

By: Corte, Moody

H.B. No. 4336

Substitute the following for H.B. No. 4336:

By: Gallego

C.S.H.B. No. 4336

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the civil and criminal consequences of engaging in  
3 certain conduct involving a firearm and to creating the offense of  
4 firearm smuggling; providing penalties.

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

6 SECTION 1. Chapter 46, Penal Code, is amended by adding  
7 Section 46.14 to read as follows:

8 Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an  
9 offense if the person knowingly engages in the business of  
10 transporting or transferring a firearm that the person knows was  
11 acquired in violation of the laws of any state or of the United  
12 States. For purposes of this subsection, a person is considered to  
13 engage in the business of transporting or transferring a firearm if  
14 the person engages in that conduct:

15 (1) on more than one occasion; or

16 (2) for profit or any other form of remuneration.

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

22 (c) This section does not apply to a peace officer who is  
23 engaged in the actual discharge of an official duty.

24 (d) If conduct that constitutes an offense under this

1 section also constitutes an offense under any other law, the actor  
2 may be prosecuted under this section, the other law, or both.

3 SECTION 2. Section 71.02(a), Penal Code, is amended to read  
4 as follows:

5 (a) A person commits an offense if, with the intent to  
6 establish, maintain, or participate in a combination or in the  
7 profits of a combination or as a member of a criminal street gang,  
8 the person [~~he~~] commits or conspires to commit one or more of the  
9 following:

10 (1) murder, capital murder, arson, aggravated  
11 robbery, robbery, burglary, theft, aggravated kidnapping,  
12 kidnapping, aggravated assault, aggravated sexual assault, sexual  
13 assault, forgery, deadly conduct, assault punishable as a Class A  
14 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
15 motor vehicle;

16 (2) any gambling offense punishable as a Class A  
17 misdemeanor;

18 (3) promotion of prostitution, aggravated promotion  
19 of prostitution, or compelling prostitution;

20 (4) unlawful manufacture, transportation, repair, or  
21 sale of firearms or prohibited weapons;

22 (5) unlawful manufacture, delivery, dispensation, or  
23 distribution of a controlled substance or dangerous drug, or  
24 unlawful possession of a controlled substance or dangerous drug  
25 through forgery, fraud, misrepresentation, or deception;

26 (6) any unlawful wholesale promotion or possession of  
27 any obscene material or obscene device with the intent to wholesale

1 promote the same;

2 (7) any offense under Subchapter B, Chapter 43,  
3 depicting or involving conduct by or directed toward a child  
4 younger than 18 years of age;

5 (8) any felony offense under Chapter 32;

6 (9) any offense under Chapter 36;

7 (10) any offense under Chapter 34 or 35;

8 (11) any offense under Section 37.11(a);

9 (12) any offense under Chapter 20A; ~~or~~

10 (13) any offense under Section 37.10; or

11 (14) any offense under Section 46.06(a)(1) or 46.14.

12 SECTION 3. Article 59.01(2), Code of Criminal Procedure, as  
13 amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.  
14 2278), Acts of the 80th Legislature, Regular Session, 2007, is  
15 reenacted and amended to read as follows:

16 (2) "Contraband" means property of any nature,  
17 including real, personal, tangible, or intangible, that is:

18 (A) used in the commission of:

19 (i) any first or second degree felony under  
20 the Penal Code;

21 (ii) any felony under Section 15.031(b),  
22 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
23 31, 32, 33, 33A, or 35, Penal Code;

24 (iii) any felony under The Securities Act  
25 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

26 (iv) any offense under Chapter 49, Penal  
27 Code, that is punishable as a felony of the third degree or state

1 jail felony, if the defendant has been previously convicted three  
2 times of an offense under that chapter;

3 (B) used or intended to be used in the commission  
4 of:

5 (i) any felony under Chapter 481, Health  
6 and Safety Code (Texas Controlled Substances Act);

7 (ii) any felony under Chapter 483, Health  
8 and Safety Code;

9 (iii) a felony under Chapter 153, Finance  
10 Code;

11 (iv) any felony under Chapter 34, Penal  
12 Code;

13 (v) a Class A misdemeanor under Subchapter  
14 B, Chapter 365, Health and Safety Code, if the defendant has been  
15 previously convicted twice of an offense under that subchapter;

16 (vi) any felony under Chapter 152, Finance  
17 Code;

18 (vii) any felony under Chapter 32, Human  
19 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
20 involves the state Medicaid program;

21 (viii) a Class B misdemeanor under Chapter  
22 522, Business & Commerce Code; ~~or~~

23 (ix) a Class A misdemeanor under Section  
24 35.153, Business & Commerce Code; or

25 (x) any offense under Section 46.06(a)(1)  
26 or 46.14, Penal Code;

27 (C) the proceeds gained from the commission of a

1 felony listed in Paragraph (A) or (B) of this subdivision, a  
2 misdemeanor listed in Paragraph (B)(viii) or (x) of this  
3 subdivision, or a crime of violence;

4 (D) acquired with proceeds gained from the  
5 commission of a felony listed in Paragraph (A) or (B) of this  
6 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of  
7 this subdivision, or a crime of violence; or

8 (E) used to facilitate or intended to be used to  
9 facilitate the commission of a felony under Section 15.031 or  
10 43.25, Penal Code.

11 SECTION 4. The change in law made by this Act applies only  
12 to an offense committed on or after the effective date of this Act.  
13 An offense committed before the effective date of this Act is  
14 governed by the law in effect when the offense was committed, and  
15 the former law is continued in effect for that purpose. For  
16 purposes of this section, an offense was committed before the  
17 effective date of this Act if any element of the offense occurred  
18 before that date.

19 SECTION 5. The change in law made by this Act in amending  
20 Article 59.01(2), Code of Criminal Procedure, applies only to the  
21 forfeiture of property in relation to an offense committed on or  
22 after the effective date of this Act. Forfeiture of property in  
23 relation to an offense committed before the effective date of this  
24 Act is governed by the law in effect when the offense was committed,  
25 and the former law is continued in effect for that purpose. For  
26 purposes of this section, an offense was committed before the  
27 effective date of this Act if any element of the offense occurred

1 before that date.

2 SECTION 6. This Act takes effect September 1, 2009.