

BILL ANALYSIS

C.S.H.B. 793
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law relating to the smuggling of persons imposes a criminal penalty for intentionally using a motor vehicle, aircraft, or watercraft to transport an individual with the intent to conceal the individual from a peace officer or special investigator or to flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor. However, such criminal penalties are not available as an enforcement tool with respect to certain activities associated with such offenses. C.S.H.B. 793 seeks to expand the scope of law enforcement to allow greater flexibility in combating various forms of illicit activity associated with the smuggling of human beings.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 793 amends the Penal Code to expand the conduct that constitutes an offense of smuggling of persons to include a person who intentionally assists, guides, or directs three or more individuals to enter or remain on agricultural land without the effective consent of the owner. The bill enhances from a state jail felony to a felony of the third degree the penalty for such an offense if, during the commission of the offense, the actor, another party to the offense, or an individual assisted, guided, or directed by the actor knowingly possessed a firearm.

C.S.H.B. 793 defines "special investigator," for purposes of the element of the offense of smuggling of persons that involves the transport of an individual with the intent to conceal the individual from a special investigator or to flee such investigator attempting to arrest or detain the actor, to include an agent of the United States Department of Homeland Security.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 793 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Chapter 20A, Penal Code, is amended by adding Section 20A.04 to read as	No equivalent provision.

follows:

Sec. 20A.04. UNLAWFUL TRANSPORT OF UNDOCUMENTED PERSON.

(a) In this section, "undocumented person" means a person who:

(1) is not a citizen or national of the United States; and

(2) is unlawfully present in the United States according to the terms of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

(b) A person commits an offense if the person transports an undocumented person in a manner that is designed to conceal the undocumented person from local, state, or federal law enforcement authorities.

(c) Except as otherwise provided by Subsection (d), an offense under this section is a state jail felony.

(d) An offense under this section is a felony of the third degree if the offense is committed:

(1) for pecuniary benefit; or

(2) in a manner that creates a substantial likelihood that the undocumented person will suffer bodily injury.

(e) It is an affirmative defense to prosecution under this section that the actor is related to the undocumented person within the third degree of consanguinity or at the time of the offense within the third degree of affinity.

(f) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section.

No equivalent provision.

SECTION 1. Section 20.01, Penal Code, is amended by adding Subdivisions (6), (7), and (8) to read as follows:

(6) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.

(7) "Firearm" has the meaning assigned by Section 46.01.

(8) "Special investigator" includes an agent of the United States Department of Homeland Security.

No equivalent provision.

SECTION 2. Sections 20.05(a) and (c), Penal Code, are amended to read as follows:

(a) A person commits an offense if the person intentionally:

(1) uses a motor vehicle, aircraft, or

watercraft to transport an individual with the intent to:

(A) [~~(1)~~] conceal the individual from a peace officer or special investigator; or

(B) [~~(2)~~] flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; or

(2) assists, guides, or directs three or more individuals to enter or remain on agricultural land without the effective consent of the owner.

(c) An offense under this section is a felony of the third degree if:

(1) the actor commits the offense:

(A) [~~(1)~~] for pecuniary benefit; or

(B) [~~(2)~~] in a manner that creates a substantial likelihood that the transported individual will suffer serious bodily injury or death; or

(2) during the commission of the offense the actor, another party to the offense, or an individual assisted, guided, or directed by the actor knowingly possessed a firearm.

No equivalent provision.

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 2. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.