

By: Schaefer, et al.

H.B. No. 20

Substitute the following for H.B. No. 20:

By: Slawson

C.S.H.B. No. 20

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. GENERAL PROVISIONS

9 SECTION 1.01. This Act may be cited as the Border Protection
10 Unit Act.

11 SECTION 1.02. The legislature finds that:

12 (1) The security of Texans and the sovereignty of this
13 state have been threatened by the deadly activities of
14 transnational cartels operating throughout this state and the
15 United States.

16 (2) Many Texans have lost the peaceful use and
17 enjoyment of their properties due to criminal activities along the
18 border.

19 (3) Lethal quantities of opioids such as fentanyl are
20 being trafficked into this state resulting in the poisoning deaths
21 of people throughout Texas and the United States.

22 (4) Human trafficking by transnational cartels has
23 resulted in the deaths of many people and the exploitation of women
24 and children.

1 (5) This state is "in such imminent [d]anger as will
2 not admit of delay" and declares authority under Section 10,
3 Article 1, United States Constitution.

4 (6) Deaths from fentanyl and other synthetic opioids
5 are increasing in this state and throughout the United States and
6 number in the tens of thousands according to the National
7 Institutes of Health of the United States Department of Health and
8 Human Services.

9 (7) Fentanyl is being produced on an industrial scale
10 by Mexican cartels and smuggled across the border into Texas.

11 (8) The number of people unlawfully entering Texas
12 from Mexico at locations other than ports of entry has reached
13 historic levels and local communities are increasingly
14 overwhelmed.

15 (9) Law enforcement cannot adequately interdict
16 fentanyl and human trafficking operations along the Texas-Mexico
17 border because resources are diverted to address the unlawful entry
18 by large numbers of people into Texas from Mexico.

19 (10) The legislature, acting with the governor, has
20 the solemn duty to protect and defend the citizens of this state and
21 maintain sovereignty over this state's borders.

22 ARTICLE 2. BORDER PROTECTION UNIT

23 SECTION 2.01. Article [2.12](#), Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
26 officers:

27 (1) sheriffs, their deputies, and those reserve

1 deputies who hold a permanent peace officer license issued under
2 Chapter 1701, Occupations Code;

3 (2) constables, deputy constables, and those reserve
4 deputy constables who hold a permanent peace officer license issued
5 under Chapter 1701, Occupations Code;

6 (3) marshals or police officers of an incorporated
7 city, town, or village, and those reserve municipal police officers
8 who hold a permanent peace officer license issued under Chapter
9 1701, Occupations Code;

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

12 (A) the Public Safety Commission; and

13 (B) either:

14 (i) the Director of the Department of
15 Public Safety; or

16 (ii) the unit chief of the Border
17 Protection Unit;

18 (5) investigators of the district attorneys', criminal
19 district attorneys', and county attorneys' offices;

20 (6) law enforcement agents of the Texas Alcoholic
21 Beverage Commission;

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

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

26 (9) officers commissioned by the General Services
27 Commission;

1 (10) law enforcement officers commissioned by the
2 Parks and Wildlife Commission;

3 (11) officers commissioned under Chapter 23,
4 Transportation Code;

5 (12) municipal park and recreational patrolmen and
6 security officers;

7 (13) security officers and investigators commissioned
8 as peace officers by the comptroller;

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

11 (15) officers commissioned by a board of trustees
12 under Chapter 54, Transportation Code;

13 (16) investigators commissioned by the Texas Medical
14 Board;

15 (17) officers commissioned by:

16 (A) the board of managers of the Dallas County
17 Hospital District, the Tarrant County Hospital District, the Bexar
18 County Hospital District, or the El Paso County Hospital District
19 under Section 281.057, Health and Safety Code;

20 (B) the board of directors of the Ector County
21 Hospital District under Section 1024.117, Special District Local
22 Laws Code;

23 (C) the board of directors of the Midland County
24 Hospital District of Midland County, Texas, under Section 1061.121,
25 Special District Local Laws Code; and

26 (D) the board of hospital managers of the Lubbock
27 County Hospital District of Lubbock County, Texas, under Section

1 1053.113, Special District Local Laws Code;
2 (18) county park rangers commissioned under
3 Subchapter E, Chapter 351, Local Government Code;
4 (19) investigators employed by the Texas Racing
5 Commission;
6 (20) officers commissioned under Chapter 554,
7 Occupations Code;
8 (21) officers commissioned by the governing body of a
9 metropolitan rapid transit authority under Section 451.108,
10 Transportation Code, or by a regional transportation authority
11 under Section 452.110, Transportation Code;
12 (22) investigators commissioned by the attorney
13 general under Section 402.009, Government Code;
14 (23) security officers and investigators commissioned
15 as peace officers under Chapter 466, Government Code;
16 (24) officers appointed by an appellate court under
17 Subchapter F, Chapter 53, Government Code;
18 (25) officers commissioned by the state fire marshal
19 under Chapter 417, Government Code;
20 (26) an investigator commissioned by the commissioner
21 of insurance under Section 701.104, Insurance Code;
22 (27) apprehension specialists and inspectors general
23 commissioned by the Texas Juvenile Justice Department as officers
24 under Sections 242.102 and 243.052, Human Resources Code;
25 (28) officers appointed by the inspector general of
26 the Texas Department of Criminal Justice under Section 493.019,
27 Government Code;

1 (29) investigators commissioned by the Texas
2 Commission on Law Enforcement under Section 1701.160, Occupations
3 Code;

4 (30) commission investigators commissioned by the
5 Texas Private Security Board under Section 1702.061, Occupations
6 Code;

7 (31) the fire marshal and any officers, inspectors, or
8 investigators commissioned by an emergency services district under
9 Chapter 775, Health and Safety Code;

10 (32) officers commissioned by the State Board of
11 Dental Examiners under Section 254.013, Occupations Code, subject
12 to the limitations imposed by that section;

13 (33) investigators commissioned by the Texas Juvenile
14 Justice Department as officers under Section 221.011, Human
15 Resources Code; and

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

19 SECTION 2.02. Section 411.002(a), Government Code, is
20 amended to read as follows:

21 (a) The Department of Public Safety of the State of Texas is
22 an agency of the state to enforce the laws protecting the public
23 safety, ~~and~~ provide for the prevention and detection of crime,
24 and defend and secure the state's air, maritime, and land borders.

25 The department is composed of the Texas Rangers, the Texas Highway
26 Patrol, the Border Protection Unit, the administrative division,
27 and other divisions that the commission considers necessary.

1 SECTION 2.03. Section 411.004, Government Code, is amended
2 to read as follows:

3 Sec. 411.004. DUTIES AND POWERS OF COMMISSION. The
4 commission shall:

5 (1) formulate plans and policies for:

6 (A) enforcement of state criminal, traffic, and
7 safety laws;

8 (B) prevention of crime;

9 (C) detection and apprehension of persons who
10 violate laws; ~~and~~

11 (D) education of citizens of this state in the
12 promotion of public safety and the observance of law; and

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

15 (2) organize the department and supervise its
16 operation;

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

19 (4) maintain records of all proceedings and official
20 orders; and

21 (5) biennially submit a report of its work to the
22 governor and legislature, including the commission's and director's
23 recommendations.

24 SECTION 2.04. Section 411.006(a), Government Code, is
25 amended to read as follows:

26 (a) Subject to Section 411.555, the ~~The~~ director shall:

27 (1) be directly responsible to the commission for the

1 conduct of and act as executive director of the Texas Highway
2 Patrol, the Texas Rangers, and other administrative divisions and
3 departments assigned by the commission, other than the Border
4 Protection Unit [~~the department's affairs~~];

5 (2) [~~act as executive director of the department,~~
6 [~~3~~] act with the commission in an advisory capacity,
7 without vote;

8 (3) [~~4~~] adopt rules, subject to commission
9 approval, considered necessary for the control of the department;

10 (4) [~~5~~] issue commissions as law enforcement
11 officers, under the commission's direction, to all members of the
12 Texas Rangers and the Texas Highway Patrol and to other officers of
13 the department;

14 (5) [~~6~~] appoint, with the advice and consent of the
15 commission, the head of a division or bureau provided for by this
16 chapter;

17 (6) [~~7~~] quarterly, annually, and biennially submit
18 to the commission detailed reports of the operation of the
19 department, including statements of its expenditures; and

20 (7) [~~8~~] prepare, swear to, submit to the governor,
21 and file in the department's records a quarterly statement
22 containing an itemized list of all money received and its source and
23 all money spent and the purposes for which it was spent.

24 SECTION 2.05. Section [411.007](#)(a), Government Code, is
25 amended to read as follows:

26 (a) Subject to the provisions of this chapter, the director
27 may appoint, promote, reduce, suspend, or discharge any officer or

1 employee of the department, other than an officer or employee of the
2 Border Protection Unit.

3 SECTION 2.06. Section 411.017(a), Government Code, is
4 amended to read as follows:

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

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

10 (2) makes a copy or likeness of a badge,
11 identification card, or department insignia, with intent to use or
12 allow another to use the copy or likeness to produce an item bearing
13 the department insignia or an insignia deceptively similar to the
14 department's; or

15 (3) uses the term "Texas Department of Public Safety,"
16 "Department of Public Safety," "Texas Ranger," ~~or~~ "Texas Highway
17 Patrol," or "Border Protection Unit" in connection with an object,
18 with the intent to create the appearance that the object belongs to
19 or is being used by the department.

20 SECTION 2.07. Chapter 411, Government Code, is amended by
21 adding Subchapter S to read as follows:

22 SUBCHAPTER S. BORDER PROTECTION UNIT

23 Sec. 411.551. DEFINITIONS. In this subchapter:

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

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

27 Sec. 411.552. BORDER PROTECTION UNIT; TERM OF

1 AUTHORIZATION. (a) The unit is a division under the commission
2 consisting of the number of commissioned and noncommissioned
3 officers and other employees authorized by the legislature.

4 (b) The unit is subject to appropriations by the legislature
5 and, unless continued in existence by the legislature, is abolished
6 December 31, 2030.

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

8 Sec. 411.553. HEADQUARTERS. The unit must be headquartered
9 in the border region.

10 Sec. 411.554. UNIT CHIEF. (a) The governor shall appoint a
11 United States citizen to serve as the unit chief of the Border
12 Protection Unit. The unit chief serves until removed by the
13 governor.

14 (b) The unit chief may appoint, with the advice and consent
15 of the commission, deputy unit chiefs and assistant unit chiefs who
16 shall perform the duties that the unit chief designates. Deputy
17 unit chiefs and assistant unit chiefs serve until removed by the
18 unit chief.

19 (c) The unit chief, deputy unit chiefs, and assistant unit
20 chiefs are entitled to annual salaries as provided by the
21 legislature.

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

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

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

1 (3) act with the commission in an advisory capacity,
2 without vote;

3 (4) adopt rules, subject to commission approval,
4 considered necessary for the control and general administration of
5 the unit, including rules governing the procurement of facilities
6 and equipment for the unit and the training and working conditions
7 for unit personnel;

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

10 (6) create as necessary, with the advice and consent
11 of the commission, operational or administrative divisions within
12 the unit and appoint heads of those divisions;

13 (7) employ as necessary commissioned and
14 noncommissioned officers and other employees to perform unit
15 operations and functions;

16 (8) quarterly, annually, and biennially submit to the
17 commission detailed reports of the operation of the unit, including
18 statements of its expenditures; and

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

23 (b) The unit chief or unit chief's designee shall provide to
24 members of the commission and to employees of the unit, as often as
25 necessary, information regarding the requirements for office or
26 employment under this chapter, including information regarding a
27 person's responsibilities under applicable law relating to

1 standards of conduct for state officers or employees.

2 (c) Subject to Subsection (d), the following provisions
3 apply to the unit chief with respect to the unit in the same manner
4 as the provisions apply to the director with respect to the
5 department or, as applicable, apply to the unit when acting at the
6 direction of the unit chief in the same manner as the provisions
7 apply to the department when acting at the direction of the
8 director:

9 (1) Section 411.007;

10 (2) Section 411.0071;

11 (3) Section 411.0075;

12 (4) Section 411.0079;

13 (5) Section 411.009;

14 (6) Section 411.0095;

15 (7) Section 411.0097, as added by Section 3, Chapter
16 556 (H.B. 1239), Acts of the 79th Legislature, Regular Session,
17 2005;

18 (8) Section 411.0097, as added by Section 1, Chapter
19 693 (S.B. 293), Acts of the 79th Legislature, Regular Session,
20 2005;

21 (9) Section 411.0098;

22 (10) Section 411.013(b);

23 (11) Section 411.0131;

24 (12) Section 411.0132;

25 (13) Section 411.0141(e);

26 (14) Section 411.015;

27 (15) Section 411.016;

- 1 (16) Section 411.0161;
- 2 (17) Section 411.0162;
- 3 (18) Section 411.0163;
- 4 (19) Section 411.0164;
- 5 (20) Section 411.017;
- 6 (21) Section 411.018;
- 7 (22) Sections 411.0207(c)(1)-(5);
- 8 (23) Sections 411.0208(d) and (e);
- 9 (24) Section 411.0209;
- 10 (25) Section 411.02095;
- 11 (26) Section 411.0865;
- 12 (27) Section 411.087(e);
- 13 (28) Section 411.0891; and
- 14 (29) Section 411.154.

15 (d) The director may not exercise any operational or
16 administrative control over the unit chief or the unit. The unit
17 chief may not exercise any operational or administrative control
18 over the director or the department, other than the unit.

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

21 (f) The unit:
22 (1) may collect, preserve, ship, and analyze a DNA
23 sample for the DNA database subject to the rules adopted under
24 Section 411.146(c)(1); and
25 (2) is entitled to access or use a DNA sample or record
26 subject to the rules adopted under Section 411.147(b).

27 (g) The unit is a law enforcement agency for purposes of

1 Section 411.1471(b).

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

4 Sec. 411.556. OFFICE OF AUDIT AND REVIEW FOR UNIT. The
5 governor shall establish the office of audit and review within the
6 unit and appoint the director of the office to perform the duties
7 under Subchapter I with respect to the unit. The director of the
8 office of audit and review of the unit shall serve until removed by
9 the governor.

10 Sec. 411.557. INSPECTOR GENERAL FOR UNIT. (a) The governor
11 shall establish the office of the inspector general within the unit
12 and appoint the inspector general of the unit who shall perform with
13 respect to the unit the duties of Subchapter I-1 or as may be
14 provided by other law. The inspector general of the unit shall serve
15 until removed by the governor.

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

17 (1) preparing and delivering assessments concerning
18 the administration of the unit to the governor, the legislature,
19 and the unit chief;

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

23 (3) independently and objectively reviewing,
24 investigating, delegating, and overseeing the investigation of:

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

26 (B) criminal activity occurring within the unit;

27 (C) allegations of wrongdoing by unit employees;

1 (D) crimes committed on unit property; and

2 (E) serious breaches of unit policy.

3 Sec. 411.558. OFFICERS; OTHER EMPLOYEES. (a) The unit
4 chief may employ commissioned or noncommissioned officers meeting
5 the qualifications described by Section 411.561 to perform the
6 duties of the unit. Those officers are entitled to compensation as
7 provided by the legislature and must be recruited and trained
8 within the border region to the extent practicable.

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

11 (c) Subject to the provisions of this chapter, the unit
12 chief may appoint, promote, reduce, suspend, or discharge any
13 officer or employee of the unit.

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

19 (b) Subject to Subsection (c), a commissioned or
20 noncommissioned officer of the unit may, to the extent consistent
21 with the United States and Texas Constitutions, arrest, apprehend,
22 or detain persons crossing the Texas-Mexico border unlawfully, and
23 deter persons attempting to cross the border unlawfully, including
24 with the use of non-deadly crowd control measures.

25 (c) A noncommissioned officer may not exercise the
26 authority provided by Subsection (b) unless specifically
27 authorized by the commission and the governor and unless the

1 officer has been provided training approved by the commission and
2 the governor. A noncommissioned officer may exercise the arrest
3 authority provided by Subsection (b) only if the authority is
4 exercised in a county:

5 (1) contiguous with the Texas-Mexico border; or

6 (2) adjoining a county described by Subdivision (1).

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

9 Sec. 411.560. DEFENSES TO CIVIL AND CRIMINAL LIABILITY.

10 Notwithstanding any other law, any defense or affirmative defense
11 that applies to a peace officer in a civil or criminal action
12 applies to the unit chief and the officers and other employees of
13 the unit in a civil or criminal action brought against the unit
14 chief or an officer or other employee of the unit arising from
15 conduct engaged in while discharging the duties of the unit.

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

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

23 (c) A noncommissioned officer shall operate under the
24 accountability requirements and standards of professional conduct
25 set forth by the commission.

26 (d) The unit is an equal employment opportunity employer and
27 may not discriminate against or give preferential treatment to any

1 employee or job applicant on account of the individual's race,
2 color, sex, national origin, or religion.

3 Sec. 411.562. FACILITIES AND EQUIPMENT; TRAINING; TRANSFER
4 FROM DEPARTMENT. (a) The unit shall acquire equipment and
5 facilities and conduct training necessary to fulfill the
6 operational, intelligence, communication, logistics, and
7 administrative duties provided by this chapter and the unit chief.

8 (b) The commission shall transfer existing personnel,
9 equipment, and facilities to the unit from within the department as
10 determined necessary by the commission or the governor, in the
11 commission's or governor's discretion, while maintaining
12 accountability and adequate support for all officers and activities
13 within the commission's responsibility.

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

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

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

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

1 Sec. 411.564. ARTICLE I, SECTION 10 INVOCATION. Pursuant to
2 a legislative finding or a declaration by the governor that a state
3 of invasion or imminent danger under Section 10, Article I, United
4 States Constitution, exists, the unit chief and director may order
5 personnel under their authority to take, and the personnel may
6 take, the following actions to the extent consistent with the
7 United States and Texas Constitutions:

8 (1) deter and repel persons attempting to enter this
9 state unlawfully at locations other than ports of entry;

10 (2) return aliens to Mexico who:

11 (A) have been observed actually crossing the
12 Texas-Mexico border unlawfully; and

13 (B) were apprehended, detained, or arrested in
14 the vicinity of the Texas-Mexico border;

15 (3) enhance the examination of aircraft, ships,
16 vehicles, railcars, and cargo at or near ports of entry for the
17 purposes of interdicting fentanyl and other dangerous drugs and
18 interdicting human smuggling; and

19 (4) use force to repel, arrest, and detain known
20 transnational cartel operatives in the border region.

21 Sec. 411.565. OPERATIONAL PLAN TO COORDINATE BORDER
22 SECURITY. (a) The unit shall develop and recommend to the governor
23 and report to the legislature a strategic plan that establishes the
24 framework for the budget and operations of the unit, including
25 homeland security strategies and the assistance of other state and
26 local entities. The unit shall annually report to the governor and
27 the legislature on the implementation of the strategic plan.

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

4 (c) The unit shall create plans and conduct operations
5 consistent with the strategic plan.

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

10 Sec. 411.566. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*
11 *L.*, 518 U.S. 137 (1996), in which in the context of determining the
12 severability of a state statute the Supreme Court of the United
13 States held that an explicit statement of legislative intent is
14 controlling, it is the intent of the legislature that every
15 provision, section, subsection, sentence, clause, phrase, or word
16 in this subchapter, and every application of the provisions in this
17 subchapter to every person, group of persons, or circumstances, are
18 severable from each other.

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

1 priority that every single valid application of every statutory
2 provision be allowed to stand alone.

3 (c) The legislature further declares that it would have
4 enacted this subchapter, and each provision, section, subsection,
5 sentence, clause, phrase, or word, and all constitutional
6 applications of the provisions of this subchapter, irrespective of
7 the fact that any provision, section, subsection, sentence, clause,
8 phrase, or word, or applications of this subchapter were to be
9 declared invalid, preempted, or unconstitutional.

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

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

24 (1) is nothing more than an edict prohibiting
25 enforcement of the disputed statute against the named parties to
26 that lawsuit, which may subsequently be vacated by a later court if
27 that court has a different understanding of the requirements of the

1 Texas Constitution or the United States Constitution or federal
2 law;

3 (2) is not a formal amendment of the language in a
4 statute; and

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

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

23 SECTION 2.08. As soon as practicable after the effective
24 date of this Act, the governor shall appoint the unit chief as
25 prescribed by Section 411.554, Government Code, as added by this
26 Act.

27 ARTICLE 3. TRESPASS: CIVIL AND CRIMINAL PENALTIES

1 SECTION 3.01. Article 17.44, Code of Criminal Procedure, is
2 amended by adding Subsection (b-1) to read as follows:

3 (b-1) A magistrate shall require as a condition of release
4 on bond for a defendant arrested for an offense under Section 30.08,
5 Penal Code, that the defendant submit to electronic monitoring
6 unless the magistrate finds that the defendant is not a flight risk.

7 SECTION 3.02. Chapter 752, Government Code, is amended by
8 adding Subchapter D to read as follows:

9 SUBCHAPTER D. ENFORCEMENT BY ATTORNEY GENERAL

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

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

18 SECTION 3.03. Chapter 30, Penal Code, is amended by adding
19 Section 30.08 to read as follows:

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

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

27 (c) If conduct that constitutes an offense under this

1 section also constitutes an offense under another law, the actor
2 may be prosecuted under this section, the other law, or both.

3 ARTICLE 4. PUBLIC HEALTH EMERGENCY

4 SECTION 4.01. Subtitle D, Title 2, Health and Safety Code,
5 is amended by adding Chapter 81B to read as follows:

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

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

9 (1) "COVID-19" means the 2019 novel coronavirus
10 disease.

11 (2) "Federally declared public health emergency"
12 means:

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

16 (B) an emergency or disaster declared, including
17 under a renewal of the declaration, by the president of the United
18 States in relation to a public health emergency described by
19 Paragraph (A) under:

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

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

24 (3) "Person" means any individual other than one
25 described by:

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

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

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

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

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

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

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

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

27 Sec. 81B.003. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*

1 L., 518 U.S. 137 (1996), in which in the context of determining the
2 severability of a state statute the Supreme Court of the United
3 States held that an explicit statement of legislative intent is
4 controlling, it is the intent of the legislature that every
5 provision, section, subsection, sentence, clause, phrase, or word
6 in this chapter, and every application of the provisions in this
7 chapter to every person, group of persons, or circumstances, are
8 severable from each other.

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

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

27 (d) If any provision of this chapter is found by any court to

1 be unconstitutionally vague, then the applications of that
2 provision that do not present constitutional vagueness problems
3 shall be severed and remain in force, consistent with the
4 severability requirements of Subsections (a), (b), and (c).

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

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

20 (2) is not a formal amendment of the language in a
21 statute; and

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

25 (f) If any state or federal court disregards any of the
26 severability requirements in Subsections (a), (b), (c), (d), or
27 (e), and declares or finds any provision of this chapter facially

1 invalid, preempted, or unconstitutional, when there are discrete
2 applications of that provision that can be enforced against a
3 person, group of persons, or circumstances without violating
4 federal law or the federal or state constitutions, then that
5 provision shall be interpreted, as a matter of state law, as if the
6 legislature had enacted a provision limited to the persons, group
7 of persons, or circumstances for which the provision's application
8 will not violate federal law or the federal or state constitutions,
9 and every court shall adopt this saving construction of that
10 provision until the court ruling that pronounced the provision
11 facially invalid, preempted, or unconstitutional is vacated or
12 overruled.

13 ARTICLE 5. LEGISLATIVE OVERSIGHT

14 SECTION 5.01. Subtitle C, Title 3, Government Code, is
15 amended by adding Chapter 330 to read as follows:

16 CHAPTER 330. LEGISLATIVE BORDER SAFETY OVERSIGHT COMMITTEE

17 Sec. 330.001. DEFINITION. In this section, "committee"
18 means the legislative border safety oversight committee
19 established under this chapter.

20 Sec. 330.002. ESTABLISHMENT; COMPOSITION. (a) The
21 legislative border safety oversight committee is established to:

22 (1) provide objective research, analysis, and
23 recommendations to help guide state border safety policies;

24 (2) provide oversight for the Border Protection Unit
25 established under Subchapter S, Chapter 411; and

26 (3) perform other duties required by law.

27 (b) The committee consists of the following members:

- 1 (1) the lieutenant governor;
- 2 (2) the speaker of the house of representatives;
- 3 (3) four senators appointed by the lieutenant
4 governor; and
- 5 (4) four members of the house of representatives
6 appointed by the speaker of the house of representatives.

7 (c) The lieutenant governor and the speaker of the house of
8 representatives are joint chairs of the committee.

9 Sec. 330.003. POWERS AND DUTIES. (a) The committee shall:

10 (1) use statistical analyses and other research
11 methods to conduct an in-depth examination of border safety
12 initiatives and programs in this state that includes:

13 (A) an assessment of the cost-effectiveness of
14 the use of state and local funds in ensuring border safety;

15 (B) an identification of critical border safety
16 problems; and

17 (C) a determination of the state's long-range
18 border safety needs;

19 (2) recommend to the legislature:

20 (A) strategies to solve the problems identified
21 under Subdivision (1)(B); and

22 (B) policy priorities to address the long-range
23 needs determined under Subdivision (1)(C); and

24 (3) advise and assist the legislature in developing
25 plans, programs, and proposed legislation to improve the
26 effectiveness of border safety initiatives and programs.

27 (b) The committee has all other powers and duties provided

1 to a special committee by:

2 (1) Subchapter B, Chapter 301;

3 (2) the rules of the senate and the house of
4 representatives; and

5 (3) policies of the senate and house committees on
6 administration.

7 Sec. 330.004. MEETINGS; QUORUM. (a) A majority of the
8 members of the committee from each house of the legislature
9 constitutes a quorum to transact business. If a quorum is present,
10 the committee may act on any matter within the committee's
11 jurisdiction by a majority vote.

12 (b) The committee shall meet as often as necessary to
13 perform the committee's duties. Meetings may be held at any time at
14 the request of either chair or on written petition of a majority of
15 the committee members from each house of the legislature.

16 (c) The committee shall meet in the city of Austin, except
17 that if a majority of the committee members from each house of the
18 legislature agree, the committee may meet in any location
19 determined by the committee.

20 (d) As an exception to Chapter 551 and other law, for a
21 meeting in the city of Austin at which both joint chairs of the
22 committee are physically present, any number of the other committee
23 members may attend the meeting by use of telephone conference call,
24 videoconference call, or other similar technology. This subsection
25 applies for purposes of establishing a quorum or voting or any other
26 purpose allowing the members to fully participate in any committee
27 meeting. This subsection applies without regard to the subject or

1 topics considered by the members at the meeting.

2 (e) A committee meeting held by use of telephone conference
3 call, videoconference call, or other similar technology:

4 (1) is subject to the notice requirements applicable
5 to other meetings;

6 (2) must specify in the notice of the meeting the
7 location in the city of Austin at which the joint chairs will be
8 physically present;

9 (3) must be open to the public and audible to the
10 public at the location specified in the notice under Subdivision
11 (2); and

12 (4) must provide two-way audio communication between
13 all committee members attending the meeting during the entire
14 meeting, and if the two-way audio communication link with any
15 member attending the meeting is disrupted at any time, the meeting
16 may not continue until the two-way audio communication link is
17 reestablished.

18 Sec. 330.005. STAFF; AUTHORITY TO CONTRACT. The committee
19 may hire staff or may contract with universities or other suitable
20 entities to assist the committee in carrying out the committee's
21 duties. Funding to support the operation of the committee shall be
22 provided from funds appropriated to the Texas Legislative Council.

23 Sec. 330.006. REPORT. Not later than January 1 of each
24 odd-numbered year, the committee shall submit to the legislature a
25 report that contains the recommendations described by Section
26 330.003(a)(2).

27 ARTICLE 6. SEVERABILITY; EFFECTIVE DATE

1 SECTION 6.01. (a) If any provision of this Act or its
2 application to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications of this
4 Act that can be given effect without the invalid provision or
5 application, and to this end the provisions of this Act are declared
6 to be severable.

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

9 SECTION 6.02. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2023.