

SUBJECT: Creating the offense of firearm smuggling and providing penalties

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

2 absent — Christian, Riddle

WITNESSES: (*On original version:*)

For — None

Against — None

On — Eric Nichols, Office of the Attorney General; (*Registered, but did not testify:* Tara Mica, National Rifle Association)

BACKGROUND: Under Penal Code, sec. 46.06 a person commits the offense of unlawful transfer of certain weapons if the person:

- sells, rents, leases, loans, or gives a handgun to any person knowing that person intends to use it illegally or in the commission of an illegal act;
- intentionally or knowingly sells, rents, leases, loans, or gives or offers to sell, rent, lease, loan, or give to any child under 18 any firearm, club, or illegal knife;
- intentionally, knowingly, or recklessly sells are firearm or firearm ammunition to any intoxicated person;
- knowingly sells a firearm or firearm ammunition to any person convicted of a felony before the fifth anniversary of the person's release from confinement, or supervision under community or mandatory supervision, or parole, following the felony conviction;
- sells, rents, leases, loans, or gives a handgun to any person knowing an active protective order is directed against that person; or
- knowingly purchases, rents, leases, or receives as a loan or gift a handgun while an active protective order is directed to the person.

Code of Criminal Procedure, ch. 59 provides for the forfeiture of contraband used or intended to be used during the commission of certain offenses.

Penal Code, sec. 71.02 provides that a person commits the offense of engaging in organized criminal activity if the person commits or conspires to commit certain offenses with the intent to establish, maintain, or participate in collaboration with three or more persons, or in the profits of such a collaboration, or as a member of a criminal street gang.

Currently, there is no state law that prohibits the smuggling of firearms.

DIGEST:

CSHB 4336 would create the offense of firearm smuggling. A person would commit an offense if the person knowingly engaged in the business of transporting or transferring a firearm the person knew was acquired in violation of any state or federal law. If it were shown at trial that the offense involved three or more firearms in a single criminal episode, it would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). Otherwise, an offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

A person would be engaged in the business of transporting or transferring a firearm if the person engaged in that conduct on more than one occasion, or for profit or any other form of remuneration. This offense would not apply to a peace officer who was engaged in the actual discharge of an official duty.

If conduct that constituted the offense of firearm smuggling also constituted an offense under any other law, the person could be prosecuted under either or both laws.

Penal Code, sec. 71.02 would be amended to expand the conduct that would constitute the offense of engaging in organized criminal activity to include the offenses of firearm smuggling and unlawful transfer of certain weapons.

This bill would amend Code of Criminal Procedure, Art. 59.01 to include in the definition of "contraband" property that was used or intended to be used in the commission of the offense of firearm smuggling, or the offense

of unlawful transfer of certain weapons, and proceeds gained from the commission of those offenses.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after that date.

**NOTES:**

The companion bill, SB 2225 by Carona, passed the Senate by 30-0 on April 23 and has been referred to the House Criminal Jurisprudence Committee.