

By: Birdwell, et al.

S.B. No. 2

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the criminal offense of improper entry from a foreign nation.

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

SECTION 1. Chapter 38, Penal Code, is amended by adding Section 38.20 to read as follows:

Sec. 38.20. IMPROPER ENTRY FROM FOREIGN NATION. (a) In this section, "alien" has the meaning assigned by 8 U.S.C. Section 1101, as that provision existed on January 1, 2023.

(b) A person who is an alien commits an offense if the person:

(1) enters or attempts to enter this state from a foreign nation at any location other than a lawful point of entry;

(2) eludes examination or inspection by United States immigration officers; or

(3) attempts to enter or obtains entry to this state from a foreign nation by an intentionally false or misleading representation or the intentional concealment of a material fact.

(c) An offense under this section is a Class A misdemeanor, except that if it is shown on the trial of the offense that the person has previously been finally convicted of:

(1) an offense under this section, the offense is a state jail felony;

(2) a state jail felony described by Subdivision (1)

1 or any other felony not listed in Article 42A.054(a), Code of
2 Criminal Procedure, the offense is a felony of the second degree; or

3 (3) a felony listed in Article 42A.054(a), Code of
4 Criminal Procedure, the offense is a felony of the first degree.

5 (d) It is an affirmative defense to prosecution under this
6 section that:

7 (1) the actor has been granted a federal immigration
8 benefit entitling the actor to:

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

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

11 (2) the actor's conduct does not constitute a
12 violation of 8 U.S.C. Section 1325(a); or

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

16 (e) For purposes of Subsection (d)(1), the following
17 federal programs do not confer federal immigration benefits
18 entitling the actor to lawful presence in the United States:

19 (1) the Deferred Action for Parents of Americans and
20 Lawful Permanent Residents; and

21 (2) any program not enacted by the United States
22 Congress that is a successor to or materially similar to the program
23 described by Subdivision (1) or Subsection (d)(3).

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

27 (g) A law enforcement officer of the Department of Public

1 Safety who arrests a person for an offense under this section shall,
2 to the extent feasible, detain the person in a facility established
3 under Operation Lone Star or a similar border security operation of
4 this state.

5 SECTION 2. It is the intent of the legislature that every
6 provision, section, subsection, sentence, clause, phrase, or word
7 in this Act, and every application of the provisions in this Act to
8 every person, group of persons, or circumstances, is severable from
9 each other. If any application of any provision in this Act to any
10 person, group of persons, or circumstances is found by a court to be
11 invalid for any reason, the remaining applications of that
12 provision to all other persons and circumstances shall be severed
13 and may not be affected.

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