

By: Cain

H.B. No. 37

A BILL TO BE ENTITLED

1 AN ACT
2 relating to measures to ensure the safety and welfare of the border
3 region of this state, including protection from ongoing criminal
4 activity, and public health threats and the establishment of the
5 Border Protection Unit; creating a criminal offense; creating a
6 civil penalty.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 ARTICLE 1. BORDER PROTECTION UNIT

9 SECTION 1.01. Article 2.12, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
12 officers:

13 (1) sheriffs, their deputies, and those reserve
14 deputies who hold a permanent peace officer license issued under
15 Chapter 1701, Occupations Code;

16 (2) constables, deputy constables, and those reserve
17 deputy constables who hold a permanent peace officer license issued
18 under Chapter 1701, Occupations Code;

19 (3) marshals or police officers of an incorporated
20 city, town, or village, and those reserve municipal police officers
21 who hold a permanent peace officer license issued under Chapter
22 1701, Occupations Code;

23 (4) rangers, officers, and members of the reserve
24 officer corps commissioned by:

1 (A) the Public Safety Commission; and

2 (B) either:

3 (i) the Director of the Department of
4 Public Safety; or

5 (ii) the unit chief of the Border
6 Protection Unit;

7 (5) investigators of the district attorneys', criminal
8 district attorneys', and county attorneys' offices;

9 (6) law enforcement agents of the Texas Alcoholic
10 Beverage Commission;

11 (7) each member of an arson investigating unit
12 commissioned by a city, a county, or the state;

13 (8) officers commissioned under Section 37.081,
14 Education Code, or Subchapter E, Chapter 51, Education Code;

15 (9) officers commissioned by the General Services
16 Commission;

17 (10) law enforcement officers commissioned by the
18 Parks and Wildlife Commission;

19 (11) officers commissioned under Chapter 23,
20 Transportation Code;

21 (12) municipal park and recreational patrolmen and
22 security officers;

23 (13) security officers and investigators commissioned
24 as peace officers by the comptroller;

25 (14) officers commissioned by a water control and
26 improvement district under Section 49.216, Water Code;

27 (15) officers commissioned by a board of trustees

1 under Chapter 54, Transportation Code;

2 (16) investigators commissioned by the Texas Medical
3 Board;

4 (17) officers commissioned by:

5 (A) the board of managers of the Dallas County
6 Hospital District, the Tarrant County Hospital District, the Bexar
7 County Hospital District, or the El Paso County Hospital District
8 under Section 281.057, Health and Safety Code;

9 (B) the board of directors of the Ector County
10 Hospital District under Section 1024.117, Special District Local
11 Laws Code;

12 (C) the board of directors of the Midland County
13 Hospital District of Midland County, Texas, under Section 1061.121,
14 Special District Local Laws Code; and

15 (D) the board of hospital managers of the Lubbock
16 County Hospital District of Lubbock County, Texas, under Section
17 1053.113, Special District Local Laws Code;

18 (18) county park rangers commissioned under
19 Subchapter E, Chapter 351, Local Government Code;

20 (19) investigators employed by the Texas Racing
21 Commission;

22 (20) officers commissioned under Chapter 554,
23 Occupations Code;

24 (21) officers commissioned by the governing body of a
25 metropolitan rapid transit authority under Section 451.108,
26 Transportation Code, or by a regional transportation authority
27 under Section 452.110, Transportation Code;

1 (22) investigators commissioned by the attorney
2 general under Section [402.009](#), Government Code;

3 (23) security officers and investigators commissioned
4 as peace officers under Chapter [466](#), Government Code;

5 (24) officers appointed by an appellate court under
6 Subchapter [F](#), Chapter [53](#), Government Code;

7 (25) officers commissioned by the state fire marshal
8 under Chapter [417](#), Government Code;

9 (26) an investigator commissioned by the commissioner
10 of insurance under Section [701.104](#), Insurance Code;

11 (27) apprehension specialists and inspectors general
12 commissioned by the Texas Juvenile Justice Department as officers
13 under Sections [242.102](#) and [243.052](#), Human Resources Code;

14 (28) officers appointed by the inspector general of
15 the Texas Department of Criminal Justice under Section [493.019](#),
16 Government Code;

17 (29) investigators commissioned by the Texas
18 Commission on Law Enforcement under Section [1701.160](#), Occupations
19 Code;

20 (30) commission investigators commissioned by the
21 Texas Private Security Board under Section [1702.061](#), Occupations
22 Code;

23 (31) the fire marshal and any officers, inspectors, or
24 investigators commissioned by an emergency services district under
25 Chapter [775](#), Health and Safety Code;

26 (32) officers commissioned by the State Board of
27 Dental Examiners under Section [254.013](#), Occupations Code, subject

1 to the limitations imposed by that section;

2 (33) investigators commissioned by the Texas Juvenile
3 Justice Department as officers under Section 221.011, Human
4 Resources Code; and

5 (34) the fire marshal and any related officers,
6 inspectors, or investigators commissioned by a county under
7 Subchapter B, Chapter 352, Local Government Code.

8 SECTION 1.02. Section 411.002(a), Government Code, is
9 amended to read as follows:

10 (a) The Department of Public Safety of the State of Texas is
11 an agency of the state to enforce the laws protecting the public
12 safety, ~~and~~ provide for the prevention and detection of crime,
13 and defend and secure the state's air, maritime, and land borders.
14 The department is composed of the Texas Rangers, the Texas Highway
15 Patrol, the Border Protection Unit, the administrative division,
16 and other divisions that the commission considers necessary.

17 SECTION 1.03. Section 411.004, Government Code, is amended
18 to read as follows:

19 Sec. 411.004. DUTIES AND POWERS OF COMMISSION. The
20 commission shall:

- 21 (1) formulate plans and policies for:
- 22 (A) enforcement of state criminal, traffic, and
23 safety laws;
 - 24 (B) prevention of crime;
 - 25 (C) detection and apprehension of persons who
26 violate laws; ~~and~~
 - 27 (D) education of citizens of this state in the

1 promotion of public safety and the observance of law; and

2 (E) defense and security of this state's air,
3 maritime, and land borders;

4 (2) organize the department and supervise its
5 operation;

6 (3) adopt rules considered necessary for carrying out
7 the department's work;

8 (4) maintain records of all proceedings and official
9 orders; and

10 (5) biennially submit a report of its work to the
11 governor and legislature, including the commission's and director's
12 recommendations.

13 SECTION 1.04. Section 411.006(a), Government Code, is
14 amended to read as follows:

15 (a) Subject to Section 411.555, the ~~[The]~~ director shall:

16 (1) be directly responsible to the commission for the
17 conduct of and act as executive director of the Texas Highway
18 Patrol, the Texas Rangers, and other administrative divisions and
19 departments assigned by the commission, other than the Border
20 Protection Unit ~~[the department's affairs];~~

21 (2) ~~[act as executive director of the department,~~
22 ~~(3)]~~ act with the commission in an advisory capacity,
23 without vote;

24 (3) ~~(4)]~~ adopt rules, subject to commission
25 approval, considered necessary for the control of the department;

26 (4) ~~(5)]~~ issue commissions as law enforcement
27 officers, under the commission's direction, to all members of the

1 Texas Rangers and the Texas Highway Patrol and to other officers of
2 the department;

3 (5) [~~(6)~~] appoint, with the advice and consent of the
4 commission, the head of a division or bureau provided for by this
5 chapter;

6 (6) [~~(7)~~] quarterly, annually, and biennially submit
7 to the commission detailed reports of the operation of the
8 department, including statements of its expenditures; and

9 (7) [~~(8)~~] prepare, swear to, submit to the governor,
10 and file in the department's records a quarterly statement
11 containing an itemized list of all money received and its source and
12 all money spent and the purposes for which it was spent.

13 SECTION 1.05. Section 411.007(a), Government Code, is
14 amended to read as follows:

15 (a) Subject to the provisions of this chapter, the director
16 may appoint, promote, reduce, suspend, or discharge any officer or
17 employee of the department, other than an officer or employee of the
18 Border Protection Unit.

19 SECTION 1.06. Section 411.017(a), Government Code, is
20 amended to read as follows:

21 (a) A person commits an offense if, without the director's
22 authorization, the person:

23 (1) manufactures, sells, or possesses a badge,
24 identification card, or other item bearing a department insignia or
25 an insignia deceptively similar to the department's;

26 (2) makes a copy or likeness of a badge,
27 identification card, or department insignia, with intent to use or

1 allow another to use the copy or likeness to produce an item bearing
2 the department insignia or an insignia deceptively similar to the
3 department's; or

4 (3) uses the term "Texas Department of Public Safety,"
5 "Department of Public Safety," "Texas Ranger," ~~or~~ "Texas Highway
6 Patrol," or "Border Protection Unit" in connection with an object,
7 with the intent to create the appearance that the object belongs to
8 or is being used by the department.

9 SECTION 1.07. Chapter 411, Government Code, is amended by
10 adding Subchapter S to read as follows:

11 SUBCHAPTER S. BORDER PROTECTION UNIT

12 Sec. 411.551. DEFINITIONS. In this subchapter:

13 (1) "Unit" means the Border Protection Unit.

14 (2) "Unit chief" means the person appointed under
15 Section 411.554 as the unit chief.

16 Sec. 411.552. BORDER PROTECTION UNIT; TERM OF
17 AUTHORIZATION. (a) The unit is a division under the commission
18 consisting of the number of commissioned and noncommissioned
19 officers and other employees authorized by the legislature.

20 (b) The unit is subject to appropriations by the legislature
21 and, unless continued in existence by the legislature, is abolished
22 December 31, 2030.

23 (c) This subchapter expires December 31, 2030.

24 Sec. 411.553. HEADQUARTERS. The unit must be headquartered
25 in the border region.

26 Sec. 411.554. UNIT CHIEF. (a) The governor shall appoint a
27 United States citizen to serve as the unit chief of the Border

1 Protection Unit. The unit chief serves until removed by the
2 governor.

3 (b) The unit chief may appoint, with the advice and consent
4 of the commission, deputy unit chiefs and assistant unit chiefs who
5 shall perform the duties that the unit chief designates. Deputy
6 unit chiefs and assistant unit chiefs serve until removed by the
7 unit chief.

8 (c) The unit chief, deputy unit chiefs, and assistant unit
9 chiefs are entitled to annual salaries as provided by the
10 legislature.

11 Sec. 411.555. GENERAL POWERS AND DUTIES OF UNIT AND UNIT
12 CHIEF. (a) The unit chief shall:

13 (1) be directly responsible to the commission for all
14 conduct of the unit, but may be removed only by the governor under
15 Section 411.554;

16 (2) act as the executive director of the unit;

17 (3) act with the commission in an advisory capacity,
18 without vote;

19 (4) adopt rules, subject to commission approval,
20 considered necessary for the control and general administration of
21 the unit, including rules governing the procurement of facilities
22 and equipment for the unit and the training and working conditions
23 for unit personnel;

24 (5) issue commissions as law enforcement officers,
25 under the commission's direction, to members of the unit;

26 (6) create as necessary, with the advice and consent
27 of the commission, operational or administrative divisions within

1 the unit and appoint heads of those divisions;

2 (7) employ as necessary commissioned and
3 noncommissioned officers and other employees to perform unit
4 operations and functions;

5 (8) quarterly, annually, and biennially submit to the
6 commission detailed reports of the operation of the unit, including
7 statements of its expenditures; and

8 (9) prepare, swear to, submit to the governor, and
9 file in the unit's records a quarterly statement containing an
10 itemized list of all money received and its source and all money
11 spent and the purposes for which it was spent.

12 (b) The unit chief or unit chief's designee shall provide to
13 members of the commission and to employees of the unit, as often as
14 necessary, information regarding the requirements for office or
15 employment under this chapter, including information regarding a
16 person's responsibilities under applicable law relating to
17 standards of conduct for state officers or employees.

18 (c) Subject to Subsection (d), the following provisions
19 apply to the unit chief with respect to the unit in the same manner
20 as the provisions apply to the director with respect to the
21 department or, as applicable, apply to the unit when acting at the
22 direction of the unit chief in the same manner as the provisions
23 apply to the department when acting at the direction of the
24 director:

25 (1) Section [411.007](#);

26 (2) Section [411.0071](#);

27 (3) Section [411.0075](#);

- 1 (4) Section 411.0079;
- 2 (5) Section 411.009;
- 3 (6) Section 411.0095;
- 4 (7) Section 411.0097, as added by Section 3, Chapter
5 556 (H.B. 1239), Acts of the 79th Legislature, Regular Session,
6 2005;
- 7 (8) Section 411.0097, as added by Section 1, Chapter
8 693 (S.B. 293), Acts of the 79th Legislature, Regular Session,
9 2005;
- 10 (9) Section 411.0098;
- 11 (10) Section 411.013(b);
- 12 (11) Section 411.0131;
- 13 (12) Section 411.0132;
- 14 (13) Section 411.0141(e);
- 15 (14) Section 411.015;
- 16 (15) Section 411.016;
- 17 (16) Section 411.0161;
- 18 (17) Section 411.0162;
- 19 (18) Section 411.0163;
- 20 (19) Section 411.0164;
- 21 (20) Section 411.017;
- 22 (21) Section 411.018;
- 23 (22) Sections 411.0207(c)(1)-(5);
- 24 (23) Sections 411.0208(d) and (e);
- 25 (24) Section 411.0209;
- 26 (25) Section 411.02095;
- 27 (26) Section 411.0865;

1 (27) Section 411.087(e);

2 (28) Section 411.0891; and

3 (29) Section 411.154.

4 (d) The director may not exercise any operational or
5 administrative control over the unit chief or the unit. The unit
6 chief may not exercise any operational or administrative control
7 over the director or the department, other than the unit.

8 (e) The unit is a criminal justice agency for purposes of
9 this chapter.

10 (f) The unit:

11 (1) may collect, preserve, ship, and analyze a DNA
12 sample for the DNA database subject to the rules adopted under
13 Section 411.146(c)(1); and

14 (2) is entitled to access or use a DNA sample or record
15 subject to the rules adopted under Section 411.147(b).

16 (g) The unit is a law enforcement agency for purposes of
17 Section 411.1471(b).

18 (h) The unit may assist local law enforcement with the
19 investigation of crime.

20 Sec. 411.556. OFFICE OF AUDIT AND REVIEW FOR UNIT. The
21 governor shall establish the office of audit and review within the
22 unit and appoint the director of the office to perform the duties
23 under Subchapter I with respect to the unit. The director of the
24 office of audit and review of the unit shall serve until removed by
25 the governor.

26 Sec. 411.557. INSPECTOR GENERAL FOR UNIT. (a) The governor
27 shall establish the office of the inspector general within the unit

1 and appoint the inspector general of the unit who shall perform with
2 respect to the unit the duties of Subchapter I-1 or as may be
3 provided by other law. The inspector general of the unit shall
4 serve until removed by the governor.

5 (b) The inspector general of the unit is responsible for:

6 (1) preparing and delivering assessments concerning
7 the administration of the unit to the governor, the legislature,
8 and the unit chief;

9 (2) acting to prevent and detect serious breaches of
10 unit policy, fraud, and abuse of office, including any acts of
11 criminal conduct within the unit; and

12 (3) independently and objectively reviewing,
13 investigating, delegating, and overseeing the investigation of:

14 (A) conduct described by Subdivision (2);

15 (B) criminal activity occurring within the unit;

16 (C) allegations of wrongdoing by unit employees;

17 (D) crimes committed on unit property; and

18 (E) serious breaches of unit policy.

19 Sec. 411.558. OFFICERS; OTHER EMPLOYEES. (a) The unit
20 chief may employ commissioned or noncommissioned officers meeting
21 the qualifications described by Section 411.561 to perform the
22 duties of the unit. Those officers are entitled to compensation as
23 provided by the legislature and must be recruited and trained
24 within the border region to the extent practicable.

25 (b) The unit chief may employ individuals who are not
26 officers as necessary to carry out the duties of the unit.

27 (c) Subject to the provisions of this chapter, the unit

1 chief may appoint, promote, reduce, suspend, or discharge any
2 officer or employee of the unit.

3 Sec. 411.559. AUTHORITY OF OFFICERS. (a) A commissioned
4 officer of the unit is governed by the law regulating and defining
5 the powers and duties of sheriffs performing similar duties, except
6 that the officer may make arrests and execute processes in a
7 criminal case in any county.

8 (b) Subject to Subsection (c), a commissioned or
9 noncommissioned officer of the unit may, to the extent consistent
10 with the United States and Texas Constitutions, arrest, apprehend,
11 or detain persons crossing the Texas-Mexico border unlawfully, and
12 deter persons attempting to cross the border unlawfully, including
13 with the use of non-deadly crowd control measures.

14 (c) A noncommissioned officer may not exercise the
15 authority provided by Subsection (b) unless specifically
16 authorized by the commission and the governor and unless the
17 officer has been provided training approved by the commission and
18 the governor. A noncommissioned officer may exercise the arrest
19 authority provided by Subsection (b) only if the authority is
20 exercised in a county:

- 21 (1) contiguous with the Texas-Mexico border; or
22 (2) adjoining a county described by Subdivision (1).

23 (d) The commission shall develop or recognize a training
24 program required by Subsection (c).

25 Sec. 411.560. DEFENSES TO CIVIL AND CRIMINAL LIABILITY.
26 Notwithstanding any other law, any defense or affirmative defense
27 that applies to a peace officer in a civil or criminal action

1 applies to the unit chief and the officers and other employees of
2 the unit in a civil or criminal action brought against the unit
3 chief or an officer or other employee of the unit arising from
4 conduct engaged in while discharging the duties of the unit.

5 Sec. 411.561. QUALIFICATIONS AND STANDARDS. (a) To be a
6 commissioned officer of the unit, a person must hold a peace officer
7 license issued under Chapter 1701, Occupations Code, and meet any
8 other qualifications set by the commission.

9 (b) To be a noncommissioned officer of the unit, a person
10 must be a United States citizen and meet any other qualifications
11 set by the commission.

12 (c) A noncommissioned officer shall operate under the
13 accountability requirements and standards of professional conduct
14 set forth by the commission.

15 (d) The unit is an equal employment opportunity employer and
16 may not discriminate against or give preferential treatment to any
17 employee or job applicant on account of the individual's race,
18 color, sex, national origin, or religion.

19 Sec. 411.562. FACILITIES AND EQUIPMENT; TRAINING; TRANSFER
20 FROM DEPARTMENT. (a) The unit shall acquire equipment and
21 facilities and conduct training necessary to fulfill the
22 operational, intelligence, communication, logistics, and
23 administrative duties provided by this chapter and the unit chief.

24 (b) The commission shall transfer existing personnel,
25 equipment, and facilities to the unit from within the department as
26 determined necessary by the commission or the governor, in the
27 commission's or governor's discretion, while maintaining

1 accountability and adequate support for all officers and activities
2 within the commission's responsibility.

3 Sec. 411.563. CONSTRUCTION AND MAINTENANCE OF PHYSICAL
4 BARRIERS. (a) The unit shall oversee the construction and
5 maintenance of walls, fences, and other physical barriers along the
6 Texas-Mexico border in order to enhance the safety and security of
7 citizens of this state.

8 (b) The unit chief, or the unit chief's designee, is
9 authorized to negotiate and acquire the necessary rights-of-way,
10 leases, permissions, materials, and services needed to erect and
11 maintain physical barriers.

12 (c) The unit may use funds appropriated by the legislature,
13 other government funds, or donations from United States citizens
14 and domestic entities.

15 (d) The commission may delegate authority granted under
16 this section to another state agency.

17 Sec. 411.564. OPERATIONAL PLAN TO COORDINATE BORDER
18 SECURITY. (a) The unit shall develop and recommend to the governor
19 and report to the legislature a strategic plan that establishes the
20 framework for the budget and operations of the unit, including
21 homeland security strategies and the assistance of other state and
22 local entities. The unit shall annually report to the governor and
23 the legislature on the implementation of the strategic plan.

24 (b) The unit shall include in the strategic plan goals,
25 objectives, and performance measures that involve collaboration
26 with other state agencies and local entities.

27 (c) The unit shall create plans and conduct operations

1 consistent with the strategic plan.

2 (d) The operational plan under this section must include an
3 evaluation of 8 U.S.C. Section 1325(a) and other federal laws
4 relating to the requirement that border crossings occur only at
5 designated ports of entry.

6 Sec. 411.565. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*
7 *L.*, 518 U.S. 137 (1996), in which in the context of determining the
8 severability of a state statute the Supreme Court of the United
9 States held that an explicit statement of legislative intent is
10 controlling, it is the intent of the legislature that every
11 provision, section, subsection, sentence, clause, phrase, or word
12 in this subchapter, and every application of the provisions in this
13 subchapter to every person, group of persons, or circumstances, are
14 severable from each other.

15 (b) If any application of any provision in this subchapter
16 to any person, group of persons, or circumstances is found by a
17 court to be invalid, preempted, or unconstitutional, for any reason
18 whatsoever, then the remaining applications of that provision to
19 all other persons and circumstances shall be severed and preserved,
20 and shall remain in effect. All constitutionally valid
21 applications of the provisions in this subchapter shall be severed
22 from any applications that a court finds to be invalid, preempted,
23 or unconstitutional, because it is the legislature's intent and
24 priority that every single valid application of every statutory
25 provision be allowed to stand alone.

26 (c) The legislature further declares that it would have
27 enacted this subchapter, and each provision, section, subsection,

1 sentence, clause, phrase, or word, and all constitutional
2 applications of the provisions of this subchapter, irrespective of
3 the fact that any provision, section, subsection, sentence, clause,
4 phrase, or word, or applications of this subchapter were to be
5 declared invalid, preempted, or unconstitutional.

6 (d) If any provision of this subchapter is found by any
7 court to be unconstitutionally vague, then the applications of that
8 provision that do not present constitutional vagueness problems
9 shall be severed and remain in force, consistent with the
10 severability requirements of Subsections (a), (b), and (c).

11 (e) No court may decline to enforce the severability
12 requirements of Subsections (a), (b), (c), and (d) on the ground
13 that severance would "rewrite" the statute or involve the court in
14 legislative or lawmaking activity. A court that declines to
15 enforce or enjoins a state official from enforcing a statutory
16 provision is never rewriting a statute or engaging in legislative
17 or lawmaking activity, as the statute continues to contain the same
18 words as before the court's decision. A judicial injunction or
19 declaration of unconstitutionality:

20 (1) is nothing more than an edict prohibiting
21 enforcement of the disputed statute against the named parties to
22 that lawsuit, which may subsequently be vacated by a later court if
23 that court has a different understanding of the requirements of the
24 Texas Constitution or the United States Constitution or federal
25 law;

26 (2) is not a formal amendment of the language in a
27 statute; and

1 (3) no more rewrites a statute than a decision by the
2 executive not to enforce a duly enacted statute in a limited and
3 defined set of circumstances.

4 (f) If any state or federal court disregards any of the
5 severability requirements in Subsections (a), (b), (c), (d), or
6 (e), and declares or finds any provision of this subchapter
7 facially invalid, preempted, or unconstitutional, when there are
8 discrete applications of that provision that can be enforced
9 against a person, group of persons, or circumstances without
10 violating federal law or the federal or state constitutions, then
11 that provision shall be interpreted, as a matter of state law, as if
12 the legislature had enacted a provision limited to the persons,
13 group of persons, or circumstances for which the provision's
14 application will not violate federal law or the federal or state
15 constitutions, and every court shall adopt this saving construction
16 of that provision until the court ruling that pronounced the
17 provision facially invalid, preempted, or unconstitutional is
18 vacated or overruled.

19 SECTION 1.08. As soon as practicable after the effective
20 date of this Act, the governor shall appoint the unit chief as
21 prescribed by Section 411.554, Government Code, as added by this
22 Act.

23 ARTICLE 2. TRESPASS: CIVIL AND CRIMINAL PENALTIES

24 SECTION 2.01. Article [17.44](#), Code of Criminal Procedure, is
25 amended by adding Subsection (b-1) to read as follows:

26 (b-1) A magistrate shall require as a condition of release
27 on bond for a defendant arrested for an offense under Section 30.08,

1 Penal Code, that the defendant submit to electronic monitoring
2 unless the magistrate finds that the defendant is not a flight risk.

3 SECTION 2.02. Chapter 752, Government Code, is amended by
4 adding Subchapter D to read as follows:

5 SUBCHAPTER D. ENFORCEMENT BY ATTORNEY GENERAL

6 Sec. 752.101. CIVIL PENALTY: TRESPASS WHILE ENTERING THIS
7 STATE. (a) A person who engages in conduct constituting an offense
8 under Section 30.08, Penal Code, is liable to this state for a civil
9 penalty in an amount not to exceed \$10,000 for each occurrence of
10 the conduct.

11 (b) The attorney general may bring an action to collect the
12 civil penalty and may recover attorney's fees and costs incurred in
13 bringing the action.

14 SECTION 2.03. Chapter 30, Penal Code, is amended by adding
15 Section 30.08 to read as follows:

16 Sec. 30.08. TRESPASS WHILE ENTERING THIS STATE. (a) A
17 person commits an offense if the person knowingly enters the
18 property of another, without the effective consent of the owner,
19 while knowingly entering this state from any neighboring
20 jurisdiction, regardless of the person's immigration status.

21 (b) An offense under this section is a felony of the third
22 degree.

23 (c) If conduct that constitutes an offense under this
24 section also constitutes an offense under another law, the actor
25 may be prosecuted under this section, the other law, or both.

26 ARTICLE 3. PUBLIC HEALTH EMERGENCY

27 SECTION 3.01. Subtitle D, Title 2, Health and Safety Code,

1 is amended by adding Chapter 81B to read as follows:

2 CHAPTER 81B. SUSPENSION OF ENTRY OF PERSONS FROM DESIGNATED PLACES
3 TO PREVENT SPREAD OF COMMUNICABLE DISEASES

4 Sec. 81B.001. DEFINITIONS. In this chapter:

5 (1) "COVID-19" means the 2019 novel coronavirus
6 disease.

7 (2) "Federally declared public health emergency"
8 means:

9 (A) a public health emergency declared by the
10 United States secretary of health and human services under 42
11 U.S.C. Section 247d; or

12 (B) an emergency or disaster declared, including
13 under a renewal of the declaration, by the president of the United
14 States in relation to a public health emergency described by
15 Paragraph (A) under:

16 (i) the National Emergencies Act (50 U.S.C.
17 Section 1601 et seq.); or

18 (ii) the Robert T. Stafford Disaster Relief
19 and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.).

20 (3) "Person" means any individual other than one
21 described by:

22 (A) the first sentence of Section 1 of the
23 Fourteenth Amendment to the United States Constitution; or

24 (B) 8 U.S.C. Section 1101(a)(20).

25 (4) "Port of entry" means a port of entry described by
26 Part 101, Title 19, Code of Federal Regulations (19 C.F.R. part
27 101), or 22 C.F.R. Section 40.1.

1 Sec. 81B.002. SUSPENSION OF ENTRY. (a) To the extent
2 consistent with the United States Constitution, all persons
3 entering this state by land from another country must pass through a
4 port of entry for appropriate medical review during:

5 (1) the pendency of any federally declared public
6 health emergency for COVID-19;

7 (2) any time that a federal agency has in place any
8 vaccination requirement for any person lawfully residing in the
9 United States, including government contractors or health care
10 workers, for the purposes of preventing the spread of COVID-19 in
11 the United States; or

12 (3) any time the United States Department of State has
13 in place any travel warning related to COVID-19 for any country from
14 which citizens have unlawfully entered the United States during the
15 most recent year for which there is available data.

16 (b) A person who enters this state from a foreign country
17 other than in accordance with Subsection (a), to the extent
18 consistent with the United States Constitution, shall be removed to
19 the country from which they entered the United States, their
20 country of origin, or another location as practicable, as rapidly
21 as possible with as little time spent in congregate settings as
22 practicable under the circumstances.

23 Sec. 81B.003. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*
24 *L.*, 518 U.S. 137 (1996), in which in the context of determining the
25 severability of a state statute the Supreme Court of the United
26 States held that an explicit statement of legislative intent is
27 controlling, it is the intent of the legislature that every

1 provision, section, subsection, sentence, clause, phrase, or word
2 in this chapter, and every application of the provisions in this
3 chapter to every person, group of persons, or circumstances, are
4 severable from each other.

5 (b) If any application of any provision in this chapter to
6 any person, group of persons, or circumstances is found by a court
7 to be invalid, preempted, or unconstitutional, for any reason
8 whatsoever, then the remaining applications of that provision to
9 all other persons and circumstances shall be severed and preserved,
10 and shall remain in effect. All constitutionally valid
11 applications of the provisions in this chapter shall be severed
12 from any applications that a court finds to be invalid, preempted,
13 or unconstitutional, because it is the legislature's intent and
14 priority that every single valid application of every statutory
15 provision be allowed to stand alone.

16 (c) The legislature further declares that it would have
17 enacted this chapter, and each provision, section, subsection,
18 sentence, clause, phrase, or word, and all constitutional
19 applications of the provisions of this chapter, irrespective of the
20 fact that any provision, section, subsection, sentence, clause,
21 phrase, or word, or applications of this chapter were to be declared
22 invalid, preempted, or unconstitutional.

23 (d) If any provision of this chapter is found by any court to
24 be unconstitutionally vague, then the applications of that
25 provision that do not present constitutional vagueness problems
26 shall be severed and remain in force, consistent with the
27 severability requirements of Subsections (a), (b), and (c).

1 (e) No court may decline to enforce the severability
2 requirements of Subsections (a), (b), (c), and (d) on the ground
3 that severance would "rewrite" the statute or involve the court in
4 legislative or lawmaking activity. A court that declines to
5 enforce or enjoins a state official from enforcing a statutory
6 provision is never rewriting a statute or engaging in legislative
7 or lawmaking activity, as the statute continues to contain the same
8 words as before the court's decision. A judicial injunction or
9 declaration of unconstitutionality:

10 (1) is nothing more than an edict prohibiting
11 enforcement of the disputed statute against the named parties to
12 that lawsuit, which may subsequently be vacated by a later court if
13 that court has a different understanding of the requirements of the
14 Texas Constitution or the United States Constitution or federal
15 law;

16 (2) is not a formal amendment of the language in a
17 statute; and

18 (3) no more rewrites a statute than a decision by the
19 executive not to enforce a duly enacted statute in a limited and
20 defined set of circumstances.

21 (f) If any state or federal court disregards any of the
22 severability requirements in Subsections (a), (b), (c), (d), or
23 (e), and declares or finds any provision of this chapter facially
24 invalid, preempted, or unconstitutional, when there are discrete
25 applications of that provision that can be enforced against a
26 person, group of persons, or circumstances without violating
27 federal law or the federal or state constitutions, then that

1 provision shall be interpreted, as a matter of state law, as if the
2 legislature had enacted a provision limited to the persons, group
3 of persons, or circumstances for which the provision's application
4 will not violate federal law or the federal or state constitutions,
5 and every court shall adopt this saving construction of that
6 provision until the court ruling that pronounced the provision
7 facially invalid, preempted, or unconstitutional is vacated or
8 overruled.

9 ARTICLE 4. SEVERABILITY; EFFECTIVE DATE

10 SECTION 4.01. (a) If any provision of this Act or its
11 application to any person or circumstance is held invalid, the
12 invalidity does not affect other provisions or applications of this
13 Act that can be given effect without the invalid provision or
14 application, and to this end the provisions of this Act are declared
15 to be severable.

16 (b) Subsection (a) of this section does not affect another
17 severability provision contained in this Act.

18 SECTION 4.02. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect on the 91st day after the last day of
23 the legislative session.