

## **BILL ANALYSIS**

C.S.H.B. 4336  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, there is no state statute prohibiting the smuggling of firearms in Texas. The phrase “possesses or transports” is designed to capture illicit conduct on the part of person who initially obtains the firearms, the person who transports the firearms from one location to another, and any other persons whom the firearms are subsequently delivered.

Although a state or local law enforcement officer may apprehend a person in the business of possessing, transporting, or transferring firearms, only federal law enforcement agencies have the authority to prosecute. Due to limited resources, the United States Attorney’s Office cannot accept and prosecute all of the cases that result from investigations by local, state and federal law enforcement agencies.

C.S.H.B. 4336 creates the third degree felony offense of firearm smuggling for a person who knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4336 amends the Penal Code to create the third degree felony offense of firearm smuggling for a person who knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. The bill establishes that a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct on more than one occasion or for profit or any other form of remuneration. The bill enhances the penalty from a third degree felony to a second degree felony if it is shown at trial that the offense was committed with respect to three or more firearms in a single criminal episode. The bill makes the provisions regarding a firearm smuggling offense inapplicable to a peace officer engaged in the actual discharge of an official duty. The bill authorizes the prosecution of the actor, if conduct that constitutes a firearm smuggling offense also constitutes an offense under any other law, to be conducted under provisions regarding a firearm smuggling offense, the other law, or both.

C.S.H.B. 4336 expands the conduct that constitutes the offense of engaging in organized criminal activity to include the commission of or the conspiracy to commit an offense involving selling, renting, leasing, loaning, or giving a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act, or a firearm smuggling offense, with the intent to establish, maintain, or participate in the combination or in the profits of a combination or as a member of a criminal street gang.

C.S.H.B. 4336 reenacts and amends Article 59.01(2), Code of Criminal Procedure, as amended

by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, to include in the definition of "contraband" for purposes of provisions regarding forfeiture of contraband, property of any nature, including real, personal, tangible, or intangible, that is used or intended to be used in the commission of any offense involving selling, renting, leasing, loaning, or giving a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act, or a firearm smuggling offense, that is the proceeds gained from the commission of such offenses, or that is acquired with proceeds gained from the commission of such offenses.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 4336 differs from the original by providing that a person commits an offense of firearm smuggling if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of any state or federal law, whereas the original provides that a person commits such an offense if the person possesses or transports a firearm with that knowledge or transfers a firearm to another person knowing that the firearm was previously acquired in violation of state or federal law. The substitute removes a provision in the original enhancing the punishment for an offense of firearm smuggling to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor was engaged in the business of possessing, transporting, or transferring firearms acquired in violation of any state or federal law.

C.S.H.B. 4336 differs from the original by providing that a person is considered to engage in the business of the offense if the person engages in the conduct constituting the offense either on more than one occasion or for profit or any other form of remuneration, rather than both on more than one occasion and for profit or any other form of remuneration, as in the original.

C.S.H.B. 4336 differs from the original in the provision expanding the conduct that constitutes an offense of engaging in organized criminal activity, by including the commission of or the conspiracy to commit an offense involving selling, renting, leasing, loaning, or giving a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act, with the intent to establish, maintain, or participate in the combination or in the profits of a combination or as a member of a criminal street gang, whereas the original includes any felony offense of the unlawful transfer of certain weapons.

C.S.H.B. 4336 differs from the original by including in the definition of "contraband" property of any nature, including real, personal, tangible, or intangible, that is used or intended to be used in the commission of any offense involving selling, renting, leasing, loaning, or giving a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act, or a firearm smuggling offense, that is the proceeds gained from the commission of such offenses, or that is acquired with proceeds gained from the commission of such offenses, whereas the original includes only such property used in the commission or intended to be used in the commission of any felony weapons-related offense.