

By: Zaffirini
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S.B. No. 776

Substitute the following for S.B. No. 776:

By: Otto

C.S.S.B. No. 776

A BILL TO BE ENTITLED

AN ACT

1

2 relating to customs brokers.

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

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

6 (a-1) The comptroller shall maintain a password-protected
7 website that a customs broker, or an authorized employee of a
8 customs broker, licensed under this section must use to prepare
9 documentation to show the exemption of tangible personal property
10 under Section 151.307(b)(2). The comptroller shall require a
11 customs broker or authorized employee to use the website to
12 actually produce the documentation after providing all necessary
13 information. The comptroller shall use the information provided by
14 a customs broker or authorized employee under this subsection as
15 necessary to enforce this section and Section 151.307. The
16 comptroller may [~~shall~~] provide an alternate method to prepare
17 documentation to show the exemption of tangible personal property
18 under Section 151.307(b)(2) in those instances when the
19 password-protected website is unavailable due to technical or
20 communication problems. A customs broker or authorized employee
21 may use the alternate method only if the comptroller provides prior
22 authorization for each use.

23 (f) The comptroller may suspend or revoke a license issued
24 under this section if the customs broker does not comply with

1 Section 151.1575(c) or issues documentation that is false [~~to~~
2 ~~obtain a refund of taxes paid on tangible personal property not~~
3 ~~exported or to assist another person in obtaining such a refund~~].
4 The comptroller may determine the length of suspension or
5 revocation necessary for the enforcement of this chapter and the
6 comptroller's rules. A proceeding to suspend or revoke a license
7 under this subsection is a contested case under Chapter 2001,
8 Government Code. Judicial review is by trial de novo. The district
9 courts of Travis County have exclusive original jurisdiction of a
10 suit under this section.

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

17 SECTION 2. Sections 151.1575(a), (b), and (c), Tax Code,
18 are amended to read as follows:

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

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

27 (2) watches the property being placed on a common

1 carrier for delivery outside the territorial limits of the United
2 States; or

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

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

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

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

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

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

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

25 (G) [~~(F)~~] requiring the purchaser and the broker
26 or an authorized employee to sign in the presence of each other a
27 form prepared or approved by the comptroller:

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

10 (H) [~~(G)~~] requiring the purchaser to produce the
11 purchaser's:

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

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

19 (b) A customs broker licensed by the comptroller or an
20 authorized employee of the customs broker may issue and deliver
21 documentation under Subsection (a) at any time after the tangible
22 personal property is purchased and the broker or employee completes
23 the process required by Subsection (a). The comptroller shall
24 limit to six the number of receipts for which a single proof of
25 export documentation may be issued under this section. The
26 documentation must include:

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

- 1 (2) the license number of the customs broker;
- 2 (3) the name and address of the purchaser;
- 3 (4) the name and address of the place at which the
4 property was purchased;
- 5 (5) the date and time of the sale;
- 6 (6) a description and the quantity of the property;
- 7 (7) the sales price of the property;
- 8 (8) the foreign country destination of the property,
9 which may not be the place of export;
- 10 (9) the date and time:
- 11 (A) at which the customs broker or authorized
12 employee watched the property cross the border of the United
13 States;
- 14 (B) at which the customs broker or authorized
15 employee watched the property being placed on a common carrier for
16 delivery outside the territorial limits of the United States; or
- 17 (C) the property is expected to arrive in the
18 foreign country destination, as stated by the purchaser;
- 19 (10) a declaration signed by the customs broker or an
20 authorized employee of the customs broker stating that:
- 21 (A) the customs broker is a licensed Texas
22 customs broker; and
- 23 (B) the customs broker or authorized employee
24 inspected the property and the original receipt for the property;
25 and
- 26 (11) an export certification stamp issued by the
27 comptroller.

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

10 SECTION 3. Section 151.158, Tax Code, is amended by
11 amending Subsection (g) and adding Subsections (g-1) and (g-2) to
12 read as follows:

13 (g) The comptroller shall charge \$2.10 [~~\$1.60~~] for each
14 stamp. The comptroller shall use:

15 (1) \$1.60 of the money from the sale of the stamps only
16 for costs related to producing the stamps, including costs of
17 materials, labor, and overhead; and

18 (2) the remaining 50 cents only for enforcement of the
19 laws relating to customs brokers under this title.

20 (g-1) Any unspent money shall be deposited to the credit of
21 the general revenue fund.

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

25 SECTION 4. The change in law made by this Act applies only
26 to documentation issued on or after the effective date of this Act.
27 Documentation issued before the effective date of this Act is

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1 governed by the law in effect on the date the documentation was
2 issued, and that law is continued in effect for that purpose.

3 SECTION 5. This Act takes effect September 1, 2011.