

1-1 By: Chavez, et al. (Senate Sponsor - Shapleigh) H.B. No. 109  
1-2 (In the Senate - Received from the House May 12, 2003;  
1-3 May 13, 2003, read first time and referred to Committee on  
1-4 International Relations and Trade; May 23, 2003, reported  
1-5 favorably by the following vote: Yeas 6, Nays 0; May 23, 2003, sent  
1-6 to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to customs brokers.

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

1-11 SECTION 1. Section 151.157, Tax Code, is amended by  
1-12 amending Subsections (a)-(g) and adding Subsections (a-1) and (f-1)  
1-13 to read as follows:

1-14 (a) A customs broker, or an authorized employee of a customs  
1-15 broker, licensed by the comptroller under this section may issue  
1-16 documentation for the purpose of showing the exemption of tangible  
1-17 personal property under Section 151.307(b)(2) only under  
1-18 procedures established by this section, Section 151.1575, and by  
1-19 the comptroller by rule.

1-20 (a-1) The comptroller shall maintain a password-protected  
1-21 website that a customs broker, or an authorized employee of a  
1-22 customs broker, licensed under this section must use to prepare  
1-23 documentation to show the exemption of tangible personal property  
1-24 under Section 151.307(b)(2). The comptroller shall require a  
1-25 customs broker or authorized employee to use the website to  
1-26 actually produce the documentation after providing all necessary  
1-27 information. The comptroller shall use the information provided by  
1-28 a customs broker or authorized employee under this subsection as  
1-29 necessary to enforce this section and Section 151.307.

1-30 (b) The comptroller may issue a license to a customs broker  
1-31 for the purpose described by Subsection (a) for each place of  
1-32 business of the broker if the broker:

1-33 (1) applies to the comptroller for the license;

1-34 (2) pays the license fee to [set by] the comptroller in  
1-35 the amount required by Subsection (c);

1-36 (3) posts the bond or security in the amount required  
1-37 by Subsection (d); and

1-38 (4) complies with any rules of the comptroller to  
1-39 administer this section and to prevent the evasion of the tax under  
1-40 this chapter and local sales and use taxes.

1-41 (c) A customs broker must pay to the comptroller an annual  
1-42 license fee of \$300 for each place of business from which the  
1-43 customs broker intends to issue exemption certificates. [The  
1-44 comptroller shall set the fee for a license in an amount that does  
1-45 not exceed \$100 for each customs broker, without regard to whether  
1-46 the broker has more than one place of business. The fee may be  
1-47 imposed only once for each broker.] The comptroller shall use the  
1-48 fees only for the administration of this section, including costs  
1-49 of materials, labor, and overhead.

1-50 (d) The amount of the bond or security required by  
1-51 Subsection (b)(3) is \$5,000, plus an additional \$1,000 for each  
1-52 place of business from which the customs broker intends to issue  
1-53 exemption certificates [~~500, except that the comptroller may~~  
1-54 ~~require a customs broker to post additional bond or security in an~~  
1-55 ~~amount the comptroller considers necessary to ensure the payment of~~  
1-56 ~~the tax under this chapter and local sales and use taxes. The~~  
1-57 ~~comptroller may not require a bond or security in an amount greater~~  
1-58 ~~than \$2,500. The comptroller may not require the customs broker to~~  
1-59 ~~post more than one bond or security solely because the broker has~~  
1-60 ~~more than one place of business]. The security may be in the form of~~  
1-61 ~~cash, a certificate of deposit, a letter of credit, or another~~  
1-62 ~~instrument of value.~~

1-63 (e) A customs broker licensed under this section shall make  
1-64 available to the comptroller, on or after the 15th day after the

2-1 date the broker receives written notice from the comptroller, the  
 2-2 customs broker's books and records relating to the business of  
 2-3 issuing documentation certifying the export of tangible personal  
 2-4 property beyond the territorial limits of the United States for  
 2-5 purposes of exempting the property from the taxes imposed by this  
 2-6 chapter. The customs broker shall make available to the  
 2-7 comptroller, without notice from the comptroller, the customs  
 2-8 broker's books and records if the comptroller determines that the  
 2-9 comptroller's ability to administer and enforce effectively the  
 2-10 provisions of this chapter relating to documentation for the  
 2-11 purpose of showing the exemption of tangible personal property  
 2-12 under Section 151.307(b)(2) is jeopardized by providing notice.  
 2-13 The customs broker shall keep the books and records described by  
 2-14 this subsection for at least two years after the date of the last  
 2-15 entry that they contain. The customs broker shall report quarterly  
 2-16 to the comptroller:

2-17 (1) the total value of the tangible personal property  
 2-18 and the total amount of the corresponding tax for which the customs  
 2-19 broker issued exemption certificates; and

2-20 (2) the total amount of tax refunded in accordance  
 2-21 with exemption certificates.

2-22 (f) The comptroller may suspend or revoke a license issued  
 2-23 under this section if the customs broker does not comply with  
 2-24 Section 151.1575(c) or knowingly or intentionally issues  
 2-25 documentation that is false to obtain a refund of taxes paid on  
 2-26 tangible personal property not exported or to assist another person  
 2-27 in obtaining such a refund [for good cause]. The comptroller may  
 2-28 determine the length of suspension or revocation necessary for the  
 2-29 enforcement of this chapter and the comptroller's rules. A  
 2-30 proceeding to suspend or revoke a license under this subsection is a  
 2-31 contested case under Chapter 2001, Government Code. Judicial  
 2-32 review is by trial de novo. The district courts of Travis County  
 2-33 have exclusive original jurisdiction of a suit under this section.

2-34 (f-1) In addition to any other penalty provided by law, the  
 2-35 comptroller may require a customs broker to pay to the comptroller  
 2-36 the amount of any tax refunded if the customs broker did not comply  
 2-37 with this section or the rules adopted by the comptroller under this  
 2-38 section in relation to the refunded tax.

2-39 (g) A customs broker may authorize a person to act as an  
 2-40 independent contractor to certify in accordance with Section  
 2-41 151.1575(a)(1) that tangible personal property has been exported  
 2-42 outside of the United States only if the authorization is part of  
 2-43 the written contract and the comptroller in writing approves the  
 2-44 authorization. A customs broker may not authorize a person under  
 2-45 this subsection to prepare documentation for the purpose of showing  
 2-46 the exemption for tangible personal property under Section  
 2-47 151.307(b)(2).

2-48 SECTION 2. Subchapter E, Chapter 151, Tax Code, is amended  
 2-49 by adding Section 151.1575 to read as follows:

2-50 Sec. 151.1575. REQUIREMENTS RELATING TO ISSUING  
 2-51 DOCUMENTATION SHOWING EXPORTATION OF PROPERTY. (a) A customs  
 2-52 broker licensed by the comptroller or an authorized employee of the  
 2-53 customs broker may issue documentation certifying that delivery of  
 2-54 tangible personal property was made to a point outside the  
 2-55 territorial limits of the United States as required by Section  
 2-56 151.307(b)(2)(B) only if the customs broker or authorized employee:

2-57 (1) watches the property cross the border of the  
 2-58 United States;

2-59 (2) watches the property being placed on a common  
 2-60 carrier for delivery outside the territorial limits of the United  
 2-61 States; or

2-62 (3) verifies that the purchaser is transporting the  
 2-63 property to a destination outside of the territorial limits of the  
 2-64 United States by:

2-65 (A) examining a passport, laser visa  
 2-66 identification card, or foreign voter registration picture  
 2-67 identification indicating that the purchaser of the property  
 2-68 resides in a foreign country;

2-69 (B) requiring the purchaser to produce the

3-1 property and the original receipt for the property;  
3-2 (C) requiring the purchaser to state the foreign  
3-3 country destination of the property which must be the foreign  
3-4 country in which the purchaser resides;  
3-5 (D) requiring the purchaser to state the date and  
3-6 time the property is expected to arrive in the foreign country  
3-7 destination;  
3-8 (E) requiring the purchaser to state the date and  
3-9 time the property was purchased, the name and address of the place  
3-10 at which the property was purchased, the sales price and quantity of  
3-11 the property, and a description of the property;  
3-12 (F) requiring the purchaser to sign a form:  
3-13 (i) stating that the purchaser has provided  
3-14 the information and documentation required by this subdivision; and  
3-15 (ii) that contains a notice to the  
3-16 purchaser that tangible personal property not exported is subject  
3-17 to taxation under this chapter and the purchaser is liable, in  
3-18 addition to other possible civil liabilities and criminal  
3-19 penalties, for payment of an amount equal to the value of the  
3-20 merchandise if the purchaser improperly obtained a refund of taxes  
3-21 relating to the property; and  
3-22 (G) requiring the purchaser to produce the  
3-23 purchaser's:  
3-24 (i) Form I-94, Arrival/Departure record, or  
3-25 its successor, as issued by the United States Immigration and  
3-26 Naturalization Service; or  
3-27 (ii) air, land, or water travel  
3-28 documentation if the customs broker is located in a county that does  
3-29 not border the United Mexican States.  
3-30 (b) A customs broker licensed by the comptroller or an  
3-31 authorized employee of the customs broker may issue and deliver  
3-32 documentation under Subsection (a) at any time after the tangible  
3-33 personal property is purchased and the broker or employee completes  
3-34 the process required by Subsection (a). The documentation must  
3-35 include:  
3-36 (1) the name and address of the customs broker;  
3-37 (2) the license number of the customs broker;  
3-38 (3) the name and address of the purchaser;  
3-39 (4) the name and address of the place at which the  
3-40 property was purchased;  
3-41 (5) the date and time of the sale;  
3-42 (6) a description and the quantity of the property;  
3-43 (7) the sales price of the property;  
3-44 (8) the foreign country destination of the property,  
3-45 which may not be the place of export;  
3-46 (9) the date and time:  
3-47 (A) at which the customs broker or authorized  
3-48 employee watched the property cross the border of the United  
3-49 States;  
3-50 (B) at which the customs broker or authorized  
3-51 employee watched the property being placed on a common carrier for  
3-52 delivery outside the territorial limits of the United States; or  
3-53 (C) the property is expected to arrive in the  
3-54 foreign country destination, as stated by the purchaser;  
3-55 (10) a declaration signed by the customs broker or an  
3-56 authorized employee of the customs broker stating that the customs  
3-57 broker is a licensed Texas customs broker; and  
3-58 (11) an export certification stamp issued by the  
3-59 comptroller.  
3-60 (c) The comptroller may require a customs broker to pay the  
3-61 comptroller the amount of any tax refunded if the customs broker  
3-62 does not comply with this section, Section 151.157, or the rules  
3-63 adopted by the comptroller under this section or Section 151.157.  
3-64 In addition to the amount of the refunded tax, the comptroller may  
3-65 require the customs broker to pay a penalty in an amount equal to  
3-66 the amount of the refunded tax, but not less than \$500 nor more than  
3-67 \$5,000. The comptroller and the state may deduct any penalties to  
3-68 be paid by a customs broker from the broker's posted bond.  
3-69 (d) A proceeding to require a customs broker to pay an

4-1 amount under Subsection (c) is a contested case in the same manner  
 4-2 as a proceeding to revoke or suspend a customs broker's license  
 4-3 under Section 151.157(f).

4-4 (e) In this section, "customs broker" and "authorized  
 4-5 employee" have the meanings assigned by Section 151.157.

4-6 SECTION 3. Section 151.158(g), Tax Code, is amended to read  
 4-7 as follows:

4-8 (g) The comptroller shall charge \$1.60 [~~an amount not to~~  
 4-9 ~~exceed five cents~~] for each stamp. The comptroller shall use the  
 4-10 money from the sale of the stamps only for costs related to  
 4-11 producing the stamps, including costs of materials, labor, and  
 4-12 overhead. Any unspent money shall be deposited to the credit of the  
 4-13 general revenue fund.

4-14 SECTION 4. Sections 151.307(b) and (e), Tax Code, are  
 4-15 amended to read as follows:

4-16 (b) When an exemption is claimed because tangible personal  
 4-17 property is exported beyond the territorial limits of the United  
 4-18 States, proof of export may be shown only by:

4-19 (1) a bill of lading issued by a licensed and  
 4-20 certificated carrier of persons or property showing the seller as  
 4-21 consignor, the buyer as consignee, and a delivery point outside the  
 4-22 territorial limits of the United States;

4-23 (2) documentation:

4-24 (A) provided by a United States Customs Broker  
 4-25 licensed by the comptroller under Section 151.157;

4-26 (B) certifying that delivery was made to a point  
 4-27 outside the territorial limits of the United States; [~~and~~]

4-28 (C) that includes, in addition to any other  
 4-29 information required by the comptroller, a statement signed by the  
 4-30 person claiming the exemption that states that "Providing false  
 4-31 information to a customs broker is a Class B misdemeanor."; and

4-32 (D) to which a stamp issued under Section 151.158  
 4-33 is affixed in the manner required by that section or Section  
 4-34 151.157;

4-35 (3) import documents from the country of destination  
 4-36 showing that the property was imported into a country other than the  
 4-37 United States;

4-38 (4) an original airway, ocean, or railroad bill of  
 4-39 lading and a forwarder's receipt if an air, ocean, or rail freight  
 4-40 forwarder takes possession of the property; or

4-41 (5) any other manner provided by the comptroller for  
 4-42 an enterprise authorized to make tax-free purchases under Section  
 4-43 151.156.

4-44 (e) A retailer who makes a refund before the time prescribed  
 4-45 by Subsection (d) or makes a refund that is undocumented or  
 4-46 improperly documented is liable for the amount of the tax refunded  
 4-47 with interest. The retailer is not liable if the refund is made  
 4-48 erroneously because of a clerical error.

4-49 SECTION 5. Section 151.406(a), Tax Code, is amended to read  
 4-50 as follows:

4-51 (a) Except as provided by Section 151.407 [~~of this code~~], a  
 4-52 tax report required by this chapter must:

4-53 (1) for sales tax purposes, show the amount of the  
 4-54 total receipts of a seller for the reporting period;

4-55 (2) for use tax purposes, show the amount of the total  
 4-56 receipts from sales by a retailer of taxable items during the  
 4-57 reporting period for storage, use, or consumption in this state;

4-58 (3) show the amount of the total sales prices of  
 4-59 taxable items that are subject to the use tax during the reporting  
 4-60 period and that were acquired for storage, use, or consumption in  
 4-61 this state by a purchaser who did not pay the tax to a retailer;

4-62 (4) show the amount of the taxes due for the reporting  
 4-63 period; [~~and~~]

4-64 (5) show the amount of sales tax refunded for items  
 4-65 exported beyond the territorial limits of the United States after  
 4-66 receiving documentation under Section 151.307(b)(2); and

4-67 (6) include other information that the comptroller  
 4-68 determines to be necessary for the proper administration of this  
 4-69 chapter.

5-1 SECTION 6. Sections 151.712(b) and (f), Tax Code, are  
5-2 amended to read as follows:

5-3 (b) A person who provides proof of documentation that  
5-4 tangible personal property has been exported outside of the United  
5-5 States or a person who may benefit from the provision of the proof  
5-6 of documentation, including a customs broker, authorized employee,  
5-7 authorized independent contractor, seller of the property or agent  
5-8 or employee of the seller, or a consumer of the property or agent or  
5-9 employee of the consumer, may not sell or buy the proof of  
5-10 documentation, including stamps required for the documentation.  
5-11 This subsection does not apply to a customs broker who accepts a fee  
5-12 for providing documentation under Section 151.307(b) if the customs  
5-13 broker provides the documentation in accordance with Section  
5-14 151.157 and rules adopted by the comptroller.

5-15 (f) In addition to any monetary penalty under this section,  
5-16 the comptroller shall [~~may suspend or~~] revoke under Section 151.157  
5-17 the license of a customs broker who violates this section. A person  
5-18 whose license is revoked under this subsection may not apply for a  
5-19 new license under Section 151.157 before the first anniversary of  
5-20 the date on which the previous license was revoked.

5-21 SECTION 7. (a) This Act takes effect January 1, 2004.

5-22 (b) The change in law made by this Act does not affect taxes  
5-23 imposed before the effective date of this Act, and the former law is  
5-24 continued in effect for purposes of the liability for and  
5-25 collection of those taxes.

5-26 \* \* \* \* \*