By:  Spiller, et al. (Senate Sponsor - Birdwell) H.B. No. 4

(In the Senate - Received from the House October 26, 2023; October 26, 2023, read first time and referred to Committee on Border Security; November 2, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 3, Nays 2; November 2, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Birdwell        X

Flores          X

Blanco              X

Hinojosa            X

King            X

COMMITTEE SUBSTITUTE FOR H.B. No. 4 By:  Birdwell

A BILL TO BE ENTITLED

AN ACT

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.

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 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), 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)  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:

(A)  lawful presence in the United States; or

(B)  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)  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)  A court may not abate 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)  A law enforcement officer of the Department of Public Safety who arrests a person for an offense under this section shall, to the extent feasible, detain the person in a facility established under Operation Lone Star or a similar border security operation of this state.

(h)  A peace officer may not arrest 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)  On conviction of an offense under this section, the judge shall 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. An order issued under this subsection:

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

(2)  must 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.  Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 117 to read as follows:

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

Sec. 117.001.  DEFINITION. 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) Unless the court or jury determines that the official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness, a local government shall 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)  Indemnification payments made under Subsection (a) by a local government may not exceed:

(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)  A local government shall 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)  This section may not be 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) Unless the court or jury determines that the state official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness, the state shall 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)  Notwithstanding any other law, indemnification under Subsection (a) is not subject to any indemnification limits under state law.

(c)  The state shall 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)  A state official, employee, or contractor who may be entitled to indemnification under Subsection (a) is entitled to representation by the attorney general, subject to Chapter 104, in an action in connection with which the official, employee, or contractor may be entitled to that indemnification.

(e)  This section may not be construed to waive any statutory limits on damages under state law.

Sec. 117.004.  APPEAL TO SUPREME COURT. 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, an appeal must be taken directly to the supreme court.

Sec. 117.005.  OTHER LAWS NOT AFFECTED. 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.  Subchapter B, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.059 to read as follows:

Art. 42A.059.  PLACEMENT ON COMMUNITY SUPERVISION PROHIBITED FOR IMPROPER ENTRY FROM FOREIGN NATION. Notwithstanding any other provision of this chapter, 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.  Section 508.145(a), Government Code, is amended to read as follows:

(a)  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 the following offenses under the Penal Code:

(1)  Section 20A.03, if the offense is based partly or wholly on conduct constituting an offense under Section 20A.02(a)(5), (6), (7), or (8);

(2)  Section 21.02; [~~or~~]

(3)  Section 22.021, if the offense is punishable under Subsection (f) of that section; or

(4)  Section 38.20.

SECTION 5.  Section 508.149, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  An inmate serving a sentence for an offense under Section 38.20, Penal Code, may not be released to mandatory supervision.

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

SECTION 7.  This Act takes effect on the 91st day after the last day of the legislative session.

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