

BILL ANALYSIS

Senate Research Center
88S31234 JRR-D

C.S.H.B. 4
By: Spiller et al. (Birdwell)
Border Security
11/1/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The crisis at our southern border continues to cause irreparable harm to our communities, our state, and our nation. Operation Lone Star, the state's multi-agency effort to combat the border crisis and secure the border, has led to approximately half a million illegal immigrant apprehensions, more than 35,000 criminal arrests, and the seizure of over 434 million lethal doses of fentanyl.

Throughout the interim, regular, and special sessions, the Senate Committee on Border Security heard from landowners, residents, and businesses from border regions who no longer feel safe on their land and have witnessed firsthand the devastation and destruction of the border crisis. As a result of the federal government's unwillingness to enforce federal immigration laws and secure our southern border, the State of Texas has stepped up and devoted time and resources to combat the unprecedented border crisis that the state is facing. The intent of this bill is to put more tools in the law enforcement toolbox.

C.S.H.B. 4 continues this effort by creating a new state crime for illegally entering Texas from a foreign nation. C.S.H.B. 4 authorizes state and local law enforcement officers to arrest and prosecute aliens who illegally enter Texas from a foreign nation. Punishment for an offense under this section can range from a misdemeanor offense risking up to 180-days in jail for first-time offenders up to life in prison for felons convicted of the most serious crimes with multiple illegal entries. C.S.H.B. 4 contains probable cause language that prohibits a peace officer from arresting an individual for this offense unless they have probable cause to believe that the person engaged in the conduct constituting the offense. This bill also directs a first option to the Department of Public Safety of the State of Texas to avoid the possible overcrowding of border county jails and provides that the state is responsible for transporting individuals to federal authorities after their time served to avoid added cost to counties. C.S.H.B. 4 is carefully tailored to avoid intruding on federal immigration enforcement authority while providing law enforcement officials with an important new tool to deter unlawful entry into Texas.

C.S.H.B. 4 amends current law relating to the creation of the criminal offense of improper entry from a foreign nation and indemnification of certain claims relating to the enforcement of that offense.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Penal Code, by adding Section 38.20, as follows:

Sec. 38.20. IMPROPER ENTRY FROM FOREIGN NATION. (a) Defines "alien."

(b) Provides that 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) Provides that an offense under this section is a Class B 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) or any other felony not listed in Article 42A.054(a) (relating to providing that judge-ordered community supervision does not apply to persons who commit certain offenses), Code of Criminal Procedure, the offense is a felony of the second degree; or

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

(d) Provides that it is an affirmative defense to prosecution under this section that:

(1) the actor has been granted a federal immigration benefit entitling the actor to lawful presence in the United States or asylum under 8 U.S.C. Section 1158;

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

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

(e) Provides that for purposes of Subsection (d)(1), the following federal programs do not confer federal immigration benefits entitling the actor to lawful presence in the United States:

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

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

(f) Prohibits a court from abating the prosecution of an offense under this section on the basis that a federal determination regarding the immigration status of the actor is pending.

(g) Requires a law enforcement officer of the Department of Public Safety of the State of Texas who arrests a person for an offense under this section, to the extent feasible, to detain the person in a facility established under Operation Lone Star or a similar border security operation of this state.

(h) Prohibits a peace officer from arresting a person for an offense under this section unless the officer has probable cause to believe that the person engaged in the conduct constituting the offense.

(i) Requires the judge, on conviction of an offense under this section, to enter in the judgment in the case an order requiring that the person be returned to federal authorities at the nearest port of entry for return to the person's country of origin or the foreign nation from which the person entered or attempted to enter. Provides that an order issued under this subsection:

(1) takes effect on completion of a term of confinement or imprisonment imposed by the judgment; and

(2) is required to include the manner of transportation of the person to the port of entry and the state agency responsible for transporting the person and monitoring compliance with the order.

SECTION 2. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 117, as follows:

CHAPTER 117. INDEMNIFICATION OF CERTAIN CLAIMS RELATING TO ENFORCEMENT OF OFFENSE OF IMPROPER ENTRY FROM FOREIGN NATION

Sec. 117.001. DEFINITION. Provides that in this chapter, "damages" includes any and all damages, fines, fees, penalties, court costs, attorney's fees, or other assessments.

Sec. 117.002. LOCAL GOVERNMENT INDEMNIFICATION OF LOCAL GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Requires a local government, unless the court or jury determines that the official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness, to indemnify an official, employee, or contractor of the local government for damages arising from a cause of action resulting from an action taken by the official, employee, or contractor to enforce Section 38.20, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

(b) Prohibits indemnification payments made under Subsection (a) by a local government from exceeding:

(1) \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death; or

(2) \$10,000 for a single occurrence of property damage.

(c) Requires a local government to indemnify an official, employee, or contractor of the local government for reasonable attorney's fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce Section 38.20, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

(d) Prohibits this section from being construed to waive any statutory limits on damages under state law.

Sec. 117.003. STATE INDEMNIFICATION OF STATE OFFICIALS, EMPLOYEES, AND CONTRACTORS; ATTORNEY GENERAL REPRESENTATION. (a) Requires the state, unless the court or jury determines that the state official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness, to indemnify an elected or appointed state official or a state employee or contractor for damages arising from a cause of action resulting from an action taken by the official, employee, or contractor to enforce Section 38.20, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

(b) Provides that, notwithstanding any other law, indemnification under Subsection (a) is not subject to any indemnification limits under state law.

(c) Requires the state to indemnify a state official, employee, or contractor for reasonable attorney's fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce Section 38.20, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

(d) Entitles a state official, employee, or contractor who may be entitled to indemnification under Subsection (a) to representation by the attorney general, subject to Chapter 104 (State Liability For Conduct of Public Servants), in an action in connection with which the official, employee, or contractor may be entitled to that indemnification.

(e) Prohibits this section from being construed to waive any statutory limits on damages under state law.

Sec. 117.004. APPEAL TO SUPREME COURT. Requires that an appeal be taken directly to the Supreme Court of Texas for a civil action brought against a person who may be entitled under Section 117.002 or 117.003 to indemnification for damages awarded against the person in the action.

Sec. 117.005. OTHER LAWS NOT AFFECTED. Provides that this chapter does not affect a defense, immunity, or jurisdictional bar available to the state or a local government or an official, employee, or contractor of the state or a local government.

SECTION 3. Amends Subchapter B, Chapter 42A, Code of Criminal Procedure, by adding Article 42A.059, as follows:

Art. 42A.059. PLACEMENT ON COMMUNITY SUPERVISION PROHIBITED FOR IMPROPER ENTRY FROM FOREIGN NATION. Provides that, notwithstanding any other provision of Chapter 42A (Community Supervision), a defendant is not eligible for community supervision, including deferred adjudication community supervision, under this chapter if the defendant is charged with or convicted of an offense under Section 38.20, Penal Code.

SECTION 4. Amends Section 508.145(a), Government Code, as follows:

(a) Provides that an inmate is not eligible for release on parole if the inmate is under sentence of death, serving a sentence of life imprisonment without parole, or serving a sentence for any of certain offenses under the Penal Code, including Section 38.20. Makes nonsubstantive changes.

SECTION 5. Amends Section 508.149, Government Code, by adding Subsection (a-1) to prohibit an inmate serving a sentence for an offense under Section 38.20, Penal Code, from being released to mandatory supervision.

SECTION 6. Severability clause.

SECTION 7. Effective date: the 91st day after the last day of the legislative session.