

By: Carona, Shapleigh

S.B. No. 2225

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Chapter 46, 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 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. For 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:

(1) on more than one occasion; or

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

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

(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. Subsection (a), Section 71.02, Penal Code, is
4 amended to read 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. Subdivision (2), Article 59.01, Code of Criminal
13 Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73),
14 and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session,
15 2007, is 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. Chapter 59, Code of Criminal Procedure, is
12 amended by adding Article 59.011 to read as follows:

13 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
14 property described by Article 59.01(2)(B)(x) is subject to
15 forfeiture under this chapter and Article 18.18, the attorney
16 representing the state may proceed under either this chapter or
17 that article.

18 SECTION 5. The change in law made by this Act in amending
19 Subsection (a), Section 71.02, Penal Code, applies only to an
20 offense committed on or after the effective date of this Act. An
21 offense committed before the effective date of this Act is governed
22 by the law in effect when the offense was committed, and the former
23 law is continued in effect for that purpose. For purposes of this
24 section, an offense was committed before the effective date of this
25 Act if any element of the offense occurred before that date.

26 SECTION 6. Subdivision (2), Article 59.01, Code of Criminal
27 Procedure, as amended by this Act, and Article 59.011, Code of

1 Criminal Procedure, as added by this Act, apply only to the
2 forfeiture of property used in the commission of an offense
3 committed on or after the effective date of this Act. Forfeiture of
4 property used in the commission of an offense committed before the
5 effective date of this Act is governed by the law in effect when the
6 offense was committed, and the former law is continued in effect for
7 that purpose. For purposes of this section, an offense was
8 committed before the effective date of this Act if any element of
9 the offense occurred before that date.

10 SECTION 7. This Act takes effect September 1, 2009.