

1-1 By: Carona S.B. No. 2225
1-2 (In the Senate - Filed March 13, 2009; April 6, 2009, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; April 15, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 15, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2225 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the civil and criminal consequences of engaging in
1-11 certain conduct involving the transporting or transferring of a
1-12 firearm and to creating the offense of firearm smuggling.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 46, Penal Code, is amended by adding
1-15 Section 46.14 to read as follows:

1-16 Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an
1-17 offense if the person knowingly engages in the business of
1-18 transporting or transferring a firearm that the person knows was
1-19 acquired in violation of the laws of any state or of the United
1-20 States. For purposes of this subsection, a person is considered to
1-21 engage in the business of transporting or transferring a firearm if
1-22 the person engages in that conduct:

1-23 (1) on more than one occasion; or

1-24 (2) for profit or any other form of remuneration.

1-25 (b) An offense under this section is a felony of the third
1-26 degree, unless it is shown on the trial of the offense that the
1-27 offense was committed with respect to three or more firearms in a
1-28 single criminal episode, in which event the offense is a felony of
1-29 the second degree.

1-30 (c) This section does not apply to a peace officer who is
1-31 engaged in the actual discharge of an official duty.

1-32 (d) If conduct that constitutes an offense under this
1-33 section also constitutes an offense under any other law, the actor
1-34 may be prosecuted under this section, the other law, or both.

1-35 SECTION 2. Subsection (a), Section 71.02, Penal Code, is
1-36 amended to read as follows:

1-37 (a) A person commits an offense if, with the intent to
1-38 establish, maintain, or participate in a combination or in the
1-39 profits of a combination or as a member of a criminal street gang,
1-40 the person ~~he~~ commits or conspires to commit one or more of the
1-41 following:

1-42 (1) murder, capital murder, arson, aggravated
1-43 robbery, robbery, burglary, theft, aggravated kidnapping,
1-44 kidnapping, aggravated assault, aggravated sexual assault, sexual
1-45 assault, forgery, deadly conduct, assault punishable as a Class A
1-46 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
1-47 motor vehicle;

1-48 (2) any gambling offense punishable as a Class A
1-49 misdemeanor;

1-50 (3) promotion of prostitution, aggravated promotion
1-51 of prostitution, or compelling prostitution;

1-52 (4) unlawful manufacture, transportation, repair, or
1-53 sale of firearms or prohibited weapons;

1-54 (5) unlawful manufacture, delivery, dispensation, or
1-55 distribution of a controlled substance or dangerous drug, or
1-56 unlawful possession of a controlled substance or dangerous drug
1-57 through forgery, fraud, misrepresentation, or deception;

1-58 (6) any unlawful wholesale promotion or possession of
1-59 any obscene material or obscene device with the intent to wholesale
1-60 promote the same;

1-61 (7) any offense under Subchapter B, Chapter 43,
1-62 depicting or involving conduct by or directed toward a child
1-63 younger than 18 years of age;

- 2-1 (8) any felony offense under Chapter 32;
- 2-2 (9) any offense under Chapter 36;
- 2-3 (10) any offense under Chapter 34 or 35;
- 2-4 (11) any offense under Section 37.11(a);
- 2-5 (12) any offense under Chapter 20A; ~~[or]~~
- 2-6 (13) any offense under Section 37.10; or
- 2-7 (14) any offense under Section 46.06(a)(1) or 46.14.

2-8 SECTION 3. Subdivision (2), Article 59.01, Code of Criminal
 2-9 Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73),
 2-10 and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session,
 2-11 2007, is reenacted and amended to read as follows:

2-12 (2) "Contraband" means property of any nature,
 2-13 including real, personal, tangible, or intangible, that is:

2-14 (A) used in the commission of:
 2-15 (i) any first or second degree felony under
 2-16 the Penal Code;

2-17 (ii) any felony under Section 15.031(b),
 2-18 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
 2-19 31, 32, 33, 33A, or 35, Penal Code;

2-20 (iii) any felony under The Securities Act
 2-21 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

2-22 (iv) any offense under Chapter 49, Penal
 2-23 Code, that is punishable as a felony of the third degree or state
 2-24 jail felony, if the defendant has been previously convicted three
 2-25 times of an offense under that chapter;

2-26 (B) used or intended to be used in the commission
 2-27 of:

2-28 (i) any felony under Chapter 481, Health
 2-29 and Safety Code (Texas Controlled Substances Act);

2-30 (ii) any felony under Chapter 483, Health
 2-31 and Safety Code;

2-32 (iii) a felony under Chapter 153, Finance
 2-33 Code;

2-34 (iv) any felony under Chapter 34, Penal
 2-35 Code;

2-36 (v) a Class A misdemeanor under Subchapter
 2-37 B, Chapter 365, Health and Safety Code, if the defendant has been
 2-38 previously convicted twice of an offense under that subchapter;

2-39 (vi) any felony under Chapter 152, Finance
 2-40 Code;

2-41 (vii) any felony under Chapter 32, Human
 2-42 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
 2-43 involves the state Medicaid program;

2-44 (viii) a Class B misdemeanor under Chapter
 2-45 522, Business & Commerce Code; ~~[or]~~

2-46 (ix) a Class A misdemeanor under Section
 2-47 35.153, Business & Commerce Code; or

2-48 (x) any offense under Section 46.06(a)(1)
 2-49 or 46.14, Penal Code;

2-50 (C) the proceeds gained from the commission of a
 2-51 felony listed in Paragraph (A) or (B) of this subdivision, a
 2-52 misdemeanor listed in Paragraph (B)(viii) or (x) of this
 2-53 subdivision, or a crime of violence;

2-54 (D) acquired with proceeds gained from the
 2-55 commission of a felony listed in Paragraph (A) or (B) of this
 2-56 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of
 2-57 this subdivision, or a crime of violence; or

2-58 (E) used to facilitate or intended to be used to
 2-59 facilitate the commission of a felony under Section 15.031 or
 2-60 43.25, Penal Code.

2-61 SECTION 4. Chapter 59, Code of Criminal Procedure, is
 2-62 amended by adding Article 59.011 to read as follows:

2-63 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
 2-64 property described by Article 59.01(2)(B)(x) is subject to
 2-65 forfeiture under this chapter and Article 18.18, the attorney
 2-66 representing the state may proceed under either this chapter or
 2-67 that article.

2-68 SECTION 5. The change in law made by this Act in amending
 2-69 Subsection (a), Section 71.02, Penal Code, applies only to an

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

3-7 SECTION 6. Subdivision (2), Article 59.01, Code of Criminal
3-8 Procedure, as amended by this Act, and Article 59.011, Code of
3-9 Criminal Procedure, as added by this Act, apply only to the
3-10 forfeiture of property used in the commission of an offense
3-11 committed on or after the effective date of this Act. Forfeiture of
3-12 property used in the commission of an offense committed before the
3-13 effective date of this Act is governed by the law in effect when the
3-14 offense was committed, and the former law is continued in effect for
3-15 that purpose. For purposes of this section, an offense was
3-16 committed before the effective date of this Act if any element of
3-17 the offense occurred before that date.

3-18 SECTION 7. This Act takes effect September 1, 2009.

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