

BILL ANALYSIS

C.S.H.B. 102
By: Fletcher
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that current law does not provide law enforcement with the tools necessary to stop organized cargo theft. The parties contend that typically the only person charged with an offense related to cargo theft is the person in possession of a stolen item but that many other people are often involved in the theft. Additionally, the parties express concern that there is not a clear, consistent understanding of the term cargo theft. C.S.H.B. 102 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 102 amends the Penal Code to create the offense of cargo theft for a person who knowingly or intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, abandons, or disposes of stolen cargo or cargo explicitly represented to the person as being stolen cargo; or for a person who 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 such an activity, knowingly or intentionally fails to deliver the entire cargo to the known point of destination as contracted or knowingly or intentionally causes the seal to be broken on the vehicle or on an intermodal container containing any part of the cargo. The bill defines "cargo" as goods that constitute, wholly or partly, a commercial shipment of freight moving in commerce and specifies that a shipment is considered to be moving in commerce if the shipment is located at any point between the point of origin and the final point of destination regardless of any temporary stop that is made for the purpose of transshipment or otherwise.

C.S.H.B. 102 establishes penalties for the offense ranging from a state jail felony to a first degree felony depending on the total value of the cargo involved in the activity, including 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. The bill enhances the penalty for the offense, excluding a first degree felony, 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 conduct constituting the offense.

C.S.H.B. 102 establishes that it is not a defense to prosecution that the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, that 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 that the actor was solicited by a peace officer in a certain specified manner to commit the offense.

C.S.H.B. 102 amends the Code of Criminal Procedure to authorize the prosecution of a cargo theft offense in any county in which an underlying theft could have been prosecuted as a separate offense.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 102 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Article 13.08, Code of Criminal Procedure, is amended.

SECTION 2. Article 13.08(b), Code of Criminal Procedure, is amended.

SECTION 3. Chapter 31, Penal Code, is amended by adding Section 31.18 to read as follows:

Sec. 31.18. CARGO THEFT. (a) In this section:

(1) "Cargo" means goods, as defined by Section 7.102, Business & Commerce Code, that constitute, wholly or partly, a commercial shipment of freight moving in commerce. A shipment is considered to be moving in commerce if the shipment is located at any point between the point of origin and the final point of destination regardless of any temporary stop that is made for the purpose of transshipment or otherwise.

(2) "Vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(b) 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Chapter 31, Penal Code, is amended by adding Section 31.18 to read as follows:

Sec. 31.18. CARGO THEFT. (a) In this section:

(1) "Cargo" means goods, as defined by Section 7.102, Business & Commerce Code, that constitute, wholly or partly, a commercial shipment of freight moving in commerce. A shipment is considered to be moving in commerce if the shipment is located at any point between the point of origin and the final point of destination regardless of any temporary stop that is made for the purpose of transshipment or otherwise.

(2) "Vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person commits an offense if the person:

(1) knowingly or intentionally 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) 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) 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) 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) 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

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), knowingly or intentionally:

(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) 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) 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) 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) 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. This Act takes effect September 1, 2015.

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. Same as introduced version.