

AN ACT

relating to businesses related to international transactions;
providing penalties.

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

SECTION 1. Section 151.157, Tax Code, is amended by amending Subsections (a)-(g) and adding Subsections (a-1), (f-1), (h), and (i) to read as follows:

(a) A customs broker, or an authorized employee of a customs broker, licensed by the comptroller under this section may issue documentation for the purpose of showing the exemption of tangible personal property under Section 151.307(b)(2) only under procedures established by this section, Section 151.1575, and by the comptroller by rule.

(a-1) The comptroller shall maintain a password-protected website that a customs broker, or an authorized employee of a customs broker, licensed under this section must use to prepare documentation to show the exemption of tangible personal property under Section 151.307(b)(2). The comptroller shall require a customs broker or authorized employee to use the website to actually produce the documentation after providing all necessary information. The comptroller shall use the information provided by a customs broker or authorized employee under this subsection as necessary to enforce this section and Section 151.307. The comptroller shall provide an alternate method to prepare

1 documentation to show the exemption of tangible personal property
2 under Section 151.307(b)(2) in those instances when the
3 password-protected website is unavailable due to technical or
4 communication problems.

5 (b) The comptroller may issue a license to a customs broker
6 for the purpose described by Subsection (a) for each place of
7 business of the broker if the broker:

8 (1) applies to the comptroller for the license;

9 (2) pays the license fee to ~~[set by]~~ the comptroller in
10 the amount required by Subsection (c);

11 (3) posts the bond or security in the amount required
12 by Subsection (d); and

13 (4) complies with any rules of the comptroller to
14 administer this section and to prevent the evasion of the tax under
15 this chapter and local sales and use taxes.

16 (c) A customs broker must pay to the comptroller an annual
17 license fee of \$300 for each place of business from which the
18 customs broker intends to issue a certificate of export. ~~[The~~
19 ~~comptroller shall set the fee for a license in an amount that does~~
20 ~~not exceed \$100 for each customs broker, without regard to whether~~
21 ~~the broker has more than one place of business. The fee may be~~
22 ~~imposed only once for each broker.]~~ The comptroller shall use the
23 fees only for the administration of this section, including costs
24 of materials, labor, and overhead.

25 (d) The amount of the bond or security required by
26 Subsection (b)(3) is \$5,000, plus an additional \$1,000 for each
27 place of business from which the customs broker intends to issue

1 exemption certificates [~~\$500, except that the comptroller may~~
2 ~~require a customs broker to post additional bond or security in an~~
3 ~~amount the comptroller considers necessary to ensure the payment of~~
4 ~~the tax under this chapter and local sales and use taxes. The~~
5 ~~comptroller may not require a bond or security in an amount greater~~
6 ~~than \$2,500. The comptroller may not require the customs broker to~~
7 ~~post more than one bond or security solely because the broker has~~
8 ~~more than one place of business]. The security may be in the form of
9 cash, a certificate of deposit, a letter of credit, or another
10 instrument of value.~~

11 (e) A customs broker licensed under this section shall make
12 available to the comptroller, on or after the 15th day after the
13 date the broker receives written notice from the comptroller, the
14 customs broker's books and records relating to the business of
15 issuing documentation certifying the export of tangible personal
16 property beyond the territorial limits of the United States for
17 purposes of exempting the property from the taxes imposed by this
18 chapter. The customs broker shall make available to the
19 comptroller, without notice from the comptroller, the customs
20 broker's books and records if the comptroller determines that the
21 comptroller's ability to administer and enforce effectively the
22 provisions of this chapter relating to documentation for the
23 purpose of showing the exemption of tangible personal property
24 under Section 151.307(b)(2) is jeopardized by providing notice.
25 The customs broker shall keep the books and records described by
26 this subsection for at least two years after the date of the last
27 entry that they contain. The customs broker shall report quarterly

1 to the comptroller:

2 (1) the total value of the tangible personal property
3 and the total amount of the corresponding tax for which the customs
4 broker issued certificates of export; and

5 (2) the total amount of tax refunded in accordance
6 with certificates of export.

7 (f) The comptroller may suspend or revoke a license issued
8 under this section if the customs broker does not comply with
9 Section 151.1575(c) or issues documentation that is false to obtain
10 a refund of taxes paid on tangible personal property not exported or
11 to assist another person in obtaining such a refund [~~for good~~
12 ~~cause~~]. The comptroller may determine the length of suspension or
13 revocation necessary for the enforcement of this chapter and the
14 comptroller's rules. A proceeding to suspend or revoke a license
15 under this subsection is a contested case under Chapter 2001,
16 Government Code. Judicial review is by trial de novo. The district
17 courts of Travis County have exclusive original jurisdiction of a
18 suit under this section.

19 (f-1) In addition to any other penalty provided by law, the
20 comptroller may require a customs broker to pay to the comptroller
21 the amount of any tax refunded if the customs broker did not comply
22 with this section or the rules adopted by the comptroller under this
23 section in relation to the refunded tax.

24 (g) A customs broker may authorize a person to act as an
25 independent contractor to certify in accordance with Section
26 151.1575(a)(1) that tangible personal property has been exported
27 outside of the United States only if the authorization is part of

1 the written contract and the comptroller in writing approves the
2 authorization. A customs broker may not authorize a person under
3 this subsection to prepare documentation for the purpose of showing
4 the exemption for tangible personal property under Section
5 151.307(b)(2).

6 (h) Notwithstanding any other law, the filing of a petition
7 to initiate judicial review does not vacate the comptroller
8 decision that is the subject of review and does not affect the
9 enforceability of that decision.

10 (i) The comptroller shall impose a penalty of \$500 for each
11 occurrence on a customs broker who fails to file the report required
12 by this section.

13 SECTION 2. Subchapter E, Chapter 151, Tax Code, is amended
14 by adding Section 151.1575 to read as follows:

15 Sec. 151.1575. REQUIREMENTS RELATING TO ISSUING
16 DOCUMENTATION SHOWING EXPORTATION OF PROPERTY. (a) A customs
17 broker licensed by the comptroller or an authorized employee of the
18 customs broker may issue documentation certifying that delivery of
19 tangible personal property was made to a point outside the
20 territorial limits of the United States as required by Section
21 151.307(b)(2)(B) only if the customs broker or authorized employee:

22 (1) watches the property cross the border of the
23 United States;

24 (2) watches the property being placed on a common
25 carrier for delivery outside the territorial limits of the United
26 States; or

27 (3) verifies that the purchaser is transporting the

1 property to a destination outside of the territorial limits of the
2 United States by:

3 (A) examining a passport, laser visa
4 identification card, or foreign voter registration picture
5 identification indicating that the purchaser of the property
6 resides in a foreign country;

7 (B) requiring the purchaser to produce the
8 property and the original receipt for the property;

9 (C) requiring the purchaser to state the foreign
10 country destination of the property which must be the foreign
11 country in which the purchaser resides;

12 (D) requiring the purchaser to state the date and
13 time the property is expected to arrive in the foreign country
14 destination;

15 (E) requiring the purchaser to state the date and
16 time the property was purchased, the name and address of the place
17 at which the property was purchased, the sales price and quantity of
18 the property, and a description of the property;

19 (F) requiring the purchaser to sign a form:

20 (i) stating that the purchaser has provided
21 the information and documentation required by this subdivision; and

22 (ii) that contains a notice to the
23 purchaser that tangible personal property not exported is subject
24 to taxation under this chapter and the purchaser is liable, in
25 addition to other possible civil liabilities and criminal
26 penalties, for payment of an amount equal to the value of the
27 merchandise if the purchaser improperly obtained a refund of taxes

1 relating to the property; and

2 (G) requiring the purchaser to produce the
3 purchaser's:

4 (i) Form I-94, Arrival/Departure record, or
5 its successor, as issued by the United States Immigration and
6 Naturalization Service, for those purchasers in a county not
7 bordering the United Mexican States; or

8 (ii) air, land, or water travel
9 documentation if the customs broker is located in a county that does
10 not border the United Mexican States.

11 (b) A customs broker licensed by the comptroller or an
12 authorized employee of the customs broker may issue and deliver
13 documentation under Subsection (a) at any time after the tangible
14 personal property is purchased and the broker or employee completes
15 the process required by Subsection (a). The documentation must
16 include:

17 (1) the name and address of the customs broker;

18 (2) the license number of the customs broker;

19 (3) the name and address of the purchaser;

20 (4) the name and address of the place at which the
21 property was purchased;

22 (5) the date and time of the sale;

23 (6) a description and the quantity of the property;

24 (7) the sales price of the property;

25 (8) the foreign country destination of the property,
26 which may not be the place of export;

27 (9) the date and time:

1 (A) at which the customs broker or authorized
2 employee watched the property cross the border of the United
3 States;

4 (B) at which the customs broker or authorized
5 employee watched the property being placed on a common carrier for
6 delivery outside the territorial limits of the United States; or

7 (C) the property is expected to arrive in the
8 foreign country destination, as stated by the purchaser;

9 (10) a declaration signed by the customs broker or an
10 authorized employee of the customs broker stating that the customs
11 broker is a licensed Texas customs broker; and

12 (11) an export certification stamp issued by the
13 comptroller.

14 (c) The comptroller may require a customs broker to pay the
15 comptroller the amount of any tax refunded if the customs broker
16 does not comply with this section, Section 151.157, or the rules
17 adopted by the comptroller under this section or Section 151.157.
18 In addition to the amount of the refunded tax, the comptroller may
19 require the customs broker to pay a penalty in an amount equal to
20 the amount of the refunded tax, but not less than \$500 nor more than
21 \$5,000. The comptroller and the state may deduct any penalties to
22 be paid by a customs broker from the broker's posted bond.

23 (d) A proceeding to require a customs broker to pay an
24 amount under Subsection (c) is a contested case in the same manner
25 as a proceeding to revoke or suspend a customs broker's license
26 under Section 151.157(f).

27 (e) In this section, "customs broker" and "authorized

1 employee" have the meanings assigned by Section 151.157.

2 SECTION 3. Section 151.158(g), Tax Code, is amended to read
3 as follows:

4 (g) The comptroller shall charge \$1.60 [~~an amount not to~~
5 ~~exceed five cents~~] for each stamp. The comptroller shall use the
6 money from the sale of the stamps only for costs related to
7 producing the stamps, including costs of materials, labor, and
8 overhead. Any unspent money shall be deposited to the credit of the
9 general revenue fund. Customs brokers who return unused stamps to
10 the comptroller's office on a quarterly basis shall get credit
11 towards the purchase of new stamps.

12 SECTION 4. Section 151.307(b), Tax Code, is amended to read
13 as follows:

14 (b) When an exemption is claimed because tangible personal
15 property is exported beyond the territorial limits of the United
16 States, proof of export may be shown only by:

17 (1) a bill of lading issued by a licensed and
18 certificated carrier of persons or property showing the seller as
19 consignor, the buyer as consignee, and a delivery point outside the
20 territorial limits of the United States;

21 (2) documentation:

22 (A) provided by a United States Customs Broker
23 licensed by the comptroller under Section 151.157;

24 (B) certifying that delivery was made to a point
25 outside the territorial limits of the United States; [~~and~~]

26 (C) that includes, in addition to any other
27 information required by the comptroller, a statement signed by the

1 person claiming the exemption that states that "Providing false
2 information to a customs broker is a Class B misdemeanor."; and

3 (D) to which a stamp issued under Section 151.158
4 is affixed in the manner required by that section or Section
5 151.157;

6 (3) import documents from the country of destination
7 showing that the property was imported into a country other than the
8 United States;

9 (4) an original airway, ocean, or railroad bill of
10 lading and a forwarder's receipt if an air, ocean, or rail freight
11 forwarder takes possession of the property; or

12 (5) any other manner provided by the comptroller for
13 an enterprise authorized to make tax-free purchases under Section
14 151.156.

15 SECTION 5. Section 151.406(a), Tax Code, is amended to read
16 as follows:

17 (a) Except as provided by Section 151.407 [~~of this code~~], a
18 tax report required by this chapter must:

19 (1) for sales tax purposes, show the amount of the
20 total receipts of a seller for the reporting period;

21 (2) for use tax purposes, show the amount of the total
22 receipts from sales by a retailer of taxable items during the
23 reporting period for storage, use, or consumption in this state;

24 (3) show the amount of the total sales prices of
25 taxable items that are subject to the use tax during the reporting
26 period and that were acquired for storage, use, or consumption in
27 this state by a purchaser who did not pay the tax to a retailer;

1 (4) show the amount of the taxes due for the reporting
2 period; ~~and~~

3 (5) show the amount of sales tax refunded for items
4 exported beyond the territorial limits of the United States after
5 receiving documentation under Section 151.307(b)(2); and

6 (6) include other information that the comptroller
7 determines to be necessary for the proper administration of this
8 chapter.

9 SECTION 6. Sections 151.712(b) and (f), Tax Code, are
10 amended to read as follows:

11 (b) A person who provides proof of documentation that
12 tangible personal property has been exported outside of the United
13 States or a person who may benefit from the provision of the proof
14 of documentation, including a customs broker, authorized employee,
15 authorized independent contractor, seller of the property or agent
16 or employee of the seller, or a consumer of the property or agent or
17 employee of the consumer, may not sell or buy the proof of
18 documentation, including stamps required for the documentation.
19 This subsection does not apply to a customs broker who accepts a fee
20 for providing documentation under Section 151.307(b) if the customs
21 broker provides the documentation in accordance with Section
22 151.157 and rules adopted by the comptroller.

23 (f) In addition to any monetary penalty under this section,
24 the comptroller shall ~~may suspend or~~ revoke under Section 151.157
25 the license of a customs broker who violates this section. A person
26 whose license is revoked under this subsection may not apply for a
27 new license under Section 151.157 before the first anniversary of

1 the date on which the previous license was revoked.

2 SECTION 7. Subtitle Z, Title 3, Finance Code, is amended by
3 adding Chapter 278 to read as follows:

4 CHAPTER 278. REGULATION OF CURRENCY TRANSMISSIONS

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 278.001. DEFINITIONS. In this chapter:

7 (1) "Currency" has the meaning assigned by Section
8 153.001.

9 (2) "Currency transmission business" means engaging
10 in or offering currency transmission as a service or for profit.
11 The term does not include:

12 (A) a federally insured financial institution,
13 as defined by Section 201.101, that is organized under the laws of
14 this state, another state, or the United States; or

15 (B) a title insurance company or title insurance
16 agent, as defined by Article 9.02, Insurance Code.

17 (3) "Currency transmission" means receiving currency
18 or an instrument payable in currency in order to transmit the
19 currency or its equivalent by wire, computer modem, facsimile,
20 physical transport, or any other means or through the use of a
21 financial intermediary, the Federal Reserve System, or another
22 funds transfer network.

23 (4) "Fee" does not include revenue that a currency
24 transmission business generates in connection with a currency
25 transmission in the conversion of a currency of one government into
26 the currency of another government.

27 [Sections 278.002-278.050 reserved for expansion]

1 SUBCHAPTER B. CURRENCY TRANSMISSION DISCLOSURES

2 Sec. 278.051. DISCLOSURES WITH TRANSACTION. (a) Other
3 than in a telephonic transaction conducted on a telephone that is
4 not designated for use in currency transmission transactions by a
5 currency transmission business, at the time of a currency
6 transmission transaction to another country the currency
7 transmission business shall provide a receipt to the customer. The
8 receipt must:

9 (1) clearly state the amount of currency presented for
10 transmission and any fees charged by the currency transmission
11 business; and

12 (2) provide a toll-free telephone number or a local
13 number that a customer can access at no charge to receive
14 information about a currency transmission.

15 (b) If the rate of exchange for a currency transmission to
16 be paid in the currency of another country is fixed by the currency
17 transmission business for a transaction at the time the currency
18 transmission is initiated, the receipt must also disclose:

19 (1) the rate of exchange for that transaction;
20 (2) the amount to be paid in the foreign currency; and
21 (3) the period, if any, in which the payment must be
22 made in order to qualify for the fixed rate of exchange.

23 (c) If the rate of exchange for a currency transmission to
24 be paid in the currency of another country is not fixed at the time
25 the currency transmission is initiated, the receipt must also
26 disclose that the rate of exchange for the transaction will be set
27 at the time the recipient of the currency transmission receives the

1 funds in the foreign country.

2 (d) If the customer requests, the currency transmission
3 business must provide the required disclosures before completing
4 the transaction.

5 Sec. 278.052. CANCELLATION AND REFUND OF TRANSACTION. (a)
6 Except as provided by Subsection (c), on receiving the transaction
7 receipt required under Section 278.051, a customer may cancel the
8 currency transaction:

9 (1) before leaving the premises of the currency
10 transmission business; and

11 (2) not later than 30 minutes after the time at which
12 the currency transmission was initiated.

13 (b) If the customer cancels the transaction, the currency
14 transmission business shall immediately refund to the customer the
15 fees paid and currency to be transmitted.

16 (c) A customer may not cancel a transaction after the
17 recipient of the currency transmission has received the currency or
18 its equivalent.

19 Sec. 278.053. LANGUAGE OF DISCLOSURE. A currency
20 transmission business shall make the disclosures required by this
21 chapter in English and, if the currency transmission is to a country
22 where Spanish is widely spoken, in Spanish.

23 [Sections 278.054-278.100 reserved for expansion]

24 SUBCHAPTER C. ENFORCEMENT

25 Sec. 278.101. CIVIL PENALTY. (a) A person who knowingly
26 violates this chapter is liable to the state for a civil penalty in
27 an amount not to exceed \$1,000 for each violation. The attorney

1 general or the prosecuting attorney in the county in which the
2 violation occurs may bring:

3 (1) a suit to recover the civil penalty imposed under
4 this section; and

5 (2) an action in the name of the state to restrain or
6 enjoin a person from violating this chapter.

7 (b) The attorney general or the prosecuting attorney in the
8 county in which the violation occurs, as appropriate, is entitled
9 to recover reasonable expenses incurred in obtaining injunctive
10 relief, civil penalties, or both, under this section, including
11 reasonable attorney's fees, court costs, and investigatory costs.

12 SECTION 8. Chapter 278, Finance Code, as added by this Act,
13 takes effect September 1, 2003.

14 SECTION 9. (a) Except as otherwise provided by this Act,
15 this Act takes effect January 1, 2004.

16 (b) The change in law made by this Act does not affect taxes
17 imposed before the effective date of this Act, and the former law is
18 continued in effect for purposes of the liability for and
19 collection of those taxes.

President of the Senate

Speaker of the House

I certify that H.B. No. 109 was passed by the House on May 10, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 109 on May 31, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 109 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor