

BILL ANALYSIS

Senate Research Center

S.B. 4
By: Perry
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 4 prohibits "sanctuary city" policies, which prohibit local law enforcement from inquiring about a person's immigration status and complying with detainer requests. These policies also often prohibit the sharing of information regarding a person's immigration status with the federal government.

Opponents of such policies argue that the state should pass legislation that prohibits cities and other government entities from the creation and enforcement of policies and ordinances that prohibit or impede the enforcement of state and federal immigration law.

S.B. 4 amends current law relating to the enforcement by campus police departments and certain local governmental entities of state and federal laws governing immigration and to related duties and liability of certain persons in the criminal justice system; provides a civil penalty; and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. POLICIES OF AND GRANT PROGRAMS FOR LOCAL ENTITIES AND CAMPUS POLICE DEPARTMENTS

SECTION 1.01. Amends Chapter 752, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS BY LOCAL ENTITIES AND CAMPUS POLICE DEPARTMENTS

Sec. 752.051. DEFINITIONS. Defines "campus police department (CPD)," "immigration laws," "institution of higher education (IHE)," "lawful detention," "local entity," and "policy."

Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (a) Provides that this subchapter does not apply to a hospital or hospital district created under Subtitle C (Local Hospitals) or D (Hospital Districts), Title 4 (Health Facilities), Health and Safety Code, a federally qualified health center as defined in Section 31.017 (Federally Qualified Health Centers), Health and Safety Code, a hospital owned or operated by an IHE, or a hospital district created under a general or special law authorized by Article IX (Counties), Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under certain federal or state laws, as applicable.

(b) Provides that Subsection (a) excludes the application of this subchapter to a commissioned peace officer employed by a hospital or hospital district during the officer's employment or commissioned by a hospital or hospital district.

(c) Provides that this subchapter does not apply to a commissioned peace officer employed or contracted by a religious organization during the officer's employment with the organization or while the officer is performing the contract.

(d) Provides that this subchapter does not apply to a school district or open-enrollment charter school (charter school), including a peace officer employed or contracted by a school district or charter school during the officer's employment with the school district or charter school or while the officer is performing the contract. Provides that this subchapter does not apply to the release of information contained in educational records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(e) Provides that this subchapter does not apply to the public health department of a local entity.

(f) Provides that this subchapter does not apply to a community center as defined by Section 571.003 (Definitions), Health and Safety Code, or a local mental health authority as defined by Section 531.002 (Definitions), Health and Safety Code.

Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION ENFORCEMENT. (a) Prohibits a local entity or CPD from:

(1) adopting, enforcing, or endorsing a policy under which the entity or CPD prohibits or materially limits the enforcement of immigration laws;

(2) prohibiting or materially limiting the enforcement of immigration laws, as demonstrated by pattern or practice; or

(3) for an entity that is a law enforcement agency (LEA) or for a CPD, as demonstrated by pattern or practice, intentionally violating Article 2.251, Code of Criminal Procedure, which is added by this Act.

(b) Prohibits a local entity or CPD, in compliance with Subsection (a), from prohibiting or materially limiting a person who is a commissioned peace officer described by Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, a corrections officer, a booking clerk, a magistrate, a district attorney, criminal district attorney, or other prosecuting attorney and who is employed by or otherwise under the direction or control of the entity or CPD from:

(1) inquiring into the immigration status of a person under a lawful detention or under arrest;

(2) taking certain actions with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person's place of birth;

(3) assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws.

(c) Authorizes a local entity or CPD, notwithstanding Subsection (b)(3), to prohibit persons who are employed by or otherwise under the direction or control of the entity or CPD from assisting or cooperating with a federal immigration officer if the assistance or cooperation occurs at a place of worship.

Sec. 752.054. DISCRIMINATION PROHIBITED. Prohibits a local entity, a CPD, or a person employed by or otherwise under the direction or control of the entity or CPD from considering race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the United States Constitution or Texas Constitution.

Sec. 752.055. COMPLAINT; EQUITABLE RELIEF. (a) Authorizes any citizen residing in the jurisdiction of a local entity or any citizen enrolled at or employed by an IHE to file a complaint with the Texas attorney general (attorney general) if the person asserts facts supporting an allegation that the entity or IHE's CPD has violated Section 752.053. Requires the citizen to include a sworn statement with the complaint stating that to the best of the citizen's knowledge, all of the facts asserted in the complaint are true and correct.

(b) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (a) against a local entity or CPD is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in a certain county to compel the entity or CPD that is suspected of violating Section 752.053 to comply with that section.

(c) Provides that an appeal of a suit brought under Subsection (b) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure and requires the appellate court to render its final order or judgment with the least possible delay.

Sec. 752.056. CIVIL PENALTY. (a) Provides that a local entity or CPD that is found by a court of law as having intentionally violated Section 752.053 is subject to a civil penalty in a certain amount.

(b) Provides that each day of a continuing violation of Section 752.053 constitutes a separate violation for the civil penalty under this section.

(c) Requires the court that hears an action brought under Section 752.055 against the local entity or CPD to determine the amount of the civil penalty under this section.

(d) Requires that a civil penalty collected under this section be deposited to the credit of the compensation to victims of crime fund established under Subchapter B (Crime Victims' Compensation), Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure.

(e) Provides that sovereign immunity of this state and governmental immunity of a county and municipality to suit is waived and abolished to the extent of liability created by this section.

Sec. 752.0565. REMOVAL FROM OFFICE. (a) Provides that, for the purposes of Section 66.001 (Grounds), Civil Practice and Remedies Code, a person holding an elective or appointive office of a political subdivision of this state does an act that causes the forfeiture of the person's office if the person violates Section 752.053.

(b) Requires the attorney general to file a petition under Section 66.002 (Initiation of Suit), Civil Practice and Remedies Code, against a public officer to which Subsection (a) applies if presented with evidence, including evidence of a statement by the public officer, establishing probable grounds that the public officer engaged in conduct described by Subsection (a) Requires the court in which the petition is filed to give precedence to proceedings relating to the petition in the same manner as provided for an election contest under Section 23.101 (Primary Priorities).

(c) Requires the court, if the person against whom an information is filed based on conduct described by Subsection (a) is found guilty as charged, to enter judgment removing the person from office.

Sec. 752.057. COMMUNITY OUTREACH POLICY. (a) Authorizes each LEA that is subject to the requirements of this subchapter to adopt a written policy requiring the LEA to perform community outreach activities to educate the public that a peace officer is prohibited from inquiring into the immigration status of a victim of or witness to an alleged criminal offense unless, as provided by Article 2.13 (Duties and Powers), Code of Criminal Procedure, the officer determines that the inquiry is necessary to investigate the offense or provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.

(b) Requires that a policy adopted under this section include outreach to victims of certain crimes.

SECTION 1.02. Amends Subchapter A, Chapter 772, Government Code, by adding Section 772.0073, as follows:

Sec. 772.0073. ENFORCEMENT OF IMMIGRATION LAW GRANT PROGRAM. (a) Defines “criminal justice division,” immigration detainer request,” “immigration laws,” and “local entity.”

(b) Requires the governor’s criminal justice division (division) to establish and administer a competitive grant program to provide financial assistance to local entities to offset costs related to enforcing immigration laws or complying with, honoring, or fulfilling immigration detainer requests (detainer requests).

(c) Requires the division to establish eligibility criteria for grant applicants, grant application procedures, criteria for evaluating grant applications and awarding grants, guidelines related to grant amounts, and procedures for monitoring the use of a grant awarded under this section and ensuring compliance with any conditions of the grant.

(d) Authorizes the division to use any revenue available for purposes of this section.

ARTICLE 2. DUTIES OF LAW ENFORCEMENT AGENCIES AND JUDGES

SECTION 2.01. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.251, as follows:

Art. 2.251. DUTIES RELATED TO IMMIGRATION DETAINER REQUESTS. (a) Requires a LEA that has custody of a person subject to a detainer request issued by United States Immigration and Customs Enforcement (ICE) to:

(1) comply with, honor, and fulfill any request made in the detainer request provided by the federal government; and

(2) inform the person that the person is being held pursuant to a detainer request issued by ICE.

(b) Provides that a LEA is not required to perform a duty imposed by Subsection (a) with respect to a person who has provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver’s license or similar government-issued identification.

SECTION 2.02. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.039, as follows:

Art. 42.039. COMPLETION OF SENTENCE IN FEDERAL CUSTODY. (a) Provides that this article applies only to a criminal case in which the judgment requires the defendant to be confined in a secure correctional facility and the defendant is subject to a detainer request.

(b) Requires the judge, in a criminal case described by Subsection (a), at the time of pronouncement of a sentence of confinement, to issue an order requiring the secure correctional facility in which the defendant is to be confined and all appropriate government officers, including a sheriff, a warden, or members of the Board of Pardons and Paroles, as appropriate, to require the defendant to serve in federal custody the final portion of the defendant's sentence, not to exceed a period of seven days, following the facility's or officer's determination that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody. Authorizes a facility or officer acting under exigent circumstances, in the absence of an order issued under this subsection, to perform the transfer after making the determination described by this subsection. Provides that this subsection applies only if appropriate officers of the federal government consent to the defendant's transfer into federal custody under the circumstances described by this subsection.

(c) Requires the judge, if the applicable information described by Subsection (a)(2) (relating to a defendant subject to a detainer request) is not available at the time sentence is pronounced in the case, to issue the order described by Subsection (b) as soon as the information becomes available. Provides that the judge retains jurisdiction for the purpose of issuing an order under this article.

(d) Defines "secure correctional facility."

ARTICLE 3. DEFENSE OF LOCAL ENTITIES BY ATTORNEY GENERAL

SECTION 3.01. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.0241, as follows:

Sec. 402.0241. DEFENSE OF LOCAL ENTITIES IN SUITS RELATED TO IMMIGRATION DETAINER REQUESTS. (a) Defines "local entity."

(b) Requires the attorney general to defend a local entity in any action in any court if:

(1) the executive head or governing body, as applicable, of the local entity requests the attorney general's assistance in the defense; and

(2) the attorney general determines that the cause of action arises out of a claim involving the local entity's good-faith compliance with a detainer request required by Article 2.251, Code of Criminal Procedure.

(c) Provides that, if the attorney general defends a local entity under Subsection (b), the state is liable for the expenses, costs, judgment, or settlement of the claims arising out of the representation. Authorizes the attorney general to settle or compromise any and all claims described by Subsection (b)(2) and prohibits the state from being liable for any expenses, costs, judgments, or settlements of any claims against a local entity not being represented by the attorney general under Subsection (b).

ARTICLE 4. SURETY BOND

SECTION 4.01. Amends Article 17.16, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes a surety to before forfeiture relieve the surety of the surety's undertaking by:

(1) makes no changes to this subdivision;

(2) delivering to the sheriff of the county in which the prosecution is pending and to the office of the prosecuting attorney an affidavit stating that the accused is incarcerated in federal custody, subject to Subsection (a-1); the custody of any state; or any county of this state. Makes nonsubstantive changes.

(a-1) Prohibits the surety, for purposes of Subsection (a)(2), from being relieved of the surety's undertaking if the accused is in federal custody to determine whether the accused is lawfully present in the United States.

ARTICLE 5. PROHIBITED CONDUCT BY SHERIFF OR CONSTABLE

SECTION 5.01. Amends Section 87.031, Local Government Code, by adding Subsection (c), to provide that, for purposes of Subsection (a) (relating to the immediate removal of a county officer for a certain conviction), "a misdemeanor involving official misconduct" includes a misdemeanor under Section 39.07, Penal Code, which is added by this Act.

SECTION 5.02. Amends Chapter 39, Penal Code, by adding Section 39.07, as follows:

Sec. 39.07. FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST.

(a) Provides that a person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail, commits an offense if the person:

(1) has custody of a person subject to a detainer request issued by ICE;
and

(2) knowingly fails to comply with the detainer request.

(b) Provides that an offense under this section is a Class A misdemeanor.

(c) Provides that it is an exception to the application of this section that the person who was subject to a detainer request described by Subsection (a)(1) had provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.

ARTICLE 6. INQUIRY BY PEACE OFFICER REGARDING IMMIGRATION OR NATIONALITY OF CRIME VICTIM OR WITNESS

SECTION 6.01. Amends Article 2.13, Code of Criminal Procedure, by adding Subsections (d) and (e), as follows:

(d) Authorizes a peace officer, subject to Subsection (e), in the course of investigating an alleged criminal offense, to inquire as to the nationality or immigration status of a victim of or witness to the offense only if the officer determines that the inquiry is necessary to investigate the offense or provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.

(e) Provides that Subsection (d) does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense or from inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.

ARTICLE 7. SEVERABILITY AND EFFECTIVE DATE

SECTION 7.01. Severability clause.

SECTION 7.02. Effective date: upon passage or September 1, 2017.