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H.B. No. 11

A BILL TO BE ENTITLED

1 AN ACT
2 relating to reports filed with the comptroller regarding certain
3 alcoholic beverage sales; providing a penalty.

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

5 SECTION 1. Section 111.006, Tax Code, is amended by adding
6 Subsections (h) and (i) to read as follows:

7 (h) The comptroller shall disclose information to a person
8 regarding net sales by quantity, brand, and size that is submitted
9 in a report required under Section 151.462 if:

10 (1) the person requesting the information holds a
11 permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66,
12 Alcoholic Beverage Code; and

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

15 (i) A disclosure made under Subsection (h) is not considered
16 a disclosure of competitively sensitive, proprietary, or
17 confidential information.

18 SECTION 2. Chapter 151, Tax Code, is amended by adding
19 Subchapter I-1, and a heading is added to that subchapter to read as
20 follows:

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

23 SECTION 3. Subchapter I-1, Chapter 151, Tax Code, as added
24 by this Act, is amended by adding Sections 151.462, 151.463,

1 151.464, 151.465, 151.466, 151.467, 151.468, 151.469, 151.470, and
2 151.471, and Section 151.433, Tax Code, is transferred to
3 Subchapter I-1, Chapter 151, Tax Code, redesignated as Section
4 151.461, Tax Code, and amended to read as follows:

5 Sec. 151.461 [~~151.433~~]. DEFINITIONS. [~~REPORTS BY~~
6 ~~WHOLESALEERS AND DISTRIBUTORS OF BEER, WINE, AND MALT LIQUOR. (a)~~]

7 In this subchapter [~~section~~]:

8 (1) "Brewer" means a person required to hold a brewer's
9 permit under Chapter 12, Alcoholic Beverage Code.

10 (2) "Distributor" means a person required to hold:

11 (A) a general distributor's license under
12 Chapter 64, Alcoholic Beverage Code;

13 (B) a local distributor's license under Chapter
14 65, Alcoholic Beverage Code; or

15 (C) a branch distributor's license under Chapter
16 66, Alcoholic Beverage Code.

17 (3) "Manufacturer" means a person required to hold a
18 manufacturer's license under Chapter 62, Alcoholic Beverage Code.

19 (4) "Package store local distributor" means a person
20 required to hold:

21 (A) a package store permit under Chapter 22,
22 Alcoholic Beverage Code; and

23 (B) a local distributor's permit under Chapter
24 23, [a general, local, or branch distributor's license under the]
25 Alcoholic Beverage Code.

26 (5) [~~(2)~~] "Retailer" means a person required to hold
27 [the following]:

1 (A) a wine and beer retailer's permit under
2 Chapter 25, Alcoholic Beverage Code;

3 (B) a wine and beer retailer's off-premise permit
4 under Chapter 26, Alcoholic Beverage Code;

5 (C) a temporary wine and beer retailer's permit
6 or special three-day wine and beer permit under Chapter 27,
7 Alcoholic Beverage Code;

8 (D) a mixed beverage permit under Chapter 28,
9 Alcoholic Beverage Code;

10 (E) a daily temporary mixed beverage permit under
11 Chapter 30, Alcoholic Beverage Code;

12 (F) a private club registration permit under
13 Chapter 32, Alcoholic Beverage Code;

14 (G) a certificate issued to a fraternal or
15 veterans organization under Section 32.11, Alcoholic Beverage
16 Code;

17 (H) a daily temporary private club permit under
18 Subchapter B, Chapter 33, Alcoholic Beverage Code;

19 (I) a temporary charitable auction permit under
20 Chapter 53, Alcoholic Beverage Code;

21 (J) a retail dealer's on-premise license under
22 Chapter 69, Alcoholic Beverage Code;

23 (K) a temporary license under Chapter 72,
24 Alcoholic Beverage Code; or

25 (L) [~~(D)~~] a retail dealer's off-premise license
26 under Chapter 71, Alcoholic Beverage Code, except for a dealer who
27 also holds a package store permit under Chapter 22, Alcoholic

1 Beverage Code.

2 (6) [~~(3)~~] "Wholesaler" means a person required to hold
3 [~~the following under the Alcoholic Beverage Code~~]:

4 (A) a winery permit under Chapter 16, Alcoholic
5 Beverage Code;

6 (B) a wholesaler's permit under Chapter 19,
7 Alcoholic Beverage Code;

8 (C) [~~(B)~~] a general Class B wholesaler's permit
9 under Chapter 20, Alcoholic Beverage Code; or

10 (D) [~~(C)~~] a local Class B wholesaler's permit
11 under Chapter 21, Alcoholic Beverage Code.

12 Sec. 151.462. REPORTS BY BREWERS, MANUFACTURERS,
13 WHOLESALERS, AND DISTRIBUTORS. (a) [~~(b)~~] The comptroller shall
14 [may, when considered necessary by the comptroller for the
15 administration of a tax under this chapter,] require each brewer,
16 manufacturer, wholesaler, [~~or~~] distributor, or package store local
17 distributor [~~of beer, wine, or malt liquor~~] to file with the
18 comptroller a report each month of alcoholic beverage sales to
19 retailers in this state.

20 (b) Each brewer, manufacturer, [~~(c) The~~] wholesaler, [~~or~~]
21 distributor, or package store local distributor shall file a
22 separate [~~the~~] report for each permit or license held on or before
23 the 25th day of each month. The report must contain the following
24 information for the preceding calendar month's sales in relation to
25 each retailer:

26 (1) the brewer's, manufacturer's, wholesaler's,
27 distributor's, or package store local distributor's name, address,

1 taxpayer number and outlet number assigned by the comptroller, and
2 alphanumeric permit or license number issued by the Texas Alcoholic
3 Beverage Commission;

4 (2) the retailer's:

5 (A) name and address, including street name and
6 number, city, and zip code;

7 (B) taxpayer number assigned by the comptroller;
8 and

9 (C) alphanumeric permit or license number issued
10 by the Texas Alcoholic Beverage Commission for each separate retail
11 location or outlet to which the brewer, manufacturer, wholesaler,
12 distributor, or package store local distributor sold the alcoholic
13 beverages that are listed on the report ~~[the name of the retailer~~
14 ~~and the address of the retailer's outlet location to which the~~
15 ~~wholesaler or distributor delivered beer, wine, or malt liquor,~~
16 ~~including the city and zip code;~~

17 ~~[(2) the taxpayer number assigned by the comptroller~~
18 ~~to the retailer, if the wholesaler or distributor is in possession~~
19 ~~of the number;~~

20 ~~[(3) the permit or license number assigned to the~~
21 ~~retailer by the Texas Alcoholic Beverage Commission]; and~~

22 (3) [(4)] the monthly net sales made by the brewer,
23 manufacturer, wholesaler, distributor, or package store local
24 distributor to the retailer for each [by] outlet or location
25 covered by a separate retail permit or license issued by the Texas
26 Alcoholic Beverage Commission, including separate line items for:

27 (A) the number of units of alcoholic beverages;

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

3 (C) the brand name;

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

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

8 (F) the net selling price of the alcoholic
9 beverage [~~by the wholesaler or distributor, including the quantity~~
10 ~~and units of beer, wine, and malt liquor sold to the retailer].~~

11 (c) [(d)] Except as provided by this subsection, the
12 brewer, manufacturer, wholesaler, [or] distributor, or package
13 store local distributor shall file the report with the comptroller
14 electronically. The comptroller may establish procedures to
15 temporarily postpone the electronic reporting requirement [~~for~~
16 ~~allowing an alternative method of filing]~~ for a brewer,
17 manufacturer, wholesaler, [or] distributor, or package store local
18 distributor who demonstrates to the comptroller an inability to
19 comply because undue hardship would result if it were required to
20 file the return electronically [~~with the electronic reporting~~
21 ~~requirement]. If the comptroller determines that another~~
22 technological method of filing the report is more efficient than
23 electronic filing, the comptroller may establish procedures
24 requiring its use by brewers, manufacturers, wholesalers, [and]
25 distributors, and package store local distributors.

26 Sec. 151.463. RULES. The comptroller may adopt rules to
27 implement this subchapter.

1 Sec. 151.464. CONFIDENTIALITY. [~~(e)~~] Except as provided by
2 Section 111.006, information contained in a report required to be
3 filed by this subchapter [~~section~~] is confidential and not subject
4 to disclosure under Chapter 552, Government Code.

5 Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This
6 subchapter applies only to a brewer whose annual production of malt
7 liquor in this state, together with the annual production of beer at
8 the same premises by the holder of a manufacturer's license under
9 Section 62.12, Alcoholic Beverage Code, does not exceed 75,000
10 barrels.

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

14 Sec. 151.467. SUSPENSION OR CANCELLATION OF PERMIT. [~~(f)~~]
15 If a person fails to file a report required by this subchapter
16 [~~section~~] or fails to file a complete report, the comptroller may
17 suspend or cancel one or more permits issued to the person under
18 Section 151.203.

19 Sec. 151.468. CIVIL PENALTY; CRIMINAL PENALTY. (a) If a
20 person fails to file a report required by this subchapter or fails
21 to file a complete report, the comptroller [~~and~~] may impose a civil
22 or criminal penalty, or both, under Section 151.7031 or 151.709.

23 (b) In addition to the penalties imposed under Subsection
24 (a), a brewer, manufacturer, wholesaler, distributor, or package
25 store local distributor shall pay the state a civil penalty of not
26 less than \$25 or more than \$2,000 for each day a violation continues
27 if the brewer, manufacturer, wholesaler, distributor, or package

1 store local distributor:

2 (1) violates this subchapter; or

3 (2) violates a rule adopted to administer or enforce
4 this subchapter.

5 Sec. 151.469. ACTION BY TEXAS ALCOHOLIC BEVERAGE
6 COMMISSION. [~~g~~] If a person fails to file a report required by
7 this subchapter [~~section~~] or fails to file a complete report, the
8 comptroller may notify the Texas Alcoholic Beverage Commission of
9 the failure and the commission may take administrative action
10 against the person for the failure under the Alcoholic Beverage
11 Code.

12 Sec. 151.470. AUDIT; INSPECTION. The comptroller may
13 audit, inspect, or otherwise verify a brewer's, manufacturer's,
14 wholesaler's, distributor's, or package store local distributor's
15 compliance with this subchapter.

16 Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S
17 FEES. (a) The comptroller may bring an action to enforce this
18 subchapter and obtain any civil remedy authorized by this
19 subchapter or any other law for the violation of this subchapter.
20 The attorney general shall prosecute the action on the
21 comptroller's behalf.

22 (b) Venue for and jurisdiction of an action under this
23 section is exclusively conferred on the district courts in Travis
24 County.

25 (c) If the comptroller prevails in an action under this
26 section, the comptroller and attorney general are entitled to
27 recover court costs and reasonable attorney's fees incurred in

1 bringing the action.

2 SECTION 4. Subchapter I-1, Chapter 151, Tax Code, as added
3 by this Act, applies only to a report due on or after the effective
4 date of this Act. A report due before the effective date of this Act
5 is governed by the law as it existed on the date the report was due,
6 and the former law is continued in effect for that purpose.

7 SECTION 5. This Act takes effect September 1, 2011.