| **House Bill 3572**  Senate Amendments  Section-by-Section Analysis | | |
| --- | --- | --- |
| HOUSE VERSION | SENATE VERSION (IE) | CONFERENCE |
| No equivalent provision. | SECTION \_\_. Section 106.14, Alcoholic Beverage Code, is amended by adding Subsection (b-1) to read as follows:  (b-1) The commission may not deny the approval of a seller training program on the ground that the program presents the information using only an audiovisual recording. [FA1] |  |
| SECTION 1. Section 151.308(a), Tax Code, is amended to read as follows:  (a) The following are exempted from the taxes imposed by this chapter:  (1) gas as taxed by Chapter 201;  (2) oil as taxed by Chapter 202;  (3) [~~(2)~~] sulphur as taxed by Chapter 203;  (4) [~~(3)~~] motor fuels, compressed and liquefied natural gas, and special fuels as defined, taxed, or exempted by Chapter 162;  (5) [~~(4)~~] cement as taxed by Chapter 181;  (6) [~~(5)~~] motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152, other than a mobile office or an oilfield portable unit, as those terms are defined by Section 152.001;  (7) [~~(6)~~] mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Subchapter B, Chapter 183, or the items are taxable by Subchapter B-1, Chapter 183;  (8) [~~(7)~~] alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club;  (9) [~~(8)~~] oil well service as taxed by Subchapter E, Chapter 191; and  (10) [~~(9)~~] insurance premiums subject to gross premiums taxes. | SECTION 1. Section 151.308(a), Tax Code, is amended to read as follows:  (a) The following are exempted from the taxes imposed by this chapter:  (1) oil as taxed by Chapter 202;  (2) sulphur as taxed by Chapter 203;  (3) motor fuels and special fuels as defined, taxed, or exempted by Chapter 162;  (4) cement as taxed by Chapter 181;  (5) motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152, other than a mobile office or an oilfield portable unit, as those terms are defined by Section 152.001;  (6) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Subchapter B, Chapter 183, or the items are taxable by Subchapter B-1, Chapter 183;  (7) alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club;  (8) oil well service as taxed by Subchapter E, Chapter 191; and  (9) insurance premiums subject to gross premiums taxes. |  |
| SECTION 2. The heading to Subtitle G, Title 2, Tax Code, is amended to read as follows:  SUBTITLE G. GROSS RECEIPTS AND MIXED BEVERAGE TAXES | SECTION 2. Same as House version. |  |
| SECTION 3. The heading to Chapter 183, Tax Code, is amended to read as follows:  CHAPTER 183. MIXED BEVERAGE TAXES [~~TAX~~] | SECTION 3. Same as House version. |  |
| SECTION 4. Section 183.001(b), Tax Code, is amended by adding Subdivision (3) to read as follows:  (3) "Sales price" has the meaning assigned by Section 151.007, as applicable. | SECTION 4. Same as House version. |  |
| SECTION 5. The heading to Subchapter B, Chapter 183, Tax Code, is amended to read as follows:  SUBCHAPTER B. MIXED BEVERAGE GROSS RECEIPTS TAX | SECTION 5. Same as House version. |  |
| SECTION 6. Section 183.021, Tax Code, is amended to read as follows:  Sec. 183.021. TAX IMPOSED ON GROSS RECEIPTS OF PERMITTEE FROM MIXED BEVERAGES. A tax at the rate of 6.7 [~~14~~] percent is imposed on the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee. | SECTION 6. Same as House version. |  |
| SECTION 7. Sections 183.0212(a) and (b), Tax Code, are amended to read as follows:  (a) For informational purposes only, a permittee may provide that each sales invoice, billing, service check, ticket, or other receipt to a customer for the purchase of an item subject to taxation under this subchapter [~~chapter~~] include:  (1) a separate statement disclosing the amount of tax to be paid by the permittee under this subchapter [~~chapter~~] in relation to that item; or  (2) a statement of the mixed beverage taxes, consisting of the combined amount of the tax to be paid by the permittee under this subchapter in relation to that item and the amount of tax imposed under Subchapter B-1 on that item.  (b) A [~~The separate~~] statement under Subsection (a)(1) must clearly disclose the amount of tax payable by the permittee. | SECTION 7. Same as House version. |  |
| SECTION 8. Sections 183.024(a) and (d), Tax Code, are amended to read as follows:  (a) A permittee who fails to file a report as required by this subchapter [~~chapter~~] or who fails to pay a tax imposed by this subchapter [~~chapter~~] when due shall pay five percent of the amount due as a penalty, and if the permittee fails to file the report or pay the tax within 30 days after the day the tax or report is due, the permittee shall pay an additional five percent of the amount due as an additional penalty.  (d) In addition to any other penalty authorized by this section, a permittee who fails to file a report as required by this subchapter [~~chapter~~] shall pay a penalty of $50. The penalty provided by this subsection is assessed without regard to whether the permittee subsequently files the report or whether any taxes were due from the permittee for the reporting period under the required report. | SECTION 8. Same as House version. |  |
| SECTION 9. Section 183.053, Tax Code, is transferred to Subchapter B, Chapter 183, Tax Code, redesignated as Section 183.025, Tax Code, and amended to read as follows:  Sec. 183.025 [~~183.053~~]. SECURITY REQUIREMENT. (a) A permittee subject to the tax imposed by this subchapter [~~chapter~~] must comply with the security requirements imposed by Chapter 151 except that a permittee is not required to comply with Section 151.253(b).  (b) The total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this subchapter [~~chapter~~] shall be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state. The comptroller may not set the amount of security at less than $1,000 or more than the greater of $100,000 or four times the amount of the permittee's average monthly tax liability. | SECTION 9. Same as House version. |  |
| SECTION 10. Section 183.054, Tax Code, is transferred to Subchapter B, Chapter 183, Tax Code, redesignated as Section 183.026, Tax Code, and amended to read as follows:  Sec. 183.026 [~~183.054~~]. AUDIT FREQUENCY. The comptroller shall have the discretion to determine the frequency of mixed beverage tax audits under this subchapter. In determining the frequency of the audit the comptroller may consider the following factors:  (1) reasonable and prudent accounting standards;  (2) the audit history of the permittee;  (3) the effect on state revenues; and  (4) other factors the comptroller deems appropriate. | SECTION 10. Same as House version. |  |
| SECTION 11. Section 183.055, Tax Code, is transferred to Subchapter B, Chapter 183, Tax Code, redesignated as Section 183.027, Tax Code, and amended to read as follows:  Sec. 183.027 [~~183.055~~]. CREDITS AND REFUNDS FOR BAD DEBTS. (a) A permittee may withhold the payment of the tax under this subchapter on a portion of the gross receipts that remains unpaid by a purchaser if:  (1) during the reporting period in which the mixed beverage is sold, the permittee determines that the unpaid portion will remain unpaid;  (2) the permittee enters the unpaid portion of the sales gross receipts in the permittee's books as a bad debt; and  (3) the bad debt is claimed as a deduction for federal tax purposes during the same or a subsequent reporting period.  (b) If the portion of a debt determined to be bad under Subsection (a) is paid, the permittee shall report and pay the tax on the portion during the reporting period in which payment is made.  (c) A permittee is entitled to credit or reimbursement for taxes paid on the portion of the gross receipts determined to be worthless and actually charged off for federal income tax purposes. | SECTION 11. Same as House version. |  |
| SECTION 12. Chapter 183, Tax Code, is amended by adding Subchapter B-1 to read as follows:  SUBCHAPTER B-1. MIXED BEVERAGE SALES TAX  Sec. 183.041. TAX IMPOSED ON SALES OF MIXED BEVERAGES AND RELATED ITEMS. (a) A tax is imposed on each mixed beverage sold, prepared, or served by a permittee in this state and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee in this state for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.  (b) The rate of the tax is 8.25 percent of the sales price of the item sold, prepared, or served.  Sec. 183.042. DISCLOSURE OF TAX. A permittee may provide that a sales invoice, billing, service check, ticket, or other receipt to a customer for the purchase of an item subject to taxation under this subchapter include:  (1) a statement that mixed beverage sales tax is included in the sales price;  (2) a separate statement of the amount of tax imposed under this subchapter on that item;  (3) a statement of the mixed beverage taxes, consisting of the combined amount of the tax to be paid by the permittee under Subchapter B in relation to that item and the amount of tax imposed under this subchapter on that item; or  (4) a statement of the combined amount of taxes imposed under this subchapter and Chapter 151 on all items listed on the invoice, billing, service check, ticket, or other receipt.  Sec. 183.043. APPLICABILITY OF OTHER LAW. (a) Except as otherwise provided by this section:  (1) the tax imposed by this subchapter is administered, collected, and enforced in the same manner as the tax under Chapter 151 is administered, collected, and enforced; and  (2) Chapter 151 applies to the tax imposed by this subchapter in the same manner as Chapter 151 applies to the tax imposed under Section 151.051.  (b) Sections 151.423 and 151.424 do not apply to the tax imposed by this subchapter.  (c) A sale to a permittee of an item described by Section 183.021 is not a sale for resale for purposes of Section 151.302 if the item is mixed with or becomes a component part of a mixed beverage subject to taxation under this subchapter that is served without any consideration paid to the permittee.  (d) An item subject to tax under this subchapter is exempt from the taxes imposed under Subtitle C, Title 3. | SECTION 12. Same as House version. |  |
| SECTION 13. Section 183.051, Tax Code, as effective September 1, 2013, is amended to read as follows:  Sec. 183.051. MIXED BEVERAGE TAX CLEARANCE FUND. (a) Not later than the last day of the month following a calendar quarter, the comptroller shall calculate the total amount of taxes received under Subchapters B and B-1 during the quarter from permittees outside an incorporated municipality within each county and the total amount received from permittees within each incorporated municipality in each county.  (b) The comptroller shall issue to each county described in Subsection (a) a warrant drawn on the general revenue fund in an amount appropriated by the legislature that may not be less than 10.7143 percent of the taxes received [~~receipts~~] from permittees within the county during the quarter and shall issue to each incorporated municipality described in Subsection (a) a warrant drawn on that fund in an amount appropriated by the legislature that may not be less than 10.7143 percent of the taxes received [~~receipts~~] from permittees within the incorporated municipality during the quarter. | SECTION 13. Same as House version. |  |
| SECTION 14. Section 183.052, Tax Code, is amended to read as follows:  Sec. 183.052. CONFLICT OF RULES. If a rule or policy adopted by the Texas Alcoholic Beverage Commission [~~commission~~] conflicts with a rule adopted by the comptroller for the application, enforcement, or collection of a [~~the~~] tax imposed by this chapter, the comptroller's rule prevails. A conflicting rule or policy adopted by the commission is invalid to the extent of the inconsistency. If the comptroller determines that a rule or policy adopted by the commission conflicts with one adopted by the comptroller relating to the application, enforcement, or collection of a [~~the~~] tax imposed by this chapter, the comptroller shall notify the commission in writing of the determination. After receipt of the notification, the commission must amend or repeal the conflicting rule or policy not later than the 90th day after the date of notification. | SECTION 14. Same as House version. |  |
| SECTION 15. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes. | SECTION 15. Same as House version. |  |
| SECTION 16. This Act takes effect January 1, 2014. | SECTION 16. Same as House version. |  |