

By: Corte

H.B. No. 4336

A BILL TO BE ENTITLED

AN ACT

relating to the civil and criminal consequences of engaging in certain conduct creating the offense of firearm smuggling; providing penalties.

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

SECTION 1. Title 10, Penal Code, is amended by adding Section 46.14 to read as follows:

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly:

(1) possesses or transports a firearm knowing that the firearm was acquired in violation of the laws of any state or of the United States; or

(2) transfers a firearm to another person knowing that the firearm was previously acquired in violation of the laws of any state or of the United States.

(b) 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) Notwithstanding Subsection (b), the punishment prescribed for an offense under this section is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor, at the time

1 of the offense, was engaged in the business of possessing,
2 transporting, or transferring firearms acquired in violation of the
3 laws of any state or of the United States. For purposes of this
4 subsection, a person is considered to have engaged in business if,
5 on more than one occasion, the person engaged in the applicable
6 conduct for profit or any other form of remuneration.

7 (d) This section does not apply to a peace officer who is
8 engaged in the actual discharge of an official duty.

9 (e) If conduct that constitutes an offense under this
10 section also constitutes an offense under any other law, the actor
11 may be prosecuted under this section, the other law, or both.

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

14 (a) A person commits an offense if, with the intent to
15 establish, maintain, or participate in a combination or in the
16 profits of a combination or as a member of a criminal street gang,
17 the person ~~he~~ commits or conspires to commit one or more of the
18 following:

19 (1) murder, capital murder, arson, aggravated
20 robbery, robbery, burglary, theft, aggravated kidnapping,
21 kidnapping, aggravated assault, aggravated sexual assault, sexual
22 assault, forgery, deadly conduct, assault punishable as a Class A
23 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
24 motor vehicle;

25 (2) any gambling offense punishable as a Class A
26 misdemeanor;

27 (3) promotion of prostitution, aggravated promotion

1 of prostitution, or compelling prostitution;

2 (4) unlawful manufacture, transportation, repair, or
3 sale of firearms or prohibited weapons;

4 (5) unlawful manufacture, delivery, dispensation, or
5 distribution of a controlled substance or dangerous drug, or
6 unlawful possession of a controlled substance or dangerous drug
7 through forgery, fraud, misrepresentation, or deception;

8 (6) any unlawful wholesale promotion or possession of
9 any obscene material or obscene device with the intent to wholesale
10 promote the same;

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

14 (8) any felony offense under Chapter 32;

15 (9) any offense under Chapter 36;

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

17 (11) any offense under Section 37 11(a);

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

19 (13) any offense under Section 37.10; or

20 (14) any felony offense under Section 46.06 or 46.14.

21 SECTION 3. Article 59, Code of Criminal Procedure is
22 amended by amending Section 59.01, subsection (2), to read as
23 follows:

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

26 (A) used in the commission of:

27 (i) any first or second degree felony under

1 the Penal Code;

2 (ii) any felony under Section 15.031(b),
3 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
4 31, 32, 33, 33A, ~~or~~ 35, or 46, Penal Code.

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

7 (iv) any offense under Chapter 49, Penal
8 Code, that is punishable as a felony of the third degree or state
9 jail felony, if the defendant has been previously convicted three
10 times of an offense under that chapter;

11 (B) used or intended to be used in the commission
12 of:

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

15 (ii) any felony under Chapter 483, Health
16 and Safety Code;

17 (iii) a felony under Chapter 153, Finance
18 Code;

19 (iv) any felony under Chapter 34 or 46,
20 Penal Code;

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

24 (vi) any felony under Chapter 152, Finance
25 Code;

26 (vii) any felony under Chapter 32, Human
27 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that

1 involves the state Medicaid program;

2 (viii) a Class B misdemeanor under Section
3 35.60, Business & Commerce Code; or

4 (ix) a Class A misdemeanor under Section
5 35.153, Business & Commerce Code;

6 (C) the proceeds gained from the commission of a
7 felony listed in Paragraph (A) or (B) of this subdivision, a
8 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a
9 crime of violence;

10 (D) acquired with proceeds gained from the
11 commission of a felony listed in Paragraph (A) or (B) of this
12 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this
13 subdivision, or a crime of violence; or

14 (E) used to facilitate or intended to be used to
15 facilitate the commission of a felony under Section 15.031 or
16 43.25, Penal Code.

17 SECTION 4. The change in law made by this Act applies only
18 to an offense committed on or after the effective date of this Act.
19 An offense committed before the effective date of this Act is
20 governed by the law in effect when the offense was committed, and
21 the former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 5. The change in law made by this Act in amending
26 Article 59.01(2), Code of Criminal Procedure, applies only to the
27 forfeiture of property in relation to an offense committed on or

1 after the effective date of this Act. Forfeiture of property in
2 relation to an offense committed before the effective date of this
3 Act is governed by the law in effect when the offense was committed,
4 and the former law is continued in effect for that purpose. For
5 purposes of this section, an offense was committed before the
6 effective date of this Act if any element of the offense occurred
7 before that date.

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