

1-1 By: Eltife S.B. No. 576
1-2 (In the Senate - Filed February 9, 2011; February 17, 2011,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 16, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 16, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 576 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to reports filed with the comptroller regarding certain
1-11 alcoholic beverage sales; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 111.006, Tax Code, is amended by adding
1-14 Subsections (h) and (i) to read as follows:

1-15 (h) The comptroller shall disclose information to a person
1-16 regarding net sales by quantity, brand, and size that is submitted
1-17 in a report required under Section 151.462 if:

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

1-21 (2) the request relates only to information regarding
1-22 the sale of a product distributed by the person making the request.

1-23 (i) A disclosure made under Subsection (h) is not considered
1-24 a disclosure of competitively sensitive, proprietary, or
1-25 confidential information.

1-26 SECTION 2. Chapter 151, Tax Code, is amended by adding
1-27 Subchapter I-1, and a heading is added to that subchapter to read as
1-28 follows:

1-29 SUBCHAPTER I-1. REPORTS BY PERSONS INVOLVED IN THE MANUFACTURE
1-30 AND DISTRIBUTION OF ALCOHOLIC BEVERAGES

1-31 SECTION 3. Subchapter I-1, Chapter 151, Tax Code, as added
1-32 by this Act, is amended by adding Sections 151.462, 151.463,
1-33 151.464, 151.465, 151.466, 151.467, 151.468, 151.469, 151.470, and
1-34 151.471 and Section 151.433, Tax Code, is transferred to Subchapter
1-35 I-1, Chapter 151, Tax Code, redesignated as Section 151.461, Tax
1-36 Code, and amended to read as follows:

1-37 Sec. 151.461 [151.433]. DEFINITIONS. [REPORTS BY
1-38 WHOLESALERS AND DISTRIBUTORS OF BEER, WINE, AND MALT LIQUOR.
1-39 (a)] In this subchapter [section]:

1-40 (1) "Brewer" means a person required to hold a brewer's
1-41 permit under Chapter 12, Alcoholic Beverage Code.

1-42 (2) "Distributor" means a person required to hold:
1-43 (A) a general distributor's license under
1-44 Chapter 64, Alcoholic Beverage Code;

1-45 (B) a local distributor's license under Chapter
1-46 65, Alcoholic Beverage Code; or

1-47 (C) a branch distributor's license under Chapter
1-48 66, Alcoholic Beverage Code.

1-49 (3) "Manufacturer" means a person required to hold a
1-50 manufacturer's license under Chapter 62, Alcoholic Beverage Code.

1-51 (4) "Package store local distributor" means a person
1-52 required to hold:

1-53 (A) a package store permit under Chapter 22,
1-54 Alcoholic Beverage Code; and

1-55 (B) a local distributor's permit under Chapter
1-56 23, [a general, local, or branch distributor's license under the]
1-57 Alcoholic Beverage Code.

1-58 (5) [(-2)] "Retailer" means a person required to hold
1-59 [the following]:

1-60 (A) a wine and beer retailer's permit under
1-61 Chapter 25, Alcoholic Beverage Code;

1-62 (B) a wine and beer retailer's off-premise permit
1-63 under Chapter 26, Alcoholic Beverage Code;

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

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

4-1 comptroller may notify the Texas Alcoholic Beverage Commission of
4-2 the failure and the commission may take administrative action
4-3 against the person for the failure under the Alcoholic Beverage
4-4 Code.

4-5 Sec. 151.470. AUDIT; INSPECTION. The comptroller may
4-6 audit, inspect, or otherwise verify a brewer's, manufacturer's,
4-7 wholesaler's, distributor's, or package store local distributor's
4-8 compliance with this subchapter.

4-9 Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S
4-10 FEES. (a) The comptroller may bring an action to enforce this
4-11 subchapter and obtain any civil remedy authorized by this
4-12 subchapter or any other law for the violation of this subchapter.
4-13 The attorney general shall prosecute the action on the
4-14 comptroller's behalf.

4-15 (b) Venue for and jurisdiction of an action under this
4-16 section is exclusively conferred on the district courts in Travis
4-17 County.

4-18 (c) If the comptroller prevails in an action under this
4-19 section, the comptroller and attorney general are entitled to
4-20 recover court costs and reasonable attorney's fees incurred in
4-21 bringing the action.

4-22 SECTION 4. Subchapter I-1, Chapter 151, Tax Code, as added
4-23 by this Act, applies only to a report due on or after the effective
4-24 date of this Act. A report due before the effective date of this Act
4-25 is governed by the law as it existed on the date the report was due,
4-26 and the former law is continued in effect for that purpose.

4-27 SECTION 5. This Act takes effect September 1, 2011.

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