(c) Redesignates existing Section 151.433(d) as Section 151.462(c). Requires the brewer, manufacturer, wholesaler, distributor, or package store local distributor, wholesaler, distributor, or package store local distributor, to file the report with the comptroller electronically. Authorizes the comptroller to establish procedures to temporarily postpone the electronic reporting requirement for a brewer, manufacturer, wholesaler, distributor, or package store local distributor who demonstrates to the comptroller an inability to comply because undue hardship would result if it were required to file the return electronically. Authorizes the comptroller, if the comptroller determines that another technological method of filing the report is more efficient than electronic filing, to establish procedures requires its use by brewers, manufacturers, wholesalers, distributors, and package store local distributors. Deletes existing text requiring, the wholesaler or distributor, except as provided by this subsection, to file the report with the comptroller electronically. Deletes existing text authorizing the comptroller to establish procedures for allowing an alternative method of filing for a wholesaler, or distributor, who demonstrates to the comptroller an inability to comply with the electronic reporting requirements.

Sec. 151.463. RULES. Authorizes the comptroller to adopt rules to implement this subchapter.

Sec. 151.464. CONFIDENTIALITY. Redesignates existing Section 151.433(e) as Section 151.464. Provides that except as provided by Section 111.006, information contained in a report required to be filed by this subchapter, rather than section, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. Provides that this subchapter applies only to a brewer whose annual production of malt liquor in this state, together with the annual production of beer at the same premises by the holder of a manufacturer's license under Section 62.12 (Sales By Certain Manufacturers), Alcoholic Beverage Code, does not exceed 75,000 barrels.

Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. Provides that this subchapter applies only to a manufacturer whose annual production of beer in this state does not exceed 75,000 barrels.

Sec. 151.467. SUSPENSION OR CANCELLATION OF PERMIT. Redesignates existing Section 151.433(f) as Section 151.467. Provides that if a person fails to file a report required by this subchapter, rather than this section, or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Section 151.203.

Sec. 151.468. CIVIL PENALTY; CRIMINAL PENALTY. (a) Authorizes the comptroller, if a person fails to file a report required by this subchapter or fails to file a complete report, to impose a civil or criminal penalty, or both, under Section 151.7031 or 151.709.

(b) Requires a brewer, manufacturer, wholesaler, distributor, or package store local distributor, in addition to the penalties imposed under Subsection (a), to pay the state a civil penalty of not less than \$25 or more than \$2,000 for each day a violation continues if the brewer, manufacturer, wholesaler, distributor, or package store local distributor violates this subchapter; or violates a rule adopted to administer or enforce this subchapter.

Sec. 151.469. ACTION BY TEXAS ALCOHOLIC BEVERAGE COMMISSION. Redesignates existing Section 151.433(g) as Section 151.469. Makes a conforming change.

Sec. 151.470. AUDIT; INSPECTION. Authorizes the comptroller to audit, inspect, or otherwise verify a brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's compliance with this subchapter.

Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S FEES. (a) Authorizes the comptroller to bring an action to enforce this subchapter and obtain any civil remedy authorized by this subchapter or any other law for the violation of this subchapter. Requires the attorney general to prosecute the action on the comptroller's behalf.

(b) Provides that the venue for and jurisdiction of an action under this section is exclusively conferred on the district courts in Travis County.

(c) Entitles the comptroller and attorney general, if the comptroller prevails in an action under this section, to recover court costs and reasonable attorney's fees incurred in bringing the action.

SECTION 4. Makes application of Subchapter I-1, Chapter 151, Tax Code, as added by this Act, apply to a report due, prospective.

SECTION 5. Effective date: September 1, 2011.