

By: Cain

H.B. No. 40

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibitions on the illegal entry into or illegal
3 presence in this state by a person who is an alien, the enforcement
4 of those prohibitions, and authorizing under certain circumstances
5 the removal of persons who violate certain of those prohibitions;
6 creating criminal offenses.

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

8 SECTION 1. Title 10, Penal Code, is amended by adding
9 Chapter 51 to read as follows:

10 CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

11 Sec. 51.01. DEFINITIONS. In this chapter:

12 (1) "Alien" has the meaning assigned by 8 U.S.C.
13 Section 1101, as that provision existed on January 1, 2023.

14 (2) "Child" means a person younger than 18 years of
15 age.

16 (3) "Port of entry" means a port of entry in the United
17 States as designated by 19 C.F.R. Part 101.

18 Sec. 51.015. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS.
19 Notwithstanding any other provision of this chapter, a peace
20 officer may not arrest, remove, or otherwise detain a person for
21 purposes of enforcing a provision of this chapter if the person is
22 on the premises or grounds of:

23 (1) a public or private primary or secondary school;

24 (2) a church, synagogue, or other established place of

1 religious worship; or

2 (3) a hospital licensed under Chapter 241, Health and
3 Safety Code.

4 Sec. 51.016. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS.

5 Notwithstanding any other provision of this chapter, a peace
6 officer may not arrest, remove, or otherwise detain a person for
7 purposes of enforcing a provision of this chapter if, for purposes
8 of obtaining a forensic medical examination and treatment, the
9 person is on the premises or grounds of a SAFE-ready facility, as
10 defined by Section 323.001, Health and Safety Code, or another
11 facility that provides forensic medical examinations to sexual
12 assault survivors in accordance with Chapter 323, Health and Safety
13 Code.

14 Sec. 51.02. ILLEGAL ENTRY FROM FOREIGN NATION. (a) A
15 person who is an alien commits an offense if the person enters or
16 attempts to enter this state directly from a foreign nation at any
17 location other than a lawful port of entry.

18 (b) An offense under this section is a Class B misdemeanor,
19 except that the offense is a state jail felony if it is shown on the
20 trial of the offense that the defendant has been previously
21 convicted of an offense under this section.

22 (c) It is an affirmative defense to prosecution under this
23 section that:

24 (1) the federal government has granted the defendant:

25 (A) lawful presence in the United States; or

26 (B) asylum under 8 U.S.C. Section 1158;

27 (2) the defendant's conduct does not constitute a

1 violation of 8 U.S.C. Section 1325(a); or

2 (3) the defendant was approved for benefits under the
3 federal Deferred Action for Childhood Arrivals program between June
4 15, 2012, and July 16, 2021.

5 (d) The following federal programs do not provide an
6 affirmative defense for purposes of Subsection (c)(1):

7 (1) the Deferred Action for Parents of Americans and
8 Lawful Permanent Residents program; and

9 (2) any program not enacted by the United States
10 Congress that is a successor to or materially similar to the program
11 described by Subsection (c)(3) or Subdivision (1).

12 (e) Notwithstanding any other law, a peace officer who is
13 charging a person detained for a violation of this section with
14 committing an offense under this section may, in lieu of arresting
15 the person or taking the person before a magistrate, remove the
16 person by:

17 (1) collecting available identifying information of
18 the person, which may include the use of photographic and biometric
19 measures that are cross-referenced with all relevant local, state,
20 and federal criminal databases;

21 (2) transporting the person to a port of entry; and

22 (3) ordering the person to return to the foreign
23 nation from which the person entered or attempted to enter.

24 (f) A court may not abate the prosecution of an offense
25 under this section on the basis that a federal determination
26 regarding the immigration status of the defendant is pending.

27 Sec. 51.03. ILLEGAL REENTRY BY CERTAIN ALIENS. (a) A

1 person who is an alien commits an offense if the person enters,
2 attempts to enter, or is at any time found in this state after the
3 person:

4 (1) has been denied admission to or excluded,
5 deported, or removed from the United States; or

6 (2) has departed from the United States while an order
7 of exclusion, deportation, or removal is outstanding.

8 (b) An offense under this section is a Class A misdemeanor,
9 except that the offense is:

10 (1) a felony of the third degree if:

11 (A) the defendant's removal was subsequent to a
12 conviction for commission of two or more misdemeanors involving
13 drugs, crimes against a person, or both;

14 (B) the defendant was excluded pursuant to 8
15 U.S.C. Section 1225(c) because the defendant was excludable under 8
16 U.S.C. Section 1182(a)(3)(B);

17 (C) the defendant was removed pursuant to the
18 provisions of 8 U.S.C. Chapter 12, Subchapter V; or

19 (D) the defendant was removed pursuant to 8
20 U.S.C. Section 1231(a)(4)(B); or

21 (2) a felony of the second degree if the defendant was
22 removed subsequent to a conviction for the commission of a felony.

23 (c) For purposes of Subsections (a) and (b), "removal"
24 includes any agreement in which an alien stipulates to removal
25 pursuant to a criminal proceeding under either federal or state
26 law.

27 (d) Notwithstanding any other law, a peace officer who is

1 charging a person detained for a violation of this section with
2 committing an offense under this section may, in lieu of arresting
3 the person or taking the person before a magistrate, remove the
4 person by:

5 (1) collecting available identifying information of
6 the person, which may include the use of photographic and biometric
7 measures that are cross-referenced with all relevant local, state,
8 and federal criminal databases;

9 (2) transporting the person to a port of entry; and

10 (3) ordering the person to return to the foreign
11 nation from which the person entered or attempted to enter.

12 (e) A court may not abate the prosecution of an offense
13 under this section on the basis that a federal determination
14 regarding the immigration status of the defendant is pending.

15 Sec. 51.04. REFUSAL TO COMPLY WITH ORDER TO RETURN TO
16 FOREIGN NATION. (a) A person who is an alien commits an offense if,
17 following a violation of Section 51.02 or 51.03, the person refuses
18 to comply with a peace officer's order under Section 51.02(e) or
19 51.03(d) to return to the foreign nation from which the person
20 entered or attempted to enter.

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

23 Sec. 51.05. CERTAIN ACTS PROHIBITED. A peace officer
24 enforcing Section 51.02 or 51.03 may not:

25 (1) push a child into water;

26 (2) deny a child access to drinking water; or

27 (3) deny a child urgent medical care.

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

3 CHAPTER 117. INDEMNIFICATION OF CERTAIN CLAIMS RELATING TO
4 ENFORCEMENT OF CERTAIN CRIMINAL OFFENSES INVOLVING ILLEGAL ENTRY
5 INTO THIS STATE

6 Sec. 117.001. DEFINITION. In this chapter, "damages"
7 includes any and all damages, fines, fees, penalties, court costs,
8 attorney's fees, or other assessments.

9 Sec. 117.002. LOCAL GOVERNMENT INDEMNIFICATION OF LOCAL
10 GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Unless the
11 court or jury determines that the official, employee, or contractor
12 acted in bad faith, with conscious indifference, or with
13 recklessness, a local government shall indemnify an official,
14 employee, or contractor of the local government for damages arising
15 from a cause of action resulting from an action taken by the
16 official, employee, or contractor to enforce Chapter 51, Penal
17 Code, during the course and scope of the official's, employee's, or
18 contractor's office, employment, or contractual performance for or
19 service on behalf of the local government.

20 (b) Indemnification payments made under Subsection (a) by a
21 local government may not exceed:

22 (1) \$100,000 to any one person or \$300,000 for any
23 single occurrence in the case of personal injury or death; or

24 (2) \$10,000 for a single occurrence of property
25 damage.

26 (c) A local government shall indemnify an official,
27 employee, or contractor of the local government for reasonable

1 attorney's fees incurred in defense of a criminal prosecution
2 against the official, employee, or contractor for an action taken
3 by the official, employee, or contractor to enforce Chapter 51,
4 Penal Code, during the course and scope of the official's,
5 employee's, or contractor's office, employment, or contractual
6 performance for or service on behalf of the local government.

7 (d) This section may not be construed to waive any statutory
8 limits on damages under state law.

9 Sec. 117.003. STATE INDEMNIFICATION OF STATE OFFICIALS,
10 EMPLOYEES, AND CONTRACTORS; ATTORNEY GENERAL REPRESENTATION. (a)
11 Unless the court or jury determines that the state official,
12 employee, or contractor acted in bad faith, with conscious
13 indifference, or with recklessness, the state shall indemnify an
14 elected or appointed state official or a state employee or
15 contractor for damages arising from a cause of action resulting
16 from an action taken by the official, employee, or contractor to
17 enforce Chapter 51, Penal Code, during the course and scope of the
18 official's, employee's, or contractor's office, employment, or
19 contractual performance for or service on behalf of the state.

20 (b) Notwithstanding any other law, indemnification under
21 Subsection (a) is not subject to any indemnification limits under
22 state law.

23 (c) The state shall indemnify a state official, employee, or
24 contractor for reasonable attorney's fees incurred in defense of a
25 criminal prosecution against the official, employee, or contractor
26 for an action taken by the official, employee, or contractor to
27 enforce Chapter 51, Penal Code, during the course and scope of the

1 official's, employee's, or contractor's office, employment, or
2 contractual performance for or service on behalf of the state.

3 (d) A state official, employee, or contractor who may be
4 entitled to indemnification under Subsection (a) is entitled to
5 representation by the attorney general, subject to Chapter 104, in
6 an action in connection with which the official, employee, or
7 contractor may be entitled to that indemnification.

8 (e) This section may not be construed to waive any statutory
9 limits on damages under state law.

10 Sec. 117.004. APPEAL TO SUPREME COURT. For a civil action
11 brought against a person who may be entitled under Section 117.002
12 or 117.003 to indemnification for damages awarded against the
13 person in the action, an appeal must be taken directly to the
14 supreme court.

15 Sec. 117.005. OTHER LAWS NOT AFFECTED. This chapter does
16 not affect a defense, immunity, or jurisdictional bar available to
17 the state or a local government or an official, employee, or
18 contractor of the state or a local government.

19 SECTION 3. It is the intent of the legislature that every
20 provision, section, subsection, sentence, clause, phrase, or word
21 in this Act, and every application of the provisions in this Act to
22 every person, group of persons, or circumstances, is severable from
23 each other. If any application of any provision in this Act to any
24 person, group of persons, or circumstances is found by a court to be
25 invalid for any reason, the remaining applications of that
26 provision to all other persons and circumstances shall be severed
27 and may not be affected.

1 SECTION 4. This Act takes effect December 1, 2023, if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for effect on that
5 date, this Act takes effect on the 91st day after the last day of the
6 legislative session.