

1-1 By: Spiller, et al. (Senate Sponsor - Birdwell) H.B. No. 4
1-2 (In the Senate - Received from the House October 26, 2023;
1-3 October 26, 2023, read first time and referred to Committee on
1-4 Border Security; November 2, 2023, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 3,
1-6 Nays 2; November 2, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Birdwell</u>	X		
1-10	<u>Flores</u>	X		
1-11	<u>Blanco</u>		X	
1-12	<u>Hinojosa</u>		X	
1-13	<u>King</u>	X		

1-14 COMMITTEE SUBSTITUTE FOR H.B. No. 4 By: Birdwell

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the creation of the criminal offense of improper entry
1-18 from a foreign nation and indemnification of certain claims
1-19 relating to the enforcement of that offense.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Chapter 38, Penal Code, is amended by adding
1-22 Section 38.20 to read as follows:

1-23 Sec. 38.20. IMPROPER ENTRY FROM FOREIGN NATION. (a) In
1-24 this section, "alien" has the meaning assigned by 8 U.S.C. Section
1-25 1101, as that provision existed on January 1, 2023.

1-26 (b) A person who is an alien commits an offense if the
1-27 person:

1-28 (1) enters or attempts to enter this state from a
1-29 foreign nation at any location other than a lawful point of entry;

1-30 (2) eludes examination or inspection by United States
1-31 immigration officers; or

1-32 (3) attempts to enter or obtains entry to this state
1-33 from a foreign nation by an intentionally false or misleading
1-34 representation or the intentional concealment of a material fact.

1-35 (c) An offense under this section is a Class B misdemeanor,
1-36 except that if it is shown on the trial of the offense that the
1-37 person has previously been finally convicted of:

1-38 (1) an offense under this section, the offense is a
1-39 state jail felony;

1-40 (2) a state jail felony described by Subdivision (1)
1-41 or any other felony not listed in Article 42A.054(a), Code of
1-42 Criminal Procedure, the offense is a felony of the second degree; or

1-43 (3) a felony listed in Article 42A.054(a), Code of
1-44 Criminal Procedure, the offense is a felony of the first degree.

1-45 (d) It is an affirmative defense to prosecution under this
1-46 section that:

1-47 (1) the actor has been granted a federal immigration
1-48 benefit entitling the actor to:

1-49 (A) lawful presence in the United States; or

1-50 (B) asylum under 8 U.S.C. Section 1158;

1-51 (2) the actor's conduct does not constitute a
1-52 violation of 8 U.S.C. Section 1325(a); or

1-53 (3) the actor was approved for benefits under the
1-54 federal Deferred Action for Childhood Arrivals program between June
1-55 15, 2012, and July 16, 2021.

1-56 (e) For purposes of Subsection (d)(1), the following
1-57 federal programs do not confer federal immigration benefits
1-58 entitling the actor to lawful presence in the United States:

1-59 (1) the Deferred Action for Parents of Americans and
1-60 Lawful Permanent Residents; and

1-61 (2) any program not enacted by the United States

2-1 Congress that is a successor to or materially similar to the program
 2-2 described by Subdivision (1) or Subsection (d)(3).

2-3 (f) A court may not abate the prosecution of an offense
 2-4 under this section on the basis that a federal determination
 2-5 regarding the immigration status of the actor is pending.

2-6 (g) A law enforcement officer of the Department of Public
 2-7 Safety who arrests a person for an offense under this section shall,
 2-8 to the extent feasible, detain the person in a facility established
 2-9 under Operation Lone Star or a similar border security operation of
 2-10 this state.

2-11 (h) A peace officer may not arrest a person for an offense
 2-12 under this section unless the officer has probable cause to believe
 2-13 that the person engaged in the conduct constituting the offense.

2-14 (i) On conviction of an offense under this section, the
 2-15 judge shall enter in the judgment in the case an order requiring
 2-16 that the person be returned to federal authorities at the nearest
 2-17 port of entry for return to the person's country of origin or the
 2-18 foreign nation from which the person entered or attempted to enter.
 2-19 An order issued under this subsection:

2-20 (1) takes effect on completion of a term of
 2-21 confinement or imprisonment imposed by the judgment; and

2-22 (2) must include the manner of transportation of the
 2-23 person to the port of entry and the state agency responsible for
 2-24 transporting the person and monitoring compliance with the order.

2-25 SECTION 2. Title 5, Civil Practice and Remedies Code, is
 2-26 amended by adding Chapter 117 to read as follows:

2-27 CHAPTER 117. INDEMNIFICATION OF CERTAIN CLAIMS RELATING TO
 2-28 ENFORCEMENT OF OFFENSE OF IMPROPER ENTRY FROM FOREIGN NATION

2-29 Sec. 117.001. DEFINITION. In this chapter, "damages"
 2-30 includes any and all damages, fines, fees, penalties, court costs,
 2-31 attorney's fees, or other assessments.

2-32 Sec. 117.002. LOCAL GOVERNMENT INDEMNIFICATION OF LOCAL
 2-33 GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Unless the
 2-34 court or jury determines that the official, employee, or contractor
 2-35 acted in bad faith, with conscious indifference, or with
 2-36 recklessness, a local government shall indemnify an official,
 2-37 employee, or contractor of the local government for damages arising
 2-38 from a cause of action resulting from an action taken by the
 2-39 official, employee, or contractor to enforce Section 38.20, Penal
 2-40 Code, during the course and scope of the official's, employee's, or
 2-41 contractor's office, employment, or contractual performance for or
 2-42 service on behalf of the local government.

2-43 (b) Indemnification payments made under Subsection (a) by a
 2-44 local government may not exceed:

2-45 (1) \$100,000 to any one person or \$300,000 for any
 2-46 single occurrence in the case of personal injury or death; or

2-47 (2) \$10,000 for a single occurrence of property
 2-48 damage.

2-49 (c) A local government shall indemnify an official,
 2-50 employee, or contractor of the local government for reasonable
 2-51 attorney's fees incurred in defense of a criminal prosecution
 2-52 against the official, employee, or contractor for an action taken
 2-53 by the official, employee, or contractor to enforce Section 38.20,
 2-54 Penal Code, during the course and scope of the official's,
 2-55 employee's, or contractor's office, employment, or contractual
 2-56 performance for or service on behalf of the local government.

2-57 (d) This section may not be construed to waive any statutory
 2-58 limits on damages under state law.

2-59 Sec. 117.003. STATE INDEMNIFICATION OF STATE OFFICIALS,
 2-60 EMPLOYEES, AND CONTRACTORS; ATTORNEY GENERAL REPRESENTATION. (a)
 2-61 Unless the court or jury determines that the state official,
 2-62 employee, or contractor acted in bad faith, with conscious
 2-63 indifference, or with recklessness, the state shall indemnify an
 2-64 elected or appointed state official or a state employee or
 2-65 contractor for damages arising from a cause of action resulting
 2-66 from an action taken by the official, employee, or contractor to
 2-67 enforce Section 38.20, Penal Code, during the course and scope of
 2-68 the official's, employee's, or contractor's office, employment, or
 2-69 contractual performance for or service on behalf of the state.

3-1 (b) Notwithstanding any other law, indemnification under
3-2 Subsection (a) is not subject to any indemnification limits under
3-3 state law.

3-4 (c) The state shall indemnify a state official, employee, or
3-5 contractor for reasonable attorney's fees incurred in defense of a
3-6 criminal prosecution against the official, employee, or contractor
3-7 for an action taken by the official, employee, or contractor to
3-8 enforce Section 38.20, Penal Code, during the course and scope of
3-9 the official's, employee's, or contractor's office, employment, or
3-10 contractual performance for or service on behalf of the state.

3-11 (d) A state official, employee, or contractor who may be
3-12 entitled to indemnification under Subsection (a) is entitled to
3-13 representation by the attorney general, subject to Chapter 104, in
3-14 an action in connection with which the official, employee, or
3-15 contractor may be entitled to that indemnification.

3-16 (e) This section may not be construed to waive any statutory
3-17 limits on damages under state law.

3-18 Sec. 117.004. APPEAL TO SUPREME COURT. For a civil action
3-19 brought against a person who may be entitled under Section 117.002
3-20 or 117.003 to indemnification for damages awarded against the
3-21 person in the action, an appeal must be taken directly to the
3-22 supreme court.

3-23 Sec. 117.005. OTHER LAWS NOT AFFECTED. This chapter does
3-24 not affect a defense, immunity, or jurisdictional bar available to
3-25 the state or a local government or an official, employee, or
3-26 contractor of the state or a local government.

3-27 SECTION 3. Subchapter B, Chapter 42A, Code of Criminal
3-28 Procedure, is amended by adding Article 42A.059 to read as follows:

3-29 Art. 42A.059. PLACEMENT ON COMMUNITY SUPERVISION
3-30 PROHIBITED FOR IMPROPER ENTRY FROM FOREIGN NATION. Notwithstanding
3-31 any other provision of this chapter, a defendant is not eligible for
3-32 community supervision, including deferred adjudication community
3-33 supervision, under this chapter if the defendant is charged with or
3-34 convicted of an offense under Section 38.20, Penal Code.

3-35 SECTION 4. Section 508.145(a), Government Code, is amended
3-36 to read as follows:

3-37 (a) An inmate is not eligible for release on parole if the
3-38 inmate is under sentence of death, serving a sentence of life
3-39 imprisonment without parole, or serving a sentence for any of the
3-40 following offenses under the Penal Code:

3-41 (1) Section 20A.03, if the offense is based partly or
3-42 wholly on conduct constituting an offense under Section
3-43 20A.02(a)(5), (6), (7), or (8);

3-44 (2) Section 21.02; [~~or~~]

3-45 (3) Section 22.021, if the offense is punishable under
3-46 Subsection (f) of that section; or

3-47 (4) Section 38.20.

3-48 SECTION 5. Section 508.149, Government Code, is amended by
3-49 adding Subsection (a-1) to read as follows:

3-50 (a-1) An inmate serving a sentence for an offense under
3-51 Section 38.20, Penal Code, may not be released to mandatory
3-52 supervision.

3-53 SECTION 6. It is the intent of the legislature that every
3-54 provision, section, subsection, sentence, clause, phrase, or word
3-55 in this Act, and every application of the provisions in this Act to
3-56 every person, group of persons, or circumstances, is severable from
3-57 each other. If any application of any provision in this Act to any
3-58 person, group of persons, or circumstances is found by a court to be
3-59 invalid for any reason, the remaining applications of that
3-60 provision to all other persons and circumstances shall be severed
3-61 and may not be affected.

3-62 SECTION 7. This Act takes effect on the 91st day after the
3-63 last day of the legislative session.

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