

BILL ANALYSIS

H.B. 11
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Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently the comptroller of public accounts may require a wholesaler or distributor of beer, wine, or malt liquor to file reports with the comptroller each month of the sales made to retailers in the state, which can be used to ensure the accurate remittance of taxes and for compliance audits. Such reports may not be required for the wholesale of distilled spirits to certain retailers, and sales of distilled spirits, beer, and wine are not tracked beyond the local distributor level to holders of mixed beverage permits, such as bars and restaurants. This gap in the chain of custody presents two issues. First, it makes it difficult to fully trace a product that may become tainted or contaminated. Second, it leaves a reporting gap between two key levels of alcohol beverage sales for tax and compliance purposes, to the extent that significant tax revenue may be lost by the state.

H.B. 11 follows the model of existing tax compliance legislation and extends the comptroller's reporting requirement to sales data by local distributors of distilled spirits, wine, and beer to mixed beverage permit holders. It has been estimated that additional revenue may be generated by the bill in an amount more than \$25 million for the 2012-2013 biennium.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 of this bill.

ANALYSIS

H.B. 11 amends the Tax Code to expand the application of provisions requiring reports to be filed with the comptroller of public accounts by persons involved in the manufacture and distribution of alcoholic beverages by transferring Section 151.433, Tax Code, relating to reports by wholesalers and distributors of beer, wine, and malt liquor, to a new subchapter, redesignating that statutory provision as Section 151.461, Tax Code, and adding to the new subchapter Sections 151.462-151.471, Tax Code, relating to reports by brewers, manufacturers, wholesalers, package store local distributors, and distributors.

H.B. 11 adds to the entities subject to the comptroller's reporting requirements a brewer, manufacturer, and package store local distributor, in addition to a wholesaler or distributor, to require those entities to file with the comptroller a report each month of alcoholic beverage sales to retailers in Texas, rather than authorizing the comptroller to require reports to be filed as considered necessary by the comptroller. The bill specifies that the reporting requirement applies to each permit or license held by the brewer, manufacturer, wholesaler, distributor, or package store local distributor and requires a separate report for each permit or license to be filed on or before the 25th day of each month.

H.B. 11 adds to the information required to be included in each monthly report to conform to the additional types of reporting entities. The bill requires the report to contain a 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. The bill requires the report to include greater specificity with regard to a retailer's address and requires the permit or license number included in the report to be the alphanumeric number issued by the Texas Alcoholic Beverage Commission (TABC). The bill requires the report to include the monthly net sales made by a brewer, manufacturer, wholesaler, distributor, or package store local distributor to a retailer for each outlet or location covered by a separate retail permit or license issued by the TABC and to include separate line items for the number of units of alcoholic beverages, the individual container size and pack of each unit, the brand name, the type of beverage, the universal product code of the alcoholic beverage, and the net selling price of the alcoholic beverage. The bill removes the condition that the report required of a wholesaler or distributor include the taxpayer number assigned to a retailer only if the number is in the possession of the wholesaler or distributor.

H.B. 11 retains a requirement that the report be filed with the comptroller electronically, but authorizes the comptroller to establish procedures to temporarily postpone the electronic reporting requirement, rather than establish procedures for allowing an alternative filing method, for a brewer, manufacturer, wholesaler, distributor, or package store local distributor who demonstrates to the comptroller an inability to comply. The bill makes such a postponement contingent on an undue hardship resulting if the brewer, manufacturer, wholesaler, distributor or package store local distributor were required to file the return electronically. The bill authorizes the comptroller to adopt rules to implement the bill's provisions.

H.B. 11 limits the applicability of its provisions to a manufacturer whose annual production of beer in Texas does not exceed 75,000 barrels and to a brewer whose annual production of malt liquor in Texas, together with the annual production of beer at the same premises by the holder of a manufacturer's license under certain provisions of the Alcoholic Beverage Code, does not exceed 75,000 barrels.

H.B. 11 authorizes the comptroller to impose certain civil or criminal penalties for failure to file a certain report or failure to file a certain complete report and requires a brewer, manufacturer, wholesaler, distributor, or package store local distributor in addition to such penalties, 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 the bill's provisions or a rule adopted to administer or enforce the bill's provisions.

H.B. 11 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 its provisions. The bill authorizes the comptroller to bring an action to enforce the bill's provisions and to obtain any civil remedy authorized by its provisions or any other law for the violation of the bill's provisions. The bill requires the attorney general to prosecute the action on the comptroller's behalf and exclusively confers the venue for and jurisdiction of such an action on the district courts in Travis County. The bill entitles the comptroller and attorney general to recover court costs and reasonable attorney's fees incurred in bringing the action if the comptroller prevails.

H.B. 11 requires the comptroller to disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report of alcoholic beverage sales to state retailers if the person requesting the information holds a certain permit or license under the Alcoholic Beverage Code and the request relates only to information regarding the sale of a product distributed by the person making the request. The bill establishes that such a disclosure is not considered a disclosure of competitively sensitive, proprietary, or confidential information.

H.B. 11 defines "brewer," "manufacturer," and "package store local distributor." The bill redefines "distributor," "retailer," and "wholesaler." The bill makes conforming changes.

EFFECTIVE DATE

September 1, 2011.