

By: Quintanilla

H.B. No. 1894

A BILL TO BE ENTITLED

AN ACT

relating to customs brokers.

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

SECTION 1. Sections 151.157(a-1), (f), and (f-1), Tax Code, are amended to read as follows:

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

(f) The comptroller may suspend or revoke a license issued under this section if the customs broker does not comply with Section 151.1575(c) or issues documentation that is false ~~[to obtain a refund of taxes paid on tangible personal property not~~

1 ~~exported or to assist another person in obtaining such a refund~~].  
2 The comptroller may determine the length of suspension or  
3 revocation necessary for the enforcement of this chapter and the  
4 comptroller's rules. A proceeding to suspend or revoke a license  
5 under this subsection is a contested case under Chapter 2001,  
6 Government Code. Judicial review is by trial de novo. The district  
7 courts of Travis County have exclusive original jurisdiction of a  
8 suit under this section.

9 (f-1) In addition to any other penalty provided by law, the  
10 comptroller may require a customs broker to pay to the comptroller  
11 the amount of any tax refunded and the amount of any penalty imposed  
12 under Section 151.1575(c) if the customs broker did not comply with  
13 this section or the rules adopted by the comptroller under this  
14 section [~~in relation to the refunded tax~~].

15 SECTION 2. Section 151.1575, Tax Code, is amended by  
16 amending Subsections (a), (b), and (c) and adding Subsection (a-1)  
17 to read as follows:

18 (a) A customs broker licensed by the comptroller or an  
19 authorized employee of the customs broker may issue documentation  
20 certifying that delivery of tangible personal property was made to  
21 a point outside the territorial limits of the United States as  
22 required by Section 151.307(b)(2)(B) only if the customs broker or  
23 authorized employee:

24 (1) watches the property cross the border of the  
25 United States;

26 (2) watches the property being placed on a common  
27 carrier for delivery outside the territorial limits of the United

1 States; or

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

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

9 (B) requiring that the documentation examined  
10 under Paragraph (A) have a unique identification number for that  
11 purchaser;

12 (C) requiring the purchaser to produce the  
13 property and the original sales receipt for the property;

14 (D) [~~(C)~~] requiring the purchaser to state the  
15 foreign country destination of the property which must be the  
16 foreign country in which the purchaser resides;

17 (E) [~~(D)~~] requiring the purchaser to state the  
18 date and time the property is expected to arrive in the foreign  
19 country destination;

20 (F) [~~(E)~~] requiring the purchaser to state the  
21 date and time the property was purchased, the name and address of  
22 the place at which the property was purchased, the sales price and  
23 quantity of the property, and a description of the property;

24 (G) [~~(F)~~] requiring the purchaser and the broker  
25 or an authorized employee to sign in the presence of each other a  
26 form prepared by the comptroller as provided by Subsection (a-1):

27 (i) stating that the purchaser has provided

1 the information and documentation required by this subdivision;  
2 [~~and~~]

3 (ii) that contains a notice to the  
4 purchaser that tangible personal property not exported is subject  
5 to taxation under this chapter and the purchaser is liable, in  
6 addition to other possible civil liabilities and criminal  
7 penalties, for payment of an amount equal to the value of the  
8 merchandise if the purchaser improperly obtained a refund of taxes  
9 relating to the property;

10 (iii) that discloses the following to the  
11 purchaser in English and Spanish:

12 (a) that state law requires that both  
13 the sales receipt and all property for which the purchaser is  
14 claiming an exemption must be presented to the broker or authorized  
15 employee;

16 (b) that the form must be signed in  
17 the presence of each other by both the purchaser and the broker or  
18 authorized employee; and

19 (c) that the purchaser and the broker  
20 or authorized employee are signing the form under penalty of  
21 perjury; and

22 (iv) that contains a signature block that  
23 requires the broker's license number and the identification number  
24 of the identification presented by the purchaser;

25 (H) requiring the purchaser to acknowledge each  
26 disclosure item under Paragraph (G)(iii) by signing next to each  
27 item; and

1                    (I) [~~(C)~~] requiring the purchaser to produce the  
2 purchaser's:

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

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

10            (a-1) The purchaser and the customs broker or authorized  
11 employee must sign, in the presence of each other and under penalty  
12 of perjury, the form described by Subsection (a)(3)(G). The  
13 signatures must be notarized. The signature block on the form must  
14 include the customs broker's license number and the identification  
15 number of the identification presented by the purchaser.

16            (b) A customs broker licensed by the comptroller or an  
17 authorized employee of the customs broker may issue and deliver  
18 documentation under Subsection (a) at any time after the tangible  
19 personal property is purchased and the broker or employee completes  
20 the process required by Subsection (a). The customs broker or  
21 authorized employee may issue or deliver documentation only for  
22 property that is listed on a single receipt. The documentation must  
23 include:

- 24                    (1) the name and address of the customs broker;  
25                    (2) the license number of the customs broker;  
26                    (3) the name and address of the purchaser;  
27                    (4) the name and address of the place at which the

1 property was purchased;

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

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

4 (7) the sales price of the property;

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

7 (9) the date and time:

8 (A) at which the customs broker or authorized  
9 employee watched the property cross the border of the United  
10 States;

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

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

16 (10) a declaration signed by the customs broker or an  
17 authorized employee of the customs broker stating that:

18 (A) the customs broker is a licensed Texas  
19 customs broker; and

20 (B) the customs broker or authorized employee  
21 inspected the property and the original receipt for the property;  
22 and

23 (11) an export certification stamp issued by the  
24 comptroller.

25 (c) The comptroller may require a customs broker to pay the  
26 comptroller the amount of any tax refunded if the customs broker  
27 does not comply with this section, Section 151.157, or the rules

1 adopted by the comptroller under this section or Section 151.157.  
2 In addition to the amount of the refunded tax, the comptroller may  
3 require the customs broker to pay a penalty of [~~in an amount equal~~  
4 ~~to the amount of the refunded tax, but~~] not less than \$500 nor more  
5 than \$5,000. The comptroller and the state may deduct any penalties  
6 to be paid by a customs broker from the broker's posted bond.

7 SECTION 3. Subchapter E, Chapter 151, Tax Code, is amended  
8 by adding Section 151.1576 to read as follows:

9 Sec. 151.1576. NOTICE REQUIRED ON CERTAIN ADVERTISEMENTS  
10 AND PREMISES RELATED TO EXPORTATION OF PROPERTY. (a) In this  
11 section, "customs broker" and "authorized employee" have the  
12 meanings assigned by Section 151.157.

13 (b) A premises at which a form is signed by a purchaser,  
14 customs broker, or authorized employee under Section  
15 151.1575(a)(3)(G) shall prominently display at each entrance to the  
16 premises a sign that gives notice in both English and Spanish that  
17 the purchaser must present all property at the time the form is  
18 signed. The sign must appear in contrasting colors with block  
19 letters at least one inch in height. The sign shall be displayed in  
20 a conspicuous manner clearly visible to the public.

21 (c) All advertising by any media, including websites,  
22 regarding services provided by a customs broker or authorized  
23 employee under Section 151.157 or 151.1575 must include a  
24 conspicuous notice in English and Spanish that the purchaser must  
25 produce all property at the time the form is signed under Section  
26 151.1575(a)(3)(G).

27 SECTION 4. Section 151.158, Tax Code, is amended by

1 amending Subsection (g) and adding Subsections (g-1) and (g-2) to  
2 read as follows:

3 (g) The comptroller shall charge \$3.20 [~~\$1.60~~] for each  
4 stamp. The comptroller shall use \$1.60 of the money from the sale  
5 of the stamps only for costs related to producing the stamps,  
6 including costs of materials, labor, and overhead. The remaining  
7 \$1.60 is distributed as follows:

8 (1) the comptroller shall use 50 cents only for  
9 enforcement of the laws relating to customs brokers under this  
10 title; and

11 (2) the comptroller shall deposit \$1.10 to the credit  
12 of the foundation school fund.

13 (g-1) Any unspent money from the \$2.10 to be used by the  
14 comptroller shall be deposited to the credit of the general revenue  
15 fund.

16 (g-2) Customs brokers who return unused stamps to the  
17 comptroller's office on a quarterly basis shall get credit towards  
18 the purchase of new stamps.

19 SECTION 5. Section 151.307(d), Tax Code, is repealed.

20 SECTION 6. The change in law made by this Act applies only  
21 to documentation issued on or after the effective date of this Act.  
22 Documentation issued before the effective date of this Act is  
23 governed by the law in effect on the date the documentation was  
24 issued, and that law is continued in effect for that purpose.

25 SECTION 7. This Act takes effect September 1, 2011.