

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1348
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A straw purchase occurs when a legally eligible buyer purchases firearms for traffickers or persons who are prohibited from buying guns. Numerous reports including those generated by the Bureau of Alcohol, Tobacco and Firearms and Explosives (ATF), say that firearms purchased by straw purchasers often land in the hands of criminals and are recovered by law enforcement from crime scenes.

Case studies also show that organized straw purchasing operations working in tandem with corrupt, licensed dealers, divert thousands of firearms from the primary gun market to illegal street markets. This is how 25 percent to 40 percent of offenders obtain firearms.

Straw purchases many times involve purchases of multiple firearms at once or over a short period of time. Law enforcement regards the purchase of multiple handguns by a single buyer in a single transaction as an indicator that the buyer intends to traffic the guns to the illegal market.

C.S.S.B. 1348 creates an offense and prescribes a penalty for persons who knowingly purchase guns to deliver to persons who cannot legally purchase firearms. Current Texas law does not specifically address straw purchases.

C.S.S.B. 1348 mirrors federal law in creating an offense for a person who provides false or misleading information on the forms required to purchase a firearm; defines the punishment for a person identified during trial as being the organizer of a group and who makes illegal straw gun purchases; and creates an offense and penalty for persons who conspire to participate in activities that are in violation of this law.

C.S.S.B. 1348 amends current law relating to certain criminal offenses concerning the unlawful transfer or purchase of certain weapons.

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 Section 46.06, Penal Code, to read as follows:

Sec. 46.06. UNLAWFUL TRANSFER OR PURCHASE OF CERTAIN WEAPONS.

SECTION 2. Amends Section 46.06, Penal Code, by amending Subsections (a), (c), and (d) and adding Subsections (a-1), (e), and (f), as follows:

(a) Changes references to a handgun to a firearm. Provides that a person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a firearm to any person knowing that the person to whom the firearm is to be delivered intends to use the firearm unlawfully or in the commission of an unlawful act;

(2) purchases or offers to purchase a firearm with intent to deliver the firearm to a person knowing that the person to whom the firearm is to be delivered intends to use the firearm unlawfully or in the commission of an unlawful act; or

(3) knowingly makes a materially false or misleading statement in providing information to a person for purposes of complying with the national instant criminal background check system in the manner required by 18 U.S.C. Section 922.

(a-1) Creates this subsection from existing text. Provides that a person commits an offense if the person intentionally or knowingly commits certain acts. Makes conforming and nonsubstantive changes.

(c) Provides that it is an affirmative defense to prosecution under Subsection (a-1)(1) (relating to providing that a person commits an offense if the person intentionally or knowingly selling, renting, leasing, or giving or offering to sell, rent, lease, or give to any child younger than 18 years any firearm, club, or illegal knife), rather than Subsection (a)(2), that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) Provides that an offense under Subsection (a) is a felony of the third degree.

(e) Creates this subsection from existing text. Provides that an offense under Subsection (a-1), rather than this section, is a Class A misdemeanor, except that an offense under Subsection (a-1)(1), rather than Subsection (a)(2), is a state jail felony if the weapon that is the subject of the offense is a handgun.

(f) Provides that to the extent of any conflict between this section and a federal law related to the unlawful transfer or purchase of a weapons, the federal law prevails.

SECTION 3. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 68 (S.B. 934) and (H.B. 260), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1)-(15) Makes no change to these subdivisions;

(16) any offense under Subsection 46.06(a) or 46.14 (Firearm Smuggling), rather than under Subsection 46.06(a)(1) or 46.14;

(17) Makes a nonsubstantive change; or

(18) Creates this subdivision from existing text.

Makes nonsubstantive changes.

SECTION 4. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Provides that 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. Provides that for the 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 5. Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. Effective date: September 1, 2013.