

BILL ANALYSIS

Senate Research Center
84R932 JRR-F

S.B. 1828
By: Zaffirini
Criminal Justice
4/20/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cargo theft by organized crime rings has become a very serious problem in this state. By some estimates, Texas leads the nation in the incidence of cargo theft, with losses valued at \$23 million between 2012 and 2014. Furthermore, existing Penal Code provisions addressing theft and organized crime present significant impediments to the prosecution of this activity. For example, an element of the crime of theft is the appropriation of property without the owner's effective consent. In cargo theft cases involving collusive drivers, however, the initial bailment of the property is consented to by the owner, making it difficult to establish at what point the driver's conduct vitiates the owner's consent for purposes of charging theft. This bill would remedy that problem by creating a separate category of offense called "cargo theft" and providing that failure to deliver cargo to its destination as contracted, or causing the seal to be broken on a vehicle containing the cargo, completes the offense, subject to general mens rea provisions.

Another impediment to prosecuting cargo theft under current law results from the fact that most cargo theft is undertaken by sophisticated, organized crime rings. Under current law, a person found in possession of stolen property may be prosecuted individually, but to reach others involved in the theft under Texas' organized crime statute would require the prosecutor to establish a "combination" of "three or more persons who collaborate in carrying on criminal activities"—a very difficult showing to make. What's more, under the standard punishment "ladder" for theft, low-value thefts can be prosecuted as misdemeanors. While this might be a suitable deterrent for amateur or opportunistic criminals, it is radically under-deterrent against organized crime syndicates that employ expendable "pawns." This bill would address both issues by making any theft of cargo a state jail felony at a minimum, and up to a first degree felony for thefts of \$200,000 or more, and by providing that anyone who "conducts, promotes, or facilitates an activity" involving the receipt, possession, concealment, storage, sale, or abandonment of stolen cargo is guilty of the offense of cargo theft.

As proposed, S.B. 1828 amends current law relating to the creation of the offense of cargo theft.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Article 13.08, Code of Criminal Procedure, to read as follows:

Art. 13.08. THEFT; ORGANIZED RETAIL THEFT; CARGO THEFT.

SECTION 2. Amends Article 13.08(b), Code of Criminal Procedure, to authorize an offense under Section 31.16 (Organized Retail Theft) or 31.18, Penal Code, to be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.

SECTION 3. Amends Chapter 31, Penal Code, by adding Section 31.18, as follows:

Sec. 31.18. CARGO THEFT. (a) Defines "cargo" and "vehicle" in this section.

(b) Provides that a person commits an offense if the person:

(1) conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, abandons, or disposes of:

(A) stolen cargo; or

(B) cargo explicitly represented to the person as being stolen cargo; or

(2) is employed as a driver lawfully contracted to transport a specific cargo by vehicle from a known point of origin to a known point of destination and, with the intent to conduct, promote, or facilitate an activity described by Subsection (b)(1):

(A) fails to deliver the entire cargo to the known point of destination as contracted; or

(B) causes the seal to be broken on the vehicle or on an intermodal container containing any part of the cargo.

(c) Provides that an offense under this section is:

(1) a state jail felony if the total value of the cargo involved in the activity is less than \$10,000;

(2) a felony of the third degree if the total value of the cargo involved in the activity is \$10,000 or more but less than \$100,000;

(3) a felony of the second degree if the total value of the cargo involved in the activity is \$100,000 or more but less than \$200,000; or

(4) a felony of the first degree if the total value of the cargo involved in the activity is \$200,000 or more.

(d) Provides that, for purposes of Subsection (c), the total value of the cargo involved in the activity includes the value of any vehicle stolen or damaged in the course of the same criminal episode as the conduct that is the subject of the prosecution.

(e) Provides that an offense described for purposes of punishment by Subsections (c)(1)-(3) is increased to the next higher category of offense if it is shown on the trial of the offense that the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b).

(f) Provides that it is not a defense to prosecution under this section that:

(1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of:

(A) an undercover operative or peace officer; or

(B) a bait vehicle;

(2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or with an opportunity to engage in conduct constituting the offense; or

(3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense but would not encourage a person not predisposed to commit the offense to actually commit the offense.

SECTION 4. Effective date: September 1, 2015.