

*Postponed from May 1 general state calendar*

SUBJECT: Creating an offense of cargo theft; expanding jurisdiction for cargo theft

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES: For — Jay Thompson, AFACT, NICB; John Rodriguez, Cardinal Health; Steve Dye and Spence Gates, Grand Prairie Police Department; Frederick Lohmann, National Insurance Crime Bureau; John Coughlin, Southwest Transportation Security Council; Philip Lawrence, Tech Data Corporation; Ivette (Ivy) Haley; (*Registered, but did not testify*: Adam Burklund, American Insurance Association; Donald Baker, Austin Police Department; Chris Chopin, City of Grand Prairie, Police Department; Gary Tittle, Dallas Police Department; Jessica Anderson, Houston Police Department; Bill Elkin, Houston Police Retired Officers Association; Brian Eppes, Tarrant County Criminal District Attorney's Office; Lon Craft and Heath Wester, Texas Municipal Police Association; Jim Sheer, Texas Retailers Association; Les Findeisen, Texas Trucking Association; John Pitts, Jr., UPS)

Against — None

DIGEST: CSHB 102 would create the offense of cargo theft and would provide associated penalties.

Individuals would commit cargo theft if they knowingly or intentionally conducted, promoted, or facilitated an activity in which they received, possessed, concealed, stored, bartered, sold, abandoned, or disposed of stolen cargo or cargo explicitly represented to them as being stolen. Individuals also would commit cargo theft if they were employed as a lawfully contracted driver, and with the intent to conduct, promote, or facilitate such an activity, failed to deliver the cargo or caused the seal to

be broken on the vehicle or on an intermodal container containing any part of the cargo.

The penalties for cargo theft would be:

- a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the value of the cargo was less than \$10,000;
- a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the value was \$10,000 or more but less than \$100,000;
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the value was \$100,000 or more but less than \$200,000; and
- a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the value was \$200,000 or more.

Any penalty for cargo theft valued under \$200,000 would be increased to the next higher category of offense if the person organized, supervised, financed, or managed one or more other persons engaged in cargo theft. The bill would define the value of the cargo to include the value of any vehicle stolen or damaged in the course of the cargo theft.

Under the bill, it would not be a defense to prosecution for cargo theft if:

- the offense occurred as a result of law enforcement deception or strategy, such as using an undercover officer or a bait vehicle;
- the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to commit the offense; or
- the actor was solicited by a peace officer to commit the offense in a manner that would encourage a person predisposed to commit the offense to do so but would not encourage a person not so predisposed to commit the offense.

The bill would authorize the prosecution of cargo theft in any county in which an underlying theft could be prosecuted as a separate offense.

This bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 102 would address the growing problem of cargo theft. As a major hub for both the transportation and warehouse industry, Texas is a prime target for criminal organizations that commit cargo theft crimes. Texas currently has one of the highest rates of cargo theft in the nation. The cost of cargo theft impacts local businesses as well as consumers because the cost of the theft is passed down in the form of increased costs of goods. It also deprives the state of significant tax revenue.

Cargo theft is difficult to prosecute under the theft statute because the crime often is committed by organized groups that are sophisticated enough to commit these thefts across multiple jurisdictions. For example, the group could steal a truck from one county, a trailer from a second, and the product from a third and then could store everything in a fourth. This movement makes it hard to prosecute all of the crimes. The theft statute also can be too broad to cover the specific factual situations involved in cargo theft.

The bill would address this problem by providing a specific offense for cargo theft, by allowing organized cargo theft to be prosecuted in any jurisdiction in which the underlying thefts occurred, and by providing enhanced penalties for certain offenses of cargo theft. The offenses provided in this bill would allow prosecutors to address the specific factual situations that arose in cargo theft cases, and the provisions on jurisdiction for cargo theft cases would allow counties to work together to tackle organized cargo theft. Establishing that all cargo theft offenses would be penalized as at least state jail felonies would reflect the severity of cargo theft and the impact the crime has on all Texans.

Taken together, the provisions of this bill would allow prosecutors to more aggressively prosecute these serious crimes, and the increased prosecution would serve as a deterrent that would reduce the incidence of

cargo theft in the state.

**OPPONENTS  
SAY:**

CSHB 102 is unnecessary because crimes that would be covered by this bill are punishable under the theft statute. The bill also seeks to punish organized cargo theft, but these crimes could be prosecuted under the organized crime statute. The penalties for low-level crimes under the bill could be excessive. Some of these incidents are low-level thefts of a small amount of cargo and should not be treated as large-scale organized cargo theft. Under current law, low-level repeat offenders can have their punishments increased, and this would be more appropriate than increasing the punishments across the board.