

By: Carona

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 possession or transfer of a firearm and to creating the offense of firearm smuggling; providing penalties.

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:

(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

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

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

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

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

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

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

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

1 (3) promotion of prostitution, aggravated promotion
2 of prostitution, or compelling prostitution;

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

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

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

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

15 (8) any felony offense under Chapter 32;

16 (9) any offense under Chapter 36;

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

18 (11) any offense under Section 37.11(a);

19 (12) any offense under Chapter 20A; ~~[or]~~

20 (13) any offense under Section 37.10; or

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

22 SECTION 3. Article 59.01(2), Code of Criminal Procedure, as
23 amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.
24 2278), Acts of the 80th Legislature, Regular Session, 2007, is
25 reenacted and amended to read as follows:

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

- 1 (A) used in the commission of:
- 2 (i) any first or second degree felony under
3 the Penal Code;
- 4 (ii) any felony under Section 15.031(b),
5 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
6 31, 32, 33, 33A, [~~or~~] 35, or 46, Penal Code;
- 7 (iii) any felony under The Securities Act
8 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
- 9 (iv) any offense under Chapter 49, Penal
10 Code, that is punishable as a felony of the third degree or state
11 jail felony, if the defendant has been previously convicted three
12 times of an offense under that chapter;
- 13 (B) used or intended to be used in the commission
14 of:
- 15 (i) any felony under Chapter 481, Health
16 and Safety Code (Texas Controlled Substances Act);
- 17 (ii) any felony under Chapter 483, Health
18 and Safety Code;
- 19 (iii) a felony under Chapter 153, Finance
20 Code;
- 21 (iv) any felony under Chapter 34 or 46,
22 Penal Code;
- 23 (v) a Class A misdemeanor under Subchapter
24 B, Chapter 365, Health and Safety Code, if the defendant has been
25 previously convicted twice of an offense under that subchapter;
- 26 (vi) any felony under Chapter 152, Finance
27 Code;

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

4 (viii) a Class B misdemeanor under Section
5 35.60, Business & Commerce Code; or

6 (ix) a Class A misdemeanor under Section
7 35.153, Business & Commerce Code;

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

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

16 (E) used to facilitate or intended to be used to
17 facilitate the commission of a felony under Section 15.031 or
18 43.25, Penal Code.

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

27 SECTION 5. The change in law made by this Act in amending

1 Article 59.01(2), Code of Criminal Procedure, applies only to the
2 forfeiture of property in relation to an offense committed on or
3 after the effective date of this Act. Forfeiture of property in
4 relation to an offense committed before the effective date of this
5 Act is governed by the law in effect when the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this section, an offense was committed before the
8 effective date of this Act if any element of the offense occurred
9 before that date.

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