

BILL ANALYSIS

S.B. 2225
By: Carona
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Illegal gun trafficking from Texas into Mexico is a serious problem. Access to weaponry can determine the level of violence and effectiveness of an organized criminal campaign.

As transnational gang activity along the border has rapidly increased, Texas and the United States have put pressure on Mexico to deal with the problem. However, Mexican drug cartels have transformed into well-equipped, well-organized, and technologically advanced armies. In 2007, half of the 14,111 firearms recovered in Mexico were traced back to Texas, originating from Houston and Dallas. The stream of illegal weapons across the border from Texas has contributed to transnational gangs becoming the greatest threat to the homeland security of this state. Currently, there is no state statute prohibiting the large-scale smuggling of firearms out of Texas.

S.B. 2225 amends current law relating to the civil and criminal consequences of engaging in certain conduct involving the transporting or transferring of a firearm and to creating the offense of firearm smuggling.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Chapter 46, Penal Code, by adding Section 46.14, as follows:

Sec. 46.14. FIREARM SMUGGLING. (a) Provides that a person commits an offense if the person 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. Provides that for the purposes of this subsection, 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.

(b) Provides that an offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) Provides that this section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 2. Amends Section 71.02(a), Penal Code, to provide that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to

commit one or more certain acts, including any offense under Section 46.06(a)(1) (relating to committing an offense with a handgun) or 46.14. Makes nonsubstantive changes.

SECTION 3. Reenacts 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 redefine "contraband" that is used or intended to be used in the commission of any offense under Section 46.06(a)(1) or 46.14, Penal Code; the proceeds gained from the commission of a felony listed in Paragraph (B)(viii) or (x) of this subsection; or acquired with proceeds gained from the commission of a felony listed in Paragraph (B)(viii) or (x).

SECTION 4. Amends Chapter 59, Code of Criminal Procedure, by adding Article 59.011, as follows:

Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. Authorizes the attorney representing the state to proceed under either this chapter or that article if property described by Article 59.01(2)(B)(x) is subject to forfeiture under this chapter and Article 18.18 (Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, and other Contraband).

SECTION 5. Makes application of the change in law made by this Act in Section 71.02(a), prospective.

SECTION 6. Makes application of the change in law made by this Act in amending Article 59.01(2), Code of Criminal Procedure, and Article 59.011, Code of Criminal Procedure, prospective.

SECTION 7. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.