

By: Spiller

H.B. No. 4

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibitions on the illegal entry into or illegal
3 presence in this state by a person who is an alien, the enforcement
4 of those prohibitions, and authorizing the removal of persons who
5 violate certain of those prohibitions in lieu of arrest; creating
6 criminal offenses.

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

8 SECTION 1. Title 10, Penal Code, is amended by adding
9 Chapter 51 to read as follows:

10 CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

11 Sec. 51.01. DEFINITIONS. In this chapter:

12 (1) "Alien" has the meaning assigned by 8 U.S.C.
13 Section 1101, as that provision existed on January 1, 2023.

14 (2) "Port of entry" means a port of entry in the United
15 States as designated by 19 C.F.R. Part 101.

16 Sec. 51.02. ILLEGAL ENTRY FROM FOREIGN NATION. (a) A
17 person who is an alien commits an offense if the person enters or
18 attempts to enter this state from a foreign nation at any location
19 other than a lawful port of entry.

20 (b) An offense under this section is a Class B misdemeanor,
21 except that the offense is a state jail felony if it is shown on the
22 trial of the offense that the defendant has been previously
23 convicted of an offense under this section.

24 (c) It is an affirmative defense to prosecution under this

1 section that:

2 (1) the federal government has granted the defendant:

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

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

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

7 (3) the defendant was approved for benefits under the
8 federal Deferred Action for Childhood Arrivals program between June
9 15, 2012, and July 16, 2021.

10 (d) The following federal programs do not provide an
11 affirmative defense for purposes of Subsection (c)(1):

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

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

17 (e) A peace officer may, in lieu of arrest, remove a person
18 detained for a violation of this section by:

19 (1) collecting any identifying information the person
20 may have;

21 (2) transporting the person to a port of entry; and

22 (3) ordering the person to return to the foreign
23 nation from which the person entered or attempted to enter.

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 defendant is pending.

27 Sec. 51.03. ILLEGAL REENTRY BY CERTAIN ALIENS. (a) A

1 person who is an alien commits an offense if the person enters,
2 attempts to enter, or is at any time found in this state after the
3 person:

4 (1) has been denied admission to or excluded,
5 deported, or removed from the United States; or

6 (2) has departed from the United States while an order
7 of exclusion, deportation, or removal is outstanding.

8 (b) An offense under this section is a Class A misdemeanor,
9 except that the offense is:

10 (1) a felony of the third degree if:

11 (A) the defendant's removal was subsequent to a
12 conviction for commission of two or more misdemeanors involving
13 drugs, crimes against a person, or both;

14 (B) the defendant was excluded pursuant to 8
15 U.S.C. Section 1225(c) because the defendant was excludable under 8
16 U.S.C. Section 1182(a)(3)(B);

17 (C) the defendant was removed pursuant to the
18 provisions of 8 U.S.C. Chapter 12, Subchapter V; or

19 (D) the defendant was removed pursuant to 8
20 U.S.C. Section 1231(a)(4)(B); or

21 (2) a felony of the second degree if the defendant was
22 removed subsequent to a conviction for the commission of a felony.

23 (c) For purposes of Subsections (a) and (b), "removal"
24 includes any agreement in which an alien stipulates to removal
25 pursuant to a criminal proceeding under either federal or state
26 law.

27 (d) A peace officer may, in lieu of arrest, remove a person

1 detained for a violation of this section by:

2 (1) collecting any identifying information the person
3 may have;

4 (2) transporting the person to a port of entry; and

5 (3) ordering the person to return to the foreign
6 nation from which the person entered or attempted to enter.

7 (e) A court may not abate the prosecution of an offense
8 under this section on the basis that a federal determination
9 regarding the immigration status of the defendant is pending.

10 Sec. 51.04. REFUSAL TO COMPLY WITH ORDER TO RETURN TO
11 FOREIGN NATION. (a) A person who is an alien commits an offense if,
12 following a violation of Section 51.02 or 51.03, the person refuses
13 to comply with a peace officer's order under Section 51.02(e) or
14 51.03(d) to return to the foreign nation from which the person
15 entered or attempted to enter.

16 (b) An offense under this section is a felony of the second
17 degree.

18 SECTION 2. Title 5, Civil Practice and Remedies Code, is
19 amended by adding Chapter 117 to read as follows:

20 CHAPTER 117. INDEMNIFICATION OF CERTAIN CLAIMS RELATING TO
21 ENFORCEMENT OF CERTAIN CRIMINAL OFFENSES INVOLVING ILLEGAL ENTRY
22 INTO THIS STATE

23 Sec. 117.001. DEFINITION. In this chapter, "damages"
24 includes any and all damages, fines, fees, penalties, court costs,
25 attorney's fees, or other assessments.

26 Sec. 117.002. LOCAL GOVERNMENT INDEMNIFICATION OF LOCAL
27 GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Unless the

1 court or jury determines that the official, employee, or contractor
2 acted in bad faith, with conscious indifference, or with
3 recklessness, a local government shall indemnify an official,
4 employee, or contractor of the local government for damages arising
5 from a cause of action resulting from:

6 (1) an action taken by the official, employee, or
7 contractor to enforce Chapter 51, Penal Code, during the course and
8 scope of the official's, employee's, or contractor's office,
9 employment, or contractual performance for or service on behalf of
10 the local government; or

11 (2) an ultra vires action taken by the official,
12 employee, or contractor in good faith to enforce Chapter 51, Penal
13 Code, on behalf of the local government.

14 (b) Indemnification under Subsection (a) is not subject to
15 the payment limits described by Section [102.003](#).

16 (c) A local government shall indemnify an official,
17 employee, or contractor of the local government for reasonable
18 attorney's fees incurred in defense of a criminal prosecution
19 against the official, employee, or contractor for an action taken
20 by the official, employee, or contractor to enforce Chapter 51,
21 Penal Code, during the course and scope of the official's,
22 employee's, or contractor's office, employment, or contractual
23 performance for or service on behalf of the local government.

24 Sec. 117.003. STATE INDEMNIFICATION OF STATE OFFICIALS,
25 EMPLOYEES, AND CONTRACTORS; ATTORNEY GENERAL REPRESENTATION. (a)
26 Unless the court or jury determines that the state official,
27 employee, or contractor acted in bad faith, with conscious

1 indifference, or with recklessness, the state shall indemnify an
2 elected or appointed state official or a state employee or
3 contractor for damages arising from a cause of action resulting
4 from:

5 (1) an action taken by the official, employee, or
6 contractor to enforce Chapter 51, Penal Code, during the course and
7 scope of the official's, employee's, or contractor's office,
8 employment, or contractual performance for or service on behalf of
9 the state; or

10 (2) an ultra vires action taken by the official,
11 employee, or contractor in good faith to enforce Chapter 51, Penal
12 Code, on behalf of the state.

13 (b) Indemnification under Subsection (a) is not subject to
14 the payment and insurance limits described by Section [104.003](#).

15 (c) The state shall indemnify a state official, employee, or
16 contractor for reasonable attorney's fees incurred in defense of a
17 criminal prosecution against the official, employee, or contractor
18 for an action taken by the official, employee, or contractor to
19 enforce Chapter 51, Penal Code, during the course and scope of the
20 official's, employee's, or contractor's office, employment, or
21 contractual performance for or service on behalf of the state.

22 (d) A state official, employee, or contractor who may be
23 entitled to indemnification under Subsection (a) is entitled to
24 representation by the attorney general, subject to Chapter [104](#), in
25 an action in connection with which the official, employee, or
26 contractor may be entitled to that indemnification.

27 Sec. 117.004. APPEAL TO SUPREME COURT. For a civil action

1 brought against a person who may be entitled under Section 117.002
2 or 117.003 to indemnification for damages awarded against the
3 person in the action, an appeal must be taken directly to the
4 supreme court.

5 Sec. 117.005. OTHER LAWS NOT AFFECTED. This chapter does
6 not affect a defense, immunity, or jurisdictional bar available to
7 the state or a local government or an official, employee, or
8 contractor of the state or a local government.

9 SECTION 3. It is the intent of the legislature that every
10 provision, section, subsection, sentence, clause, phrase, or word
11 in this Act, and every application of the provisions in this Act to
12 every person, group of persons, or circumstances, is severable from
13 each other. If any application of any provision in this Act to any
14 person, group of persons, or circumstances is found by a court to be
15 invalid for any reason, the remaining applications of that
16 provision to all other persons and circumstances shall be severed
17 and may not be affected.

18 SECTION 4. This Act takes effect December 1, 2023, if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for effect on that
22 date, this Act takes effect on the 91st day after the last day of the
23 legislative session.