

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 4
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 4 looks to prohibit "sanctuary city" policies, that prohibit local law enforcement from inquiring about a person's immigration status and complying with detainer requests. These policies often also 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.

C.S.S.B. 4 amends current law relating to the enforcement of state and federal laws governing immigration by certain governmental entities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 5 (Section 752.056, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 101, Civil Practice and Remedies Code, by adding Section 101.0216, as follows:

Sec. 101.0216. LIABILITY OF COUNTY OR MUNICIPALITY FOR FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST. (a) Provides that a county or municipality that releases from custody a person who is the subject of an immigration detainer request issued by United States Immigration and Customs Enforcement (ICE) is liable for damages resulting from a felony committed by the person in this state within 10 years following the person's release if:

(1) the county or municipality did not detain the person as requested; and had probable cause to believe that the person is not a citizen and is subject to removal from the United States; and

(2) the person had been convicted before release of an offense that is punishable as a Class B misdemeanor or any higher category of offense.

(b) Provides that this section does not create liability for damages that a person who is subject to an immigration detainer request sustains following the person's release by a county or municipality.

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

SECTION 2. Amends Chapter 2, Code of Criminal Procedure, by adding Articles 2.251 and 2.252, as follows:

Art. 2.251. ENFORCEMENT OF FEDERAL IMMIGRATION LAW. (a) Prohibits a peace officer from stopping a motor vehicle or conducting a search of business or residence solely to enforce a federal law relating to aliens, immigrants, or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.), unless the officer is acting at the request of, or providing assistance to, an appropriate federal law enforcement officer or under the terms of an agreement between the law enforcement agency employing the officer and the federal government under which the agency receives delegated authority to enforce federal law relating to aliens, immigrants, or immigration.

(b) Authorizes a peace officer to arrest an alien not lawfully present in the United States only if the officer is acting under authority granted under Article 2.13 (Duties and Powers).

Art. 2.252. DUTIES RELATED TO IMMIGRATION DETAINER REQUESTS. (a) Requires a law enforcement agency that has custody of a person subject to an immigration detainer request issued by ICE to comply with, honor, and fulfill any request made in the detainer request and in any other instrument provided by the federal government.

(b) Requires a law enforcement agency to presume an immigration detainer request is based on probable cause and is otherwise valid, regardless of whether the detainer request is written or verbal.

SECTION 3. 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:

- (1) the judgment requires the defendant to be confined in a secure correctional facility; and
- (2) the defendant is subject to an immigration 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, in the absence of an order issued under this article, a facility or officer acting under exigent circumstances 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) 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."

SECTION 4. Amends Section 22A.001(a), Government Code, as follows:

(a) Authorizes the attorney general to petition the chief justice of the supreme court to convene a special three-judge district court in any suit:

(1) creates this subdivision from existing text and makes nonsubstantive changes, or

(2) involving an alleged violation of Section 752.053 by a local entity or campus police department of an institution of higher education.

SECTION 5. 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," "immigration detainer request," "immigration laws," "institution of higher education," "lawful detention," "local entity," and "policy."

Sec. 752.052. APPLICABILITY OF CHAPTER. (a) Provides that this chapter does not apply to a school district or open-enrollment charter school. Provides that this chapter does not apply to the release of information contained in education 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).

(b) Provides that, subject to Subsection (c), this chapter 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, or a hospital district created under a general or special law authorized by Article IX, 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 the following applicable federal or state laws:

(1) 42 U.S.C. Section 1395dd;

(2) 42 U.S.C. Section 1396b(v);

(3) Subchapter C (Person Who Resides in an Area Served by a Public Hospital or Hospital District), Chapter 61 (Indigent Health Care and Treatment Act), Health and Safety Code;

(4) Chapter 81 (Communicable Diseases), Health and Safety Code; and

(5) Section 311.022 (Discrimination Prohibited in Denial of Services; Criminal Penalties), Health and Safety Code.

(c) Provides that Subsection (b) does not exclude the application of this chapter to a commissioned peace officer employed by or commissioned by a hospital or hospital district otherwise subject to Subsection (b).

Sec. 752.053. POLICY REGARDING IMMIGRATION ENFORCEMENT. (a) Prohibits a local entity or campus police department from adopting, enforcing, or endorsing a policy under which the entity or department prohibits or discourages the enforcement of immigration laws; or by consistent actions prohibiting or discouraging the enforcement of immigration laws.

(b) Requires, in compliance with Subsection (a), a local entity or campus police department to not prohibit or discourage 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 department from:

- (1) inquiring into the immigration status of a person under a lawful detention or under arrest;
- (2) 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:
 - (A) sending the information to or requesting or receiving the information from certain relevant federal agencies;
 - (B) maintaining the information; or
 - (C) exchanging the information with another local entity or campus police department or a federal or state governmental entity;
- (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.

Sec. 752.054. **DISCRIMINATION PROHIBITED.** Prohibits a local entity, a campus police department, or a person employed by or otherwise under the direction or control of the entity or department from considering race, color, 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 person, including the federal government, to file a complaint with the attorney general if the person offers evidence to support an allegation that a local entity or campus police department is violating Section 752.053. Requires the person to include the evidence the person has that supports the complaint with the complaint.

(b) Requires a local entity or campus police department for which the attorney general has received a complaint under Subsection (a) to comply with a document request, including a request for supporting documents, from the attorney general related to the complaint.

(c) Requires the attorney general, if the attorney general determines that a complaint filed under Subsection (a) against a local entity or campus police department is valid, to, not later than the 10th day after the date of the determination, provide written notification to the entity or department that:

- (1) the complaint has been filed;
- (2) the attorney general has determined that the complaint is valid;
- (3) the attorney general is authorized to file an action to enjoin the violation if the entity or department does not come into compliance with the requirements of Section 752.053 on or before the 90th day after the date of notification is provided; and
- (4) the entity and each entity that is under the jurisdiction of the local entity or department will be denied state grant funds for the state fiscal year following the year in which final judicial determination in an action brought under Subsection (e) is made.

(d) Requires the local entity or campus police department, not later than the 30th day after the day an entity or department receives written notification under Subsection (c), to provide the attorney general with a copy of the entity's or department's written policies related to immigration enforcement actions; each immigration detainer request received by the entity or department from the United States Department of Homeland Security; and each response sent by the entity or department for a detainer request described by Subdivision (2).

(e) Authorizes the attorney general, if the attorney general determines that a complaint is valid to petition the chief justice of the supreme court to convene the special three-judge district court described by Chapter 22A (Special Three-Judge District Court) to hear a petition for a writ of mandamus or other appropriate equitable relief to compel the entity or department violating Section 752.053 to comply with that section. Requires the court to convene in Travis County or the county in which the principal office of the entity or department is located. Authorizes the attorney general to recover certain reasonable expenses incurred in obtaining relief.

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

Sec. 752.056. DENIAL OF STATE GRANT FUNDS; DATABASE. (a) Prohibits a local entity, including each entity under the local entity's jurisdiction, or a campus police department from receiving state grant funds if the local entity or department violates Section 752.053.

(b) Requires, except as provided by Subsection (c), state grant funds for a local entity or campus police department to be denied beginning with the state fiscal year following the year in which a final judicial determination in an action brought under Section 752.055 is made that the local entity or department has intentionally violated Section 752.053. Requires state grant funds to continue to be denied until reinstated under Section 752.057.

(c) Prohibits state grant funds for the provision of wearable body protective gear used for law enforcement purposes from being denied under this section.

(d) Requires the comptroller of public accounts of the State of Texas to adopt rules to implement this section uniformly among the state agencies from which state grant funds are distributed to local entities and campus police departments.

(e) Requires the attorney general to develop and maintain a database listing each local entity and campus police department for which a final judicial determination described by Subsection (b) has been made. Requires the attorney general to post the database on the attorney general's Internet website.

Sec. 752.057 REINSTATEMENT OF STATE GRANT FUNDS. (a) Authorizes the local entity or campus police department, except as provided by Subsection (b), not earlier than the first anniversary of the date of a final judicial determination that a local entity or campus police department intentionally violated Section 752.053, to petition the chief justice of the supreme court to convene the special three-judge district court to hear an action against the attorney general seeking a declaratory judgment regarding the entity's or department's compliance with Section 752.053.

(b) Authorizes a local entity or campus police department to petition for the reinstatement of state grant funds under Subsection (a) before the date described by that subsection if the person who was the chief executive of the entity or department at the time of the violation of Section 752.053 is removed from office.

(c) Requires a local entity or campus police department that brings an action described by Subsection (a) to comply with a document request, including a request for supporting documents, from the attorney general related to the action.

(d) Requires state grants funds for the local entity or campus police department to be reinstated beginning with the first day of the month following the month in which the declaratory judgment was rendered, if the court renders a declaratory judgment that the local entity or campus police department is in compliance with Section 752.053.

(e) Prohibits a local entity or campus police department from bringing an action more than twice in one 12-month period.

(f) Provides that a party is not entitled to recover any attorney's fees in an action described by Subsection (a).

SECTION 6. Severability clause.

SECTION 7. Requires each law enforcement agency subject to this Act, not later than January 1, 2018, to:

(1) formalize in writing any unwritten, informal policies relating to the enforcement of immigration laws; and

(2) update the agency's policies to be consistent with this Act and to include provisions prohibiting an agency officer or employee from preventing agency personnel from taking immigration enforcement actions described by Section 752.053, Government Code, as added by this Act; and provisions requiring each agency officer or employee to comply with Articles 2.251 and 2.252, Code of Criminal Procedure, as added by this Act, if applicable.

SECTION 8. Makes application of Section 101.0216, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 9. Effective date: upon passage or September 1, 2017.