

- SUBJECT:** Increasing reporting requirements for distribution of alcoholic beverages
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 10 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Murphy, Ritter, Villarreal, Woolley
- 0 nays
- 1 absent — Martinez Fischer
- WITNESSES:** For — Alan Gray, Licensed Beverage Distributors; Billy Hamilton, Texas Hospitality Association; Michael Klein, Texas Bar and Nightclub Alliance; (*Registered, but did not testify:* Eric Glenn, Diageo; Shanna Igo, Texas Municipal League; Jim Rudd, California Wine Institute; Dale Szyndrowski, Distilled Spirits Council of US; Ralph Townes, Licensed Beverage Distribution)
- Against — (*Registered, but did not testify:* Kyle Frazier, Texas Wine and Grape Growers Association)
- On — Mike Reissig, Texas Comptroller of Public Accounts
- BACKGROUND:** Tax Code, sec. 151.433 allows the comptroller to require each wholesaler or distributor of beer, wine, or malt liquor to file a monthly report of sales to Texas package stores, bars, and restaurants. The report must contain the monthly net sales made to each retail outlet by the wholesaler or distributor, including the amount of beer, wine, and malt liquor sold to the retailer.
- Tax Code, secs. 151.7031 and 151.709 allow the comptroller to issue civil and criminal penalties, respectively, for failure to issue a sales tax report.
- Alcoholic Beverage Code, sec. 62.12 allows brewers who produce 75,000 barrels or less a year to sell directly to package stores, local distributors, and retailers as if they had a general distributor's license.
- DIGEST:** HB 11 would require brewers, manufacturers, wholesalers, and distributors to report to the comptroller sales of alcoholic beverages to

package stores, bars, and restaurants. HB 11 also would require package stores to report to the comptroller sales of alcoholic beverages to bars and restaurants.

Brewers, manufacturers, wholesalers, distributors, or package store local distributors would have to file a separate report for each month's sales made to each retailer containing their monthly net sales and separate line items for:

- the number of units of each alcoholic beverage;
- the individual container size and pack of each unit;
- the brand name;
- the type of beverage, such as distilled spirits, wine, or malt;
- the universal product code of the alcoholic beverage; and
- the net selling price of the alcoholic beverage.

The reports would have to be filed electronically, unless the comptroller temporarily postponed the electronic reporting requirement for any entity that showed inability to comply due to undue hardship.

HB 11 would allow the comptroller to impose civil and criminal penalties for failure to file a complete alcohol sales and distribution report. The bill also would authorize the comptroller, in addition to existing civil and criminal powers, to impose a civil penalty of \$25 to \$2,000 for each day that a violation of the reporting requirements continued.

HB 11 would apply only to those manufacturers and brewers that produced 75,000 barrels a year or less.

The bill would take effect September 1, 2011 and apply only to reports due on or after that date.

**SUPPORTERS
SAY:**

HB 11 would expand the number and types of groups required to report to the comptroller information on sales of alcoholic beverages. HB 11 builds on the success of HB 11 by Cook, enacted in 2007. That bill required wholesalers and distributors of beer and wine to report sales to package stores, bars, and restaurants. This bill would add package stores to the groups required to report sales and would require all groups to report sales of distilled spirits along with sales of wine and malt beverages. This additional information would allow the comptroller to audit alcohol sales

more effectively and collect additional tax revenue already owed to the state.

The sale and distribution of alcohol is a highly regulated industry in Texas. Businesses are permitted and licensed depending on where they are in the supply and distribution chain. In the first tier are large suppliers and manufacturers of distilled spirits, wine, and beer. These groups sell their products to wholesalers and distributors, who comprise the second tier. Wholesalers and distributors supply package stores, which comprise the third tier. Package stores then sell to bars and restaurants, which comprise the fourth tier. The third and fourth tiers are commonly grouped together as retailers because each may sell directly to end-point consumers.

Under current law, suppliers and manufacturers report to the Texas Alcoholic Beverage Commission (TABC) information on their sales to wholesalers and distributors. Wholesalers and distributors also pay excise taxes to TABC. However, wholesalers and distributors do not report to the comptroller information on sales made to package stores. Further, package stores do not report to the comptroller information on sales made to bars and restaurants.

Under HB 11, wholesalers, distributors, and package stores would have to report to the comptroller data on their sales to groups further down the distribution chain. The comptroller then could compare these data to reports filed by package stores, bars, and restaurants on alcohol sales to the public. Having records of both purchasing and sales information would allow the comptroller to detect any underreporting of taxable sales of alcoholic beverages by either package stores or bars and restaurants. The comptroller estimates that having this additional sales data would allow state tax auditors to collect about \$25 million in additional general revenue for the fiscal 2012-13 biennium from taxes already owed but not properly reported.

HB 11 would ensure the honest reporting of alcoholic beverage sales. The additional information on sales made by wholesalers, distributors, and package stores to those further down the supply chain would encourage retailers to report their taxable sales of alcoholic beverages honestly. Knowing that the comptroller would have information on all the alcohol purchased would compel them to accurately report all the alcohol sold. Those retailers who already fully and accurately report their taxes would be unaffected by the bill.

HB 11 would allow the comptroller to choose more effectively which retailers to audit. Under HB 11, the comptroller could compare retailers' purchases from distributors with their reported sales to consumers, thus more effectively focusing limited auditing resources on the retailers who have most underreported taxable sales. This would allow the comptroller to get the maximum return on auditing efforts.

The bill would grant the comptroller additional authority to issue civil and criminal penalties to enforce more effectively both existing reporting requirements and those that would be added under HB 11. Under existing law, the comptroller may impose a civil or criminal penalty if a business or organization with a duty to report fails to do so. However, the comptroller lacks the ability to issue penalties for filing an incomplete report. HB 11 would grant the comptroller this authority along with the ability to issue an additional civil penalty of \$25 to \$2,000 for each day a reporting violation continued.

HB 11 would not require wholesalers, distributors, and package stores to report an excessive amount of information. These data on retailers are readily available because the wholesale distribution of these products occurs in a highly regulated industry with compact distribution chains. Also, any reporting burden would be further reduced because the information would be submitted to the comptroller electronically, saving processing and postage costs.

Small wineries and breweries would be subject to the increased reporting requirements under HB 11 because the comptroller's audit division needs a complete picture of the alcohol distribution chain. Under current law, small wineries and breweries that produce fewer than 75,000 barrels a year are allowed to sell directly to package stores, bars, and restaurants. Since they are allowed to act like distributors and wholesalers, they should follow the same reporting requirements.

Small producers should not be exempt because this would prompt other groups to lobby for exemptions. If too many groups are exempt, the comptroller will not have sufficient data to conduct effective audits. Further, if an audit is to be truly effective, the comptroller must have information on all the alcohol a retailer has purchased, regardless of source, in order to be able to account fully for the retailer's sales to consumers. If HB 11 is to be effective, it is important to include even small wineries and brewers.

OPPONENTS
SAY:

Small wineries and brewers should be exempt from the increased reporting requirements in HB 11. Smaller manufacturers sell very little inventory to any one package store, bar, or restaurant. As such, HB 11 would require them to file large amounts of additional paperwork covering many small sales. These individual reports would not be of much use to the comptroller's audit division, since each one is insignificant. This additional detailed reporting would be a burden on small- to medium-sized businesses that would contribute little to the comptroller's auditing efforts.

NOTES:

According to the fiscal note, HB 11 would generate about \$8 million in general revenue in fiscal 2012, \$17.8 million in fiscal 2013, \$27.8 million in fiscal 2014, \$28.9 million in fiscal 2015, and \$30 million in fiscal 2016.

A similar bill, SB 576 by Eltife, passed the Senate by 30-0 on March 22 and has been referred to the House Ways and Means Committee.