

1-1 By: Cook, et al. (Senate Sponsor - Eltife) H.B. No. 11
1-2 (In the Senate - Received from the House April 11, 2011;
1-3 April 20, 2011, read first time and referred to Committee on
1-4 Administration; May 5, 2011, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 5, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to reports filed with the comptroller regarding certain
1-9 alcoholic beverage sales; providing a penalty.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 111.006, Tax Code, is amended by adding
1-12 Subsections (h) and (i) to read as follows:

1-13 (h) The comptroller shall disclose information to a person
1-14 regarding net sales by quantity, brand, and size that is submitted
1-15 in a report required under Section 151.462 if:

1-16 (1) the person requesting the information holds a
1-17 permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66,
1-18 Alcoholic Beverage Code; and

1-19 (2) the request relates only to information regarding
1-20 the sale of a product distributed by the person making the request.

1-21 (i) A disclosure made under Subsection (h) is not considered
1-22 a disclosure of competitively sensitive, proprietary, or
1-23 confidential information.

1-24 SECTION 2. Chapter 151, Tax Code, is amended by adding
1-25 Subchapter I-1, and a heading is added to that subchapter to read as
1-26 follows:

1-27 SUBCHAPTER I-1. REPORTS BY PERSONS INVOLVED IN THE MANUFACTURE AND
1-28 DISTRIBUTION OF ALCOHOLIC BEVERAGES

1-29 SECTION 3. Subchapter I-1, Chapter 151, Tax Code, as added
1-30 by this Act, is amended by adding Sections 151.462, 151.463,
1-31 151.464, 151.465, 151.466, 151.467, 151.468, 151.469, 151.470, and
1-32 151.471, and Section 151.433, Tax Code, is transferred to
1-33 Subchapter I-1, Chapter 151, Tax Code, redesignated as Section
1-34 151.461, Tax Code, and amended to read as follows:

1-35 Sec. 151.461 [151.433]. DEFINITIONS. [REPORTS BY
1-36 WHOLESALERS AND DISTRIBUTORS OF BEER, WINE, AND MALT LIQUOR.
1-37 (a)] In this subchapter [section]:

1-38 (1) "Brewer" means a person required to hold a brewer's
1-39 permit under Chapter 12, Alcoholic Beverage Code.

1-40 (2) "Distributor" means a person required to hold:
1-41 (A) a general distributor's license under
1-42 Chapter 64, Alcoholic Beverage Code;

1-43 (B) a local distributor's license under Chapter
1-44 65, Alcoholic Beverage Code; or

1-45 (C) a branch distributor's license under Chapter
1-46 66, Alcoholic Beverage Code.

1-47 (3) "Manufacturer" means a person required to hold a
1-48 manufacturer's license under Chapter 62, Alcoholic Beverage Code.

1-49 (4) "Package store local distributor" means a person
1-50 required to hold:

1-51 (A) a package store permit under Chapter 22,
1-52 Alcoholic Beverage Code; and

1-53 (B) a local distributor's permit under Chapter
1-54 23, [a general, local, or branch distributor's license under the]
1-55 Alcoholic Beverage Code.

1-56 (5) [(-2)] "Retailer" means a person required to hold
1-57 [the following]:

1-58 (A) a wine and beer retailer's permit under
1-59 Chapter 25, Alcoholic Beverage Code;

1-60 (B) a wine and beer retailer's off-premise permit
1-61 under Chapter 26, Alcoholic Beverage Code;

1-62 (C) a temporary wine and beer retailer's permit
1-63 or special three-day wine and beer permit under Chapter 27,
1-64 Alcoholic Beverage Code;

2-1 (D) a mixed beverage permit under Chapter 28,
2-2 Alcoholic Beverage Code;
2-3 (E) a daily temporary mixed beverage permit under
2-4 Chapter 30, Alcoholic Beverage Code;
2-5 (F) a private club registration permit under
2-6 Chapter 32, Alcoholic Beverage Code;
2-7 (G) a certificate issued to a fraternal or
2-8 veterans organization under Section 32.11, Alcoholic Beverage
2-9 Code;
2-10 (H) a daily temporary private club permit under
2-11 Subchapter B, Chapter 33, Alcoholic Beverage Code;
2-12 (I) a temporary charitable auction permit under
2-13 Chapter 53, Alcoholic Beverage Code;
2-14 (J) a retail dealer's on-premise license under
2-15 Chapter 69, Alcoholic Beverage Code;
2-16 (K) a temporary license under Chapter 72,
2-17 Alcoholic Beverage Code; or
2-18 (L) ~~[(D)]~~ a retail dealer's off-premise license
2-19 under Chapter 71, Alcoholic Beverage Code, except for a dealer who
2-20 also holds a package store permit under Chapter 22, Alcoholic
2-21 Beverage Code.
2-22 (6) ~~[(3)]~~ "Wholesaler" means a person required to hold
2-23 [the following under the Alcoholic Beverage Code]:
2-24 (A) a winery permit under Chapter 16, Alcoholic
2-25 Beverage Code;
2-26 (B) a wholesaler's permit under Chapter 19,
2-27 Alcoholic Beverage Code;
2-28 (C) ~~[(B)]~~ a general Class B wholesaler's permit
2-29 under Chapter 20, Alcoholic Beverage Code; or
2-30 (D) ~~[(C)]~~ a local Class B wholesaler's permit
2-31 under Chapter 21, Alcoholic Beverage Code.
2-32 Sec. 151.462. REPORTS BY BREWERS, MANUFACTURERS,
2-33 WHOLESALERS, AND DISTRIBUTORS. (a) ~~[(b)]~~ The comptroller shall
2-34 ~~[may, when considered necessary by the comptroller for the~~
2-35 ~~administration of a tax under this chapter,~~ require each brewer,
2-36 manufacturer, wholesaler, ~~[or]~~ distributor, or package store local
2-37 distributor ~~[of beer, wine, or malt liquor]~~ to file with the
2-38 comptroller a report each month of alcoholic beverage sales to
2-39 retailers in this state.
2-40 (b) Each brewer, manufacturer, ~~[(c) The]~~ wholesaler, ~~[or]~~
2-41 distributor, or package store local distributor shall file a
2-42 separate ~~[the]~~ report for each permit or license held on or before
2-43 the 25th day of each month. The report must contain the following
2-44 information for the preceding calendar month's sales in relation to
2-45 each retailer:
2-46 (1) the brewer's, manufacturer's, wholesaler's,
2-47 distributor's, or package store local distributor's name, address,
2-48 taxpayer number and outlet number assigned by the comptroller, and
2-49 alphanumeric permit or license number issued by the Texas Alcoholic
2-50 Beverage Commission;
2-51 (2) the retailer's:
2-52 (A) name and address, including street name and
2-53 number, city, and zip code;
2-54 (B) taxpayer number assigned by the comptroller;
2-55 and
2-56 (C) alphanumeric permit or license number issued
2-57 by the Texas Alcoholic Beverage Commission for each separate retail
2-58 location or outlet to which the brewer, manufacturer, wholesaler,
2-59 distributor, or package store local distributor sold the alcoholic
2-60 beverages that are listed on the report ~~[the name of the retailer~~
2-61 ~~and the address of the retailer's outlet location to which the~~
2-62 ~~wholesaler or distributor delivered beer, wine, or malt liquor,~~
2-63 ~~including the city and zip code,~~
2-64 ~~[(2) the taxpayer number assigned by the comptroller~~
2-65 to the retailer, if the wholesaler or distributor is in possession
2-66 of the number,
2-67 ~~[(3) the permit or license number assigned to the~~
2-68 retailer by the Texas Alcoholic Beverage Commission]; and
2-69 (3) ~~[(4)]~~ the monthly net sales made by the brewer,

3-1 manufacturer, wholesaler, distributor, or package store local
 3-2 distributor to the retailer for each [by] outlet or location
 3-3 covered by a separate retail permit or license issued by the Texas
 3-4 Alcoholic Beverage Commission, including separate line items for:
 3-5 (A) the number of units of alcoholic beverages;
 3-6 (B) the individual container size and pack of
 3-7 each unit;
 3-8 (C) the brand name;
 3-9 (D) the type of beverage, such as distilled
 3-10 spirits, wine, or malt beverage;
 3-11 (E) the universal product code of the alcoholic
 3-12 beverage; and
 3-13 (F) the net selling price of the alcoholic
 3-14 beverage [by the wholesaler or distributor, including the quantity
 3-15 and units of beer, wine, and malt liquor sold to the retailer].
 3-16 (c) [~~d~~] Except as provided by this subsection, the
 3-17 brewer, manufacturer, wholesaler, [~~or~~] distributor, or package
 3-18 store local distributor shall file the report with the comptroller
 3-19 electronically. The comptroller may establish procedures to
 3-20 temporarily postpone the electronic reporting requirement [~~for~~
 3-21 allowing an alternative method of filing] for a brewer,
 3-22 manufacturer, wholesaler, [~~or~~] distributor, or package store local
 3-23 distributor who demonstrates to the comptroller an inability to
 3-24 comply because undue hardship would result if it were required to
 3-25 file the return electronically [with the electronic reporting
 3-26 requirement]. If the comptroller determines that another
 3-27 technological method of filing the report is more efficient than
 3-28 electronic filing, the comptroller may establish procedures
 3-29 requiring its use by brewers, manufacturers, wholesalers, [~~and~~
 3-30 distributors, and package store local distributors.
 3-31 Sec. 151.463. RULES. The comptroller may adopt rules to
 3-32 implement this subchapter.
 3-33 Sec. 151.464. CONFIDENTIALITY. [~~e~~] Except as provided by
 3-34 Section 111.006, information contained in a report required to be
 3-35 filed by this subchapter [~~section~~] is confidential and not subject
 3-36 to disclosure under Chapter 552, Government Code.
 3-37 Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This
 3-38 subchapter applies only to a brewer whose annual production of malt
 3-39 liquor in this state, together with the annual production of beer at
 3-40 the same premises by the holder of a manufacturer's license under
 3-41 Section 62.12, Alcoholic Beverage Code, does not exceed 75,000
 3-42 barrels.
 3-43 Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. This
 3-44 subchapter applies only to a manufacturer whose annual production
 3-45 of beer in this state does not exceed 75,000 barrels.
 3-46 Sec. 151.467. SUSPENSION OR CANCELLATION OF PERMIT. [~~f~~]
 3-47 If a person fails to file a report required by this subchapter
 3-48 [~~section~~] or fails to file a complete report, the comptroller may
 3-49 suspend or cancel one or more permits issued to the person under
 3-50 Section 151.203.
 3-51 Sec. 151.468. CIVIL PENALTY; CRIMINAL PENALTY. (a) If a
 3-52 person fails to file a report required by this subchapter or fails
 3-53 to file a complete report, the comptroller [~~and~~] may impose a civil
 3-54 or criminal penalty, or both, under Section 151.7031 or 151.709.
 3-55 (b) In addition to the penalties imposed under Subsection
 3-56 (a), a brewer, manufacturer, wholesaler, distributor, or package
 3-57 store local distributor shall pay the state a civil penalty of not
 3-58 less than \$25 or more than \$2,000 for each day a violation continues
 3-59 if the brewer, manufacturer, wholesaler, distributor, or package
 3-60 store local distributor:
 3-61 (1) violates this subchapter; or
 3-62 (2) violates a rule adopted to administer or enforce
 3-63 this subchapter.
 3-64 Sec. 151.469. ACTION BY TEXAS ALCOHOLIC BEVERAGE
 3-65 COMMISSION. [~~g~~] If a person fails to file a report required by
 3-66 this subchapter [~~section~~] or fails to file a complete report, the
 3-67 comptroller may notify the Texas Alcoholic Beverage Commission of
 3-68 the failure and the commission may take administrative action
 3-69 against the person for the failure under the Alcoholic Beverage

4-1 Code.

4-2 Sec. 151.470. AUDIT; INSPECTION. The comptroller may
4-3 audit, inspect, or otherwise verify a brewer's, manufacturer's,
4-4 wholesaler's, distributor's, or package store local distributor's
4-5 compliance with this subchapter.

4-6 Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S
4-7 FEES. (a) The comptroller may bring an action to enforce this
4-8 subchapter and obtain any civil remedy authorized by this
4-9 subchapter or any other law for the violation of this subchapter.
4-10 The attorney general shall prosecute the action on the
4-11 comptroller's behalf.

4-12 (b) Venue for and jurisdiction of an action under this
4-13 section is exclusively conferred on the district courts in Travis
4-14 County.

4-15 (c) If the comptroller prevails in an action under this
4-16 section, the comptroller and attorney general are entitled to
4-17 recover court costs and reasonable attorney's fees incurred in
4-18 bringing the action.

4-19 SECTION 4. Subchapter I-1, Chapter 151, Tax Code, as added
4-20 by this Act, applies only to a report due on or after the effective
4-21 date of this Act. A report due before the effective date of this Act
4-22 is governed by the law as it existed on the date the report was due,
4-23 and the former law is continued in effect for that purpose.

4-24 SECTION 5. This Act takes effect September 1, 2011.

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