

1-1 By: Birdwell S.B. No. 2
1-2 (In the Senate - Filed May 30, 2023; June 2, 2023, read
1-3 first time and referred to Committee on Border Security;
1-4 June 6, 2023, reported favorably by the following vote: Yeas 3,
1-5 Nays 2; June 6, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Birdwell	X		
1-9	Flores	X		
1-10	Blanco		X	
1-11	Hinojosa		X	
1-12	King	X		

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to the creation of the criminal offense of improper entry
1-16 from a foreign nation.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Chapter 38, Penal Code, is amended by adding
1-19 Section 38.20 to read as follows:

1-20 Sec. 38.20. IMPROPER ENTRY FROM FOREIGN NATION. (a) In
1-21 this section, "alien" has the meaning assigned by 8 U.S.C. Section
1-22 1101, as that provision existed on January 1, 2023.

1-23 (b) A person who is an alien commits an offense if the
1-24 person:

1-25 (1) enters or attempts to enter this state from a
1-26 foreign nation at any location other than a lawful point of entry;

1-27 (2) eludes examination or inspection by United States
1-28 immigration officers; or

1-29 (3) attempts to enter or obtains entry to this state
1-30 from a foreign nation by an intentionally false or misleading
1-31 representation or the intentional concealment of a material fact.

1-32 (c) An offense under this section is a Class A misdemeanor,
1-33 except that if it is shown on the trial of the offense that the
1-34 person has previously been finally convicted of:

1-35 (1) an offense under this section, the offense is a
1-36 state jail felony;

1-37 (2) a state jail felony described by Subdivision (1)
1-38 or any other felony not listed in Article 42A.054(a), Code of
1-39 Criminal Procedure, the offense is a felony of the second degree; or

1-40 (3) a felony listed in Article 42A.054(a), Code of
1-41 Criminal Procedure, the offense is a felony of the first degree.

1-42 (d) It is an affirmative defense to prosecution under this
1-43 section that:

1-44 (1) the actor has been granted a federal immigration
1-45 benefit entitling the actor to:

1-46 (A) lawful presence in the United States; or

1-47 (B) asylum under 8 U.S.C. Section 1158;

1-48 (2) the actor's conduct does not constitute a
1-49 violation of 8 U.S.C. Section 1325(a); or

1-50 (3) the actor was approved for benefits under the
1-51 federal Deferred Action for Childhood Arrivals program between June
1-52 15, 2012, and July 16, 2021.

1-53 (e) For purposes of Subsection (d)(1), the following
1-54 federal programs do not confer federal immigration benefits
1-55 entitling the actor to lawful presence in the United States:

1-56 (1) the Deferred Action for Parents of Americans and
1-57 Lawful Permanent Residents; and

1-58 (2) any program not enacted by the United States
1-59 Congress that is a successor to or materially similar to the program
1-60 described by Subdivision (1) or Subsection (d)(3).

1-61 (f) A court may not abate the prosecution of an offense
1-62 under this section on the basis that a federal determination

2-1 regarding the immigration status of the actor is pending.

2-2 (g) A law enforcement officer of the Department of Public
2-3 Safety who arrests a person for an offense under this section shall,
2-4 to the extent feasible, detain the person in a facility established
2-5 under Operation Lone Star or a similar border security operation of
2-6 this state.

2-7 SECTION 2. It is the intent of the legislature that every
2-8 provision, section, subsection, sentence, clause, phrase, or word
2-9 in this Act, and every application of the provisions in this Act to
2-10 every person, group of persons, or circumstances, is severable from
2-11 each other. If any application of any provision in this Act to any
2-12 person, group of persons, or circumstances is found by a court to be
2-13 invalid for any reason, the remaining applications of that
2-14 provision to all other persons and circumstances shall be severed
2-15 and may not be affected.

2-16 SECTION 3. This Act takes effect August 1, 2023, if it
2-17 receives a vote of two-thirds of all the members elected to each
2-18 house, as provided by Section 39, Article III, Texas Constitution.
2-19 If this Act does not receive the vote necessary for effect on that
2-20 date, this Act takes effect on the 91st day after the last day of the
2-21 legislative session.

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