

By: Berman

H.B. No. 2878

A BILL TO BE ENTITLED

AN ACT

relating to the creation of certain criminal offenses involving unauthorized aliens, to the forfeiture of property in relation to criminal offenses involving unauthorized aliens, and to the creation of a private cause of action for employing or contracting with unauthorized aliens.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 94 to read as follows:

CHAPTER 94. LIABILITY FOR EMPLOYMENT OF UNAUTHORIZED ALIEN

Sec. 94.001. DEFINITION. In this chapter, "unauthorized alien" has the meaning assigned by Section 40.01, Penal Code.

Sec. 94.002. LIABILITY. (a) A person is liable as provided by Subsection (b) if the person intentionally, knowingly, or recklessly:

(1) employs an unauthorized alien; or

(2) contracts for the performance of labor or other work with an unauthorized alien.

(b) A person who is liable under Subsection (a) is liable to the state for actual damages and any other appropriate relief.

(c) It is not a defense to liability under this chapter that a defendant has not been prosecuted under Section 40.02, Penal Code, or has been convicted of a different type or class of offense, for the conduct that is alleged to give rise to liability under this

1 chapter.

2 Sec. 94.003. QUI TAM ACTION. (a) A person may file a civil  
3 action for violation of Section 94.002. An action brought under  
4 this section is a qui tam action on behalf of both the person and the  
5 state and must be brought in the name of the person and the state.

6 (b) A person bringing an action under this section shall  
7 serve a copy of the petition and a written disclosure of  
8 substantially all material evidence and information the person  
9 possesses on the attorney general in compliance with the Texas  
10 Rules of Civil Procedure.

11 (c) The petition shall be filed in camera and, except as  
12 provided by Subsection (e) or (f), shall remain under seal until at  
13 least the 180th day after the date the petition is filed or the date  
14 on which the state elects to intervene, whichever is earlier. The  
15 petition may not be served on the defendant until the court orders  
16 service on the defendant.

17 (d) The state may elect to intervene and proceed with the  
18 action not later than the 180th day after the date the attorney  
19 general receives the petition and the material evidence and  
20 information.

21 (e) At the time the state intervenes, the attorney general  
22 may file a motion with the court requesting that the petition remain  
23 under seal for an extended period.

24 (f) The state may, for good cause shown, move the court to  
25 extend the 180-day deadline under Subsection (c) or (d). A motion  
26 under this subsection may be supported by affidavits or other  
27 submissions in camera.

1       (g) An action under this section may be dismissed before the  
2 end of the period during which the petition remains under seal only  
3 if the court and the attorney general consent in writing to the  
4 dismissal and state their reasons for consenting.

5       (h) A defendant is not required to file in accordance with  
6 the Texas Rules of Civil Procedure an answer to a petition filed  
7 under this section until the petition is unsealed and served on the  
8 defendant.

9       (i) Not later than the last day of the period prescribed by  
10 Subsection (d) or an extension of that period as provided by  
11 Subsection (e) or (f), the state shall:

12             (1) proceed with the action; or

13             (2) notify the court that the state declines to take  
14 over the action.

15       (j) If the state declines to take over the action, the  
16 person bringing the action may proceed without the state's  
17 participation. On request by the state, the state is entitled to be  
18 served with copies of all pleadings filed in the action and be  
19 provided at the state's expense with copies of all deposition  
20 transcripts. If the person bringing the action proceeds without  
21 the state's participation, the court, without limiting the status  
22 and right of that person, may permit the state to intervene at a  
23 later date on a showing of good cause.

24       (k) If the state proceeds with the action, the state has the  
25 primary responsibility for prosecuting the action and is not bound  
26 by an act of the person bringing the action. The person bringing  
27 the action has the right to continue as a party to the action,

1 subject to the limitations in this section.

2 (1) The state may dismiss the action notwithstanding the  
3 objections of the person bringing the action if:

4 (1) the attorney general notifies the person that the  
5 state has filed a motion to dismiss; and

6 (2) the court provides the person with an opportunity  
7 for a hearing on the motion.

8 (m) The state may settle the action with the defendant  
9 notwithstanding the objections of the person bringing the action if  
10 the court determines, after a hearing, that the proposed settlement  
11 is fair, adequate, and reasonable under all the circumstances. On a  
12 showing of good cause, the hearing may be held in camera.

13 (n) On a showing by the state that unrestricted  
14 participation during the course of the litigation by the person  
15 bringing the action would interfere with or unduly delay the  
16 state's prosecution of the case, or would be repetitious,  
17 irrelevant, or for purposes of harassment, the court may impose  
18 limitations on the person's participation, including:

19 (1) limiting the number of witnesses the person may  
20 call;

21 (2) limiting the length of the testimony of witnesses  
22 called by the person;

23 (3) limiting the person's cross-examination of  
24 witnesses; or

25 (4) otherwise limiting the participation by the person  
26 in the litigation.

27 (o) On a showing by the defendant that unrestricted

1 participation during the course of the litigation by the person  
2 bringing the action would be for purposes of harassment or would  
3 cause the defendant undue burden or unnecessary expense, the court  
4 may limit the participation by the person in the litigation.

5 (p) A person bringing an action under this section may  
6 recover an amount not greater than half of the amount that the state  
7 recovers as a result of the person bringing the action, excluding  
8 attorney's fees and other expenses, interest, and costs, not to  
9 exceed one-third of any judgment or award.

10 SECTION 2. Article 59.01(2), Code of Criminal Procedure, as  
11 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357  
12 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is  
13 reenacted and amended to read as follows:

14 (2) "Contraband" means property of any nature,  
15 including real, personal, tangible, or intangible, that is:

16 (A) used in the commission of:

17 (i) any first or second degree felony under  
18 the Penal Code;

19 (ii) any felony under Section 15.031(b),  
20 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
21 31, 32, 33, 33A, or 35, Penal Code;

22 (iii) any felony under The Securities Act  
23 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

24 (iv) any offense under Chapter 49, Penal  
25 Code, that is punishable as a felony of the third degree or state  
26 jail felony, if the defendant has been previously convicted three  
27 times of an offense under that chapter;

(B) used or intended to be used in the commission  
of:

(i) any felony under Chapter 481, Health  
and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health  
and Safety Code;

(iii) a felony under Chapter 153, Finance  
Code;

(iv) any felony under Chapter 34, Penal  
Code;

(v) a Class A misdemeanor under Subchapter  
B, Chapter 365, Health and Safety Code, if the defendant has been  
previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance  
Code;

(vii) any felony under Chapter 32, Human  
Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter  
522, Business & Commerce Code;

(ix) a Class A misdemeanor under Section  
306.051, Business & Commerce Code; ~~or~~

(x) any offense under Section 42.10, Penal  
Code;

(xi) ~~(x)~~ any offense under Section  
46.06(a)(1) or 46.14, Penal Code; or

(xii) ~~(x)~~ any offense under Chapter 71,

1 Penal Code;

2 (C) the proceeds gained from the commission of a  
3 felony listed in Paragraph (A) or (B) of this subdivision, a  
4 misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii)  
5 ~~[(B)(viii) or (x)]~~ of this subdivision, or a crime of violence;

6 (D) acquired with proceeds gained from the  
7 commission of a felony listed in Paragraph (A) or (B) of this  
8 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),  
9 (xi), or (xii) ~~[(B)(viii) or (x)]~~ of this subdivision, or a crime of  
10 violence; ~~[or]~~

11 (E) used to facilitate or intended to be used to  
12 facilitate the commission of a felony under Section 15.031 or  
13 43.25, Penal Code; or

14 (F) located within this state and owned by a  
15 person convicted of an offense under one or more of the following  
16 provisions of the Penal Code, regardless of whether the property  
17 was used or intended to be used in the commission of the offense or  
18 offenses:

19 (i) Section 30.055, Penal Code;

20 (ii) Section 40.02, Penal Code; or

21 (iii) Section 38.05, Penal Code, if the  
22 person who is harbored or concealed, provided with a means of  
23 avoiding arrest or effecting escape, or warned of impending  
24 discovery or apprehension:

25 (a) is a citizen of any country other  
26 than the United States; and

27 (b) entered or remained on or in any

public or private property in this state in violation of 8 U.S.C. Section 1325 or 1326.

SECTION 3. Chapter 30, Penal Code, is amended by adding Section 30.055 to read as follows:

Sec. 30.055. CRIMINAL TRESPASS BY UNAUTHORIZED ALIEN. (a) A person commits an offense if the person:

(1) is a citizen of any country other than the United States; and

(2) enters or remains on or in any public or private property in this state in violation of 8 U.S.C. Section 1325 or 1326.

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

SECTION 4. The heading to Title 8, Penal Code, is amended to read as follows:

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION AND THE  
ADMINISTRATION OF CERTAIN LAWS

SECTION 5. Title 8, Penal Code, is amended by adding Chapter 40 to read as follows:

CHAPTER 40. CERTAIN EMPLOYMENT OR CONTRACTS PROHIBITED UNDER  
FEDERAL LAW

Sec. 40.01. DEFINITION. In this chapter, "unauthorized alien" has the meaning assigned by 8 U.S.C. Section 1324a(h)(3).

Sec. 40.02. EMPLOYING OR CONTRACTING WITH UNAUTHORIZED ALIEN. (a) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) employs an unauthorized alien; or



1           (2) contracts for the performance of labor or other  
2 work with an unauthorized alien.

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

5           Sec. 40.03. EXCEPTION. It is an exception to the  
6 application of Section 40.02 that the actor attempted to verify the  
7 unauthorized alien's immigration status or work authorization and  
8 had no knowledge of the unauthorized alien's actual immigration  
9 status or work authorization.

10          SECTION 6. The change in law made by this Act in amending  
11 Article 59.01(2), Code of Criminal Procedure, applies only to the  
12 forfeiture of property in relation to an offense committed on or  
13 after the effective date of this Act. Forfeiture of property in  
14 relation to an offense committed before the effective date of this  
15 Act is governed by the law in effect when the offense was committed,  
16 and the former law is continued in effect for that purpose. For  
17 purposes of this section, an offense was committed before the  
18 effective date of this Act if any element of the offense occurred  
19 before that date.

20          SECTION 7. To the extent of any conflict, this Act prevails  
21 over another Act of the 82nd Legislature, Regular Session, 2011,  
22 relating to nonsubstantive additions to and corrections in enacted  
23 codes.

24          SECTION 8. This Act takes effect September 1, 2011.