

By: Schaefer

H.B. No. 75

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to measures to ensure the safety and welfare of the border  
3 region of this state, including protection from ongoing criminal  
4 activity, and public health threats and the establishment of the  
5 Border Protection Unit; creating a criminal offense; creating a  
6 civil penalty.

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

8 ARTICLE 1. BORDER PROTECTION UNIT

9 SECTION 1.01. Article 2.12, Code of Criminal Procedure, is  
10 amended to read as follows:

11 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace  
12 officers:

13 (1) sheriffs, their deputies, and those reserve  
14 deputies who hold a permanent peace officer license issued under  
15 Chapter 1701, Occupations Code;

16 (2) constables, deputy constables, and those reserve  
17 deputy constables who hold a permanent peace officer license issued  
18 under Chapter 1701, Occupations Code;

19 (3) marshals or police officers of an incorporated  
20 city, town, or village, and those reserve municipal police officers  
21 who hold a permanent peace officer license issued under Chapter  
22 1701, Occupations Code;

23 (4) rangers, officers, and members of the reserve  
24 officer corps commissioned by:

1                    (A) the Public Safety Commission; and

2                    (B) either:

3                    (i) the Director of the Department of  
4 Public Safety; or

5                    (ii) the unit chief of the Border  
6 Protection Unit;

7                    (5) investigators of the district attorneys', criminal  
8 district attorneys', and county attorneys' offices;

9                    (6) law enforcement agents of the Texas Alcoholic  
10 Beverage Commission;

11                    (7) each member of an arson investigating unit  
12 commissioned by a city, a county, or the state;

13                    (8) officers commissioned under Section 37.081,  
14 Education Code, or Subchapter E, Chapter 51, Education Code;

15                    (9) officers commissioned by the General Services  
16 Commission;

17                    (10) law enforcement officers commissioned by the  
18 Parks and Wildlife Commission;

19                    (11) officers commissioned under Chapter 23,  
20 Transportation Code;

21                    (12) municipal park and recreational patrolmen and  
22 security officers;

23                    (13) security officers and investigators commissioned  
24 as peace officers by the comptroller;

25                    (14) officers commissioned by a water control and  
26 improvement district under Section 49.216, Water Code;

27                    (15) officers commissioned by a board of trustees

1 under Chapter 54, Transportation Code;

2 (16) investigators commissioned by the Texas Medical  
3 Board;

4 (17) officers commissioned by:

5 (A) the board of managers of the Dallas County  
6 Hospital District, the Tarrant County Hospital District, the Bexar  
7 County Hospital District, or the El Paso County Hospital District  
8 under Section 281.057, Health and Safety Code;

9 (B) the board of directors of the Ector County  
10 Hospital District under Section 1024.117, Special District Local  
11 Laws Code;

12 (C) the board of directors of the Midland County  
13 Hospital District of Midland County, Texas, under Section 1061.121,  
14 Special District Local Laws Code; and

15 (D) the board of hospital managers of the Lubbock  
16 County Hospital District of Lubbock County, Texas, under Section  
17 1053.113, Special District Local Laws Code;

18 (18) county park rangers commissioned under  
19 Subchapter E, Chapter 351, Local Government Code;

20 (19) investigators employed by the Texas Racing  
21 Commission;

22 (20) officers commissioned under Chapter 554,  
23 Occupations Code;

24 (21) officers commissioned by the governing body of a  
25 metropolitan rapid transit authority under Section 451.108,  
26 Transportation Code, or by a regional transportation authority  
27 under Section 452.110, Transportation Code;

1           (22) investigators commissioned by the attorney  
2 general under Section [402.009](#), Government Code;

3           (23) security officers and investigators commissioned  
4 as peace officers under Chapter [466](#), Government Code;

5           (24) officers appointed by an appellate court under  
6 Subchapter [F](#), Chapter [53](#), Government Code;

7           (25) officers commissioned by the state fire marshal  
8 under Chapter [417](#), Government Code;

9           (26) an investigator commissioned by the commissioner  
10 of insurance under Section [701.104](#), Insurance Code;

11           (27) apprehension specialists and inspectors general  
12 commissioned by the Texas Juvenile Justice Department as officers  
13 under Sections [242.102](#) and [243.052](#), Human Resources Code;

14           (28) officers appointed by the inspector general of  
15 the Texas Department of Criminal Justice under Section [493.019](#),  
16 Government Code;

17           (29) investigators commissioned by the Texas  
18 Commission on Law Enforcement under Section [1701.160](#), Occupations  
19 Code;

20           (30) commission investigators commissioned by the  
21 Texas Private Security Board under Section [1702.061](#), Occupations  
22 Code;

23           (31) the fire marshal and any officers, inspectors, or  
24 investigators commissioned by an emergency services district under  
25 Chapter [775](#), Health and Safety Code;

26           (32) officers commissioned by the State Board of  
27 Dental Examiners under Section [254.013](#), Occupations Code, subject

1 to the limitations imposed by that section;

2 (33) investigators commissioned by the Texas Juvenile  
3 Justice Department as officers under Section 221.011, Human  
4 Resources Code; and

5 (34) the fire marshal and any related officers,  
6 inspectors, or investigators commissioned by a county under  
7 Subchapter B, Chapter 352, Local Government Code.

8 SECTION 1.02. Section 411.002(a), Government Code, is  
9 amended to read as follows:

10 (a) The Department of Public Safety of the State of Texas is  
11 an agency of the state to enforce the laws protecting the public  
12 safety, ~~and~~ provide for the prevention and detection of crime,  
13 and defend and secure the state's air, maritime, and land borders.  
14 The department is composed of the Texas Rangers, the Texas Highway  
15 Patrol, the Border Protection Unit, the administrative division,  
16 and other divisions that the commission considers necessary.

17 SECTION 1.03. Section 411.004, Government Code, is amended  
18 to read as follows:

19 Sec. 411.004. DUTIES AND POWERS OF COMMISSION. The  
20 commission shall:

- 21 (1) formulate plans and policies for:
- 22 (A) enforcement of state criminal, traffic, and  
23 safety laws;
  - 24 (B) prevention of crime;
  - 25 (C) detection and apprehension of persons who  
26 violate laws; ~~and~~
  - 27 (D) education of citizens of this state in the

1 promotion of public safety and the observance of law; and

2 (E) defense and security of this state's air,  
3 maritime, and land borders;

4 (2) organize the department and supervise its  
5 operation;

6 (3) adopt rules considered necessary for carrying out  
7 the department's work;

8 (4) maintain records of all proceedings and official  
9 orders; and

10 (5) biennially submit a report of its work to the  
11 governor and legislature, including the commission's and director's  
12 recommendations.

13 SECTION 1.04. Section 411.006(a), Government Code, is  
14 amended to read as follows:

15 (a) Subject to Section 411.555, the ~~[The]~~ director shall:

16 (1) be directly responsible to the commission for the  
17 conduct of and act as executive director of the Texas Highway  
18 Patrol, the Texas Rangers, and other administrative divisions and  
19 departments assigned by the commission, other than the Border  
20 Protection Unit ~~[the department's affairs];~~

21 (2) ~~[act as executive director of the department,~~  
22 ~~(3)]~~ act with the commission in an advisory capacity,  
23 without vote;

24 (3) ~~(4)]~~ adopt rules, subject to commission  
25 approval, considered necessary for the control of the department;

26 (4) ~~(5)]~~ issue commissions as law enforcement  
27 officers, under the commission's direction, to all members of the

1 Texas Rangers and the Texas Highway Patrol and to other officers of  
2 the department;

3           (5) [~~(6)~~] appoint, with the advice and consent of the  
4 commission, the head of a division or bureau provided for by this  
5 chapter;

6           (6) [~~(7)~~] quarterly, annually, and biennially submit  
7 to the commission detailed reports of the operation of the  
8 department, including statements of its expenditures; and

9           (7) [~~(8)~~] prepare, swear to, submit to the governor,  
10 and file in the department's records a quarterly statement  
11 containing an itemized list of all money received and its source and  
12 all money spent and the purposes for which it was spent.

13           SECTION 1.05. Section 411.007(a), Government Code, is  
14 amended to read as follows:

15           (a) Subject to the provisions of this chapter, the director  
16 may appoint, promote, reduce, suspend, or discharge any officer or  
17 employee of the department, other than an officer or employee of the  
18 Border Protection Unit.

19           SECTION 1.06. Section 411.017(a), Government Code, is  
20 amended to read as follows:

21           (a) A person commits an offense if, without the director's  
22 authorization, the person:

23           (1) manufactures, sells, or possesses a badge,  
24 identification card, or other item bearing a department insignia or  
25 an insignia deceptively similar to the department's;

26           (2) makes a copy or likeness of a badge,  
27 identification card, or department insignia, with intent to use or

1 allow another to use the copy or likeness to produce an item bearing  
2 the department insignia or an insignia deceptively similar to the  
3 department's; or

4 (3) uses the term "Texas Department of Public Safety,"  
5 "Department of Public Safety," "Texas Ranger," ~~or~~ "Texas Highway  
6 Patrol," or "Border Protection Unit" in connection with an object,  
7 with the intent to create the appearance that the object belongs to  
8 or is being used by the department.

9 SECTION 1.07. Chapter 411, Government Code, is amended by  
10 adding Subchapter S to read as follows:

11 SUBCHAPTER S. BORDER PROTECTION UNIT

12 Sec. 411.551. DEFINITIONS. In this subchapter:

13 (1) "Unit" means the Border Protection Unit.

14 (2) "Unit chief" means the person appointed under  
15 Section 411.554 as the unit chief.

16 Sec. 411.552. BORDER PROTECTION UNIT; TERM OF  
17 AUTHORIZATION. (a) The unit is a division under the commission  
18 consisting of the number of commissioned and noncommissioned  
19 officers and other employees authorized by the legislature.

20 (b) The unit is subject to appropriations by the legislature  
21 and, unless continued in existence by the legislature, is abolished  
22 December 31, 2030.

23 (c) This subchapter expires December 31, 2030.

24 Sec. 411.553. HEADQUARTERS. The unit must be headquartered  
25 in the border region.

26 Sec. 411.554. UNIT CHIEF. (a) The governor shall appoint a  
27 United States citizen to serve as the unit chief of the Border



1 Protection Unit. The unit chief serves until removed by the  
2 governor.

3 (b) The unit chief may appoint, with the advice and consent  
4 of the commission, deputy unit chiefs and assistant unit chiefs who  
5 shall perform the duties that the unit chief designates. Deputy  
6 unit chiefs and assistant unit chiefs serve until removed by the  
7 unit chief.

8 (c) The unit chief, deputy unit chiefs, and assistant unit  
9 chiefs are entitled to annual salaries as provided by the  
10 legislature.

11 Sec. 411.555. GENERAL POWERS AND DUTIES OF UNIT AND UNIT  
12 CHIEF. (a) The unit chief shall:

13 (1) be directly responsible to the commission for all  
14 conduct of the unit, but may be removed only by the governor under  
15 Section 411.554;

16 (2) act as the executive director of the unit;

17 (3) act with the commission in an advisory capacity,  
18 without vote;

19 (4) adopt rules, subject to commission approval,  
20 considered necessary for the control and general administration of  
21 the unit, including rules governing the procurement of facilities  
22 and equipment for the unit and the training and working conditions  
23 for unit personnel;

24 (5) issue commissions as law enforcement officers,  
25 under the commission's direction, to members of the unit;

26 (6) create as necessary, with the advice and consent  
27 of the commission, operational or administrative divisions within

1 the unit and appoint heads of those divisions;

2 (7) employ as necessary commissioned and  
3 noncommissioned officers and other employees to perform unit  
4 operations and functions;

5 (8) quarterly, annually, and biennially submit to the  
6 commission detailed reports of the operation of the unit, including  
7 statements of its expenditures; and

8 (9) prepare, swear to, submit to the governor, and  
9 file in the unit's records a quarterly statement containing an  
10 itemized list of all money received and its source and all money  
11 spent and the purposes for which it was spent.

12 (b) The unit chief or unit chief's designee shall provide to  
13 members of the commission and to employees of the unit, as often as  
14 necessary, information regarding the requirements for office or  
15 employment under this chapter, including information regarding a  
16 person's responsibilities under applicable law relating to  
17 standards of conduct for state officers or employees.

18 (c) Subject to Subsection (d), the following provisions  
19 apply to the unit chief with respect to the unit in the same manner  
20 as the provisions apply to the director with respect to the  
21 department or, as applicable, apply to the unit when acting at the  
22 direction of the unit chief in the same manner as the provisions  
23 apply to the department when acting at the direction of the  
24 director:

25 (1) Section [411.007](#);

26 (2) Section [411.0071](#);

27 (3) Section [411.0075](#);

- 1           (4) Section 411.0079;
- 2           (5) Section 411.009;
- 3           (6) Section 411.0095;
- 4           (7) Section 411.0097, as added by Section 3, Chapter  
5 556 (H.B. 1239), Acts of the 79th Legislature, Regular Session,  
6 2005;
- 7           (8) Section 411.0097, as added by Section 1, Chapter  
8 693 (S.B. 293), Acts of the 79th Legislature, Regular Session,  
9 2005;
- 10          (9) Section 411.0098;
- 11          (10) Section 411.013(b);
- 12          (11) Section 411.0131;
- 13          (12) Section 411.0132;
- 14          (13) Section 411.0141(e);
- 15          (14) Section 411.015;
- 16          (15) Section 411.016;
- 17          (16) Section 411.0161;
- 18          (17) Section 411.0162;
- 19          (18) Section 411.0163;
- 20          (19) Section 411.0164;
- 21          (20) Section 411.017;
- 22          (21) Section 411.018;
- 23          (22) Sections 411.0207(c)(1)-(5);
- 24          (23) Sections 411.0208(d) and (e);
- 25          (24) Section 411.0209;
- 26          (25) Section 411.02095;
- 27          (26) Section 411.0865;

1           (27) Section 411.087(e);

2           (28) Section 411.0891; and

3           (29) Section 411.154.

4           (d) The director may not exercise any operational or  
5 administrative control over the unit chief or the unit. The unit  
6 chief may not exercise any operational or administrative control  
7 over the director or the department, other than the unit.

8           (e) The unit is a criminal justice agency for purposes of  
9 this chapter.

10          (f) The unit:

11           (1) may collect, preserve, ship, and analyze a DNA  
12 sample for the DNA database subject to the rules adopted under  
13 Section 411.146(c)(1); and

14           (2) is entitled to access or use a DNA sample or record  
15 subject to the rules adopted under Section 411.147(b).

16          (g) The unit is a law enforcement agency for purposes of  
17 Section 411.1471(b).

18          (h) The unit may assist local law enforcement with the  
19 investigation of crime.

20          Sec. 411.556. OFFICE OF AUDIT AND REVIEW FOR UNIT. The  
21 governor shall establish the office of audit and review within the  
22 unit and appoint the director of the office to perform the duties  
23 under Subchapter I with respect to the unit. The director of the  
24 office of audit and review of the unit shall serve until removed by  
25 the governor.

26          Sec. 411.557. INSPECTOR GENERAL FOR UNIT. (a) The governor  
27 shall establish the office of the inspector general within the unit

1 and appoint the inspector general of the unit who shall perform with  
2 respect to the unit the duties of Subchapter I-1 or as may be  
3 provided by other law. The inspector general of the unit shall  
4 serve until removed by the governor.

5 (b) The inspector general of the unit is responsible for:

6 (1) preparing and delivering assessments concerning  
7 the administration of the unit to the governor, the legislature,  
8 and the unit chief;

9 (2) acting to prevent and detect serious breaches of  
10 unit policy, fraud, and abuse of office, including any acts of  
11 criminal conduct within the unit; and

12 (3) independently and objectively reviewing,  
13 investigating, delegating, and overseeing the investigation of:

14 (A) conduct described by Subdivision (2);

15 (B) criminal activity occurring within the unit;

16 (C) allegations of wrongdoing by unit employees;

17 (D) crimes committed on unit property; and

18 (E) serious breaches of unit policy.

19 Sec. 411.558. OFFICERS; OTHER EMPLOYEES. (a) The unit  
20 chief may employ commissioned or noncommissioned officers meeting  
21 the qualifications described by Section 411.561 to perform the  
22 duties of the unit. Those officers are entitled to compensation as  
23 provided by the legislature and must be recruited and trained  
24 within the border region to the extent practicable.

25 (b) The unit chief may employ individuals who are not  
26 officers as necessary to carry out the duties of the unit.

27 (c) Subject to the provisions of this chapter, the unit

1 chief may appoint, promote, reduce, suspend, or discharge any  
2 officer or employee of the unit.

3 Sec. 411.559. AUTHORITY OF OFFICERS. (a) A commissioned  
4 officer of the unit is governed by the law regulating and defining  
5 the powers and duties of sheriffs performing similar duties, except  
6 that the officer may make arrests and execute processes in a  
7 criminal case in any county.

8 (b) Subject to Subsection (c), a commissioned or  
9 noncommissioned officer of the unit may, to the extent consistent  
10 with the United States and Texas Constitutions, arrest, apprehend,  
11 or detain persons crossing the Texas-Mexico border unlawfully, and  
12 deter persons attempting to cross the border unlawfully, including  
13 with the use of non-deadly crowd control measures.

14 (c) A noncommissioned officer may not exercise the  
15 authority provided by Subsection (b) unless specifically  
16 authorized by the commission and the governor and unless the  
17 officer has been provided training approved by the commission and  
18 the governor. A noncommissioned officer may exercise the arrest  
19 authority provided by Subsection (b) only if the authority is  
20 exercised in a county:

- 21 (1) contiguous with the Texas-Mexico border; or  
22 (2) adjoining a county described by Subdivision (1).

23 (d) The commission shall develop or recognize a training  
24 program required by Subsection (c).

25 Sec. 411.560. DEFENSES TO CIVIL AND CRIMINAL LIABILITY.  
26 Notwithstanding any other law, any defense or affirmative defense  
27 that applies to a peace officer in a civil or criminal action

1 applies to the unit chief and the officers and other employees of  
2 the unit in a civil or criminal action brought against the unit  
3 chief or an officer or other employee of the unit arising from  
4 conduct engaged in while discharging the duties of the unit.

5 Sec. 411.561. QUALIFICATIONS AND STANDARDS. (a) To be a  
6 commissioned officer of the unit, a person must hold a peace officer  
7 license issued under Chapter 1701, Occupations Code, and meet any  
8 other qualifications set by the commission.

9 (b) To be a noncommissioned officer of the unit, a person  
10 must be a United States citizen and meet any other qualifications  
11 set by the commission.

12 (c) A noncommissioned officer shall operate under the  
13 accountability requirements and standards of professional conduct  
14 set forth by the commission.

15 (d) The unit is an equal employment opportunity employer and  
16 may not discriminate against or give preferential treatment to any  
17 employee or job applicant on account of the individual's race,  
18 color, sex, national origin, or religion.

19 Sec. 411.562. FACILITIES AND EQUIPMENT; TRAINING; TRANSFER  
20 FROM DEPARTMENT. (a) The unit shall acquire equipment and  
21 facilities and conduct training necessary to fulfill the  
22 operational, intelligence, communication, logistics, and  
23 administrative duties provided by this chapter and the unit chief.

24 (b) The commission shall transfer existing personnel,  
25 equipment, and facilities to the unit from within the department as  
26 determined necessary by the commission or the governor, in the  
27 commission's or governor's discretion, while maintaining

1 accountability and adequate support for all officers and activities  
2 within the commission's responsibility.

3 Sec. 411.563. CONSTRUCTION AND MAINTENANCE OF PHYSICAL  
4 BARRIERS. (a) The unit shall oversee the construction and  
5 maintenance of walls, fences, and other physical barriers along the  
6 Texas-Mexico border in order to enhance the safety and security of  
7 citizens of this state.

8 (b) The unit chief, or the unit chief's designee, is  
9 authorized to negotiate and acquire the necessary rights-of-way,  
10 leases, permissions, materials, and services needed to erect and  
11 maintain physical barriers.

12 (c) The unit may use funds appropriated by the legislature,  
13 other government funds, or donations from United States citizens  
14 and domestic entities.

15 (d) The commission may delegate authority granted under  
16 this section to another state agency.

17 Sec. 411.564. OPERATIONAL PLAN TO COORDINATE BORDER  
18 SECURITY. (a) The unit shall develop and recommend to the governor  
19 and report to the legislature a strategic plan that establishes the  
20 framework for the budget and operations of the unit, including  
21 homeland security strategies and the assistance of other state and  
22 local entities. The unit shall annually report to the governor and  
23 the legislature on the implementation of the strategic plan.

24 (b) The unit shall include in the strategic plan goals,  
25 objectives, and performance measures that involve collaboration  
26 with other state agencies and local entities.

27 (c) The unit shall create plans and conduct operations



1 consistent with the strategic plan.

2 (d) The operational plan under this section must include an  
3 evaluation of 8 U.S.C. Section 1325(a) and other federal laws  
4 relating to the requirement that border crossings occur only at  
5 designated ports of entry.

6 Sec. 411.565. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*  
7 *L.*, 518 U.S. 137 (1996), in which in the context of determining the  
8 severability of a state statute the Supreme Court of the United  
9 States held that an explicit statement of legislative intent is  
10 controlling, it is the intent of the legislature that every  
11 provision, section, subsection, sentence, clause, phrase, or word  
12 in this subchapter, and every application of the provisions in this  
13 subchapter to every person, group of persons, or circumstances, are  
14 severable from each other.

15 (b) If any application of any provision in this subchapter  
16 to any person, group of persons, or circumstances is found by a  
17 court to be invalid, preempted, or unconstitutional, for any reason  
18 whatsoever, then the remaining applications of that provision to  
19 all other persons and circumstances shall be severed and preserved,  
20 and shall remain in effect. All constitutionally valid  
21 applications of the provisions in this subchapter shall be severed  
22 from any applications that a court finds to be invalid, preempted,  
23 or unconstitutional, because it is the legislature's intent and  
24 priority that every single valid application of every statutory  
25 provision be allowed to stand alone.

26 (c) The legislature further declares that it would have  
27 enacted this subchapter, and each provision, section, subsection,

1 sentence, clause, phrase, or word, and all constitutional  
2 applications of the provisions of this subchapter, irrespective of  
3 the fact that any provision, section, subsection, sentence, clause,  
4 phrase, or word, or applications of this subchapter were to be  
5 declared invalid, preempted, or unconstitutional.

6 (d) If any provision of this subchapter is found by any  
7 court to be unconstitutionally vague, then the applications of that  
8 provision that do not present constitutional vagueness problems  
9 shall be severed and remain in force, consistent with the  
10 severability requirements of Subsections (a), (b), and (c).

11 (e) No court may decline to enforce the severability  
12 requirements of Subsections (a), (b), (c), and (d) on the ground  
13 that severance would "rewrite" the statute or involve the court in  
14 legislative or lawmaking activity. A court that declines to  
15 enforce or enjoins a state official from enforcing a statutory  
16 provision is never rewriting a statute or engaging in legislative  
17 or lawmaking activity, as the statute continues to contain the same  
18 words as before the court's decision. A judicial injunction or  
19 declaration of unconstitutionality:

20 (1) is nothing more than an edict prohibiting  
21 enforcement of the disputed statute against the named parties to  
22 that lawsuit, which may subsequently be vacated by a later court if  
23 that court has a different understanding of the requirements of the  
24 Texas Constitution or the United States Constitution or federal  
25 law;

26 (2) is not a formal amendment of the language in a  
27 statute; and

1           (3) no more rewrites a statute than a decision by the  
2 executive not to enforce a duly enacted statute in a limited and  
3 defined set of circumstances.

4           (f) If any state or federal court disregards any of the  
5 severability requirements in Subsections (a), (b), (c), (d), or  
6 (e), and declares or finds any provision of this subchapter  
7 facially invalid, preempted, or unconstitutional, when there are  
8 discrete applications of that provision that can be enforced  
9 against a person, group of persons, or circumstances without  
10 violating federal law or the federal or state constitutions, then  
11 that provision shall be interpreted, as a matter of state law, as if  
12 the legislature had enacted a provision limited to the persons,  
13 group of persons, or circumstances for which the provision's  
14 application will not violate federal law or the federal or state  
15 constitutions, and every court shall adopt this saving construction  
16 of that provision until the court ruling that pronounced the  
17 provision facially invalid, preempted, or unconstitutional is  
18 vacated or overruled.

19           SECTION 1.08. As soon as practicable after the effective  
20 date of this Act, the governor shall appoint the unit chief as  
21 prescribed by Section 411.554, Government Code, as added by this  
22 Act.

23           ARTICLE 2. TRESPASS: CIVIL AND CRIMINAL PENALTIES

24           SECTION 2.01. Article 17.44, Code of Criminal Procedure, is  
25 amended by adding Subsection (b-1) to read as follows:

26           (b-1) A magistrate shall require as a condition of release  
27 on bond for a defendant arrested for an offense under Section 30.08,

1 Penal Code, that the defendant submit to electronic monitoring  
2 unless the magistrate finds that the defendant is not a flight risk.

3 SECTION 2.02. Chapter 752, Government Code, is amended by  
4 adding Subchapter D to read as follows:

5 SUBCHAPTER D. ENFORCEMENT BY ATTORNEY GENERAL

6 Sec. 752.101. CIVIL PENALTY: TRESPASS WHILE ENTERING THIS  
7 STATE. (a) A person who engages in conduct constituting an offense  
8 under Section 30.08, Penal Code, is liable to this state for a civil  
9 penalty in an amount not to exceed \$10,000 for each occurrence of  
10 the conduct.

11 (b) The attorney general may bring an action to collect the  
12 civil penalty and may recover attorney's fees and costs incurred in  
13 bringing the action.

14 SECTION 2.03. Chapter 30, Penal Code, is amended by adding  
15 Section 30.08 to read as follows:

16 Sec. 30.08. TRESPASS WHILE ENTERING THIS STATE. (a) A  
17 person commits an offense if the person knowingly enters the  
18 property of another, without the effective consent of the owner,  
19 while knowingly entering this state from any neighboring  
20 jurisdiction, regardless of the person's immigration status.

21 (b) An offense under this section is a felony of the third  
22 degree.

23 (c) If conduct that constitutes an offense under this  
24 section also constitutes an offense under another law, the actor  
25 may be prosecuted under this section, the other law, or both.

26 ARTICLE 3. PUBLIC HEALTH EMERGENCY

27 SECTION 3.01. Subtitle D, Title 2, Health and Safety Code,

1 is amended by adding Chapter 81B to read as follows:

2 CHAPTER 81B. SUSPENSION OF ENTRY OF PERSONS FROM DESIGNATED PLACES  
3 TO PREVENT SPREAD OF COMMUNICABLE DISEASES

4 Sec. 81B.001. DEFINITIONS. In this chapter:

5 (1) "COVID-19" means the 2019 novel coronavirus  
6 disease.

7 (2) "Federally declared public health emergency"  
8 means:

9 (A) a public health emergency declared by the  
10 United States secretary of health and human services under 42  
11 U.S.C. Section 247d; or

12 (B) an emergency or disaster declared, including  
13 under a renewal of the declaration, by the president of the United  
14 States in relation to a public health emergency described by  
15 Paragraph (A) under:

16 (i) the National Emergencies Act (50 U.S.C.  
17 Section 1601 et seq.); or

18 (ii) the Robert T. Stafford Disaster Relief  
19 and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.).

20 (3) "Person" means any individual other than one  
21 described by:

22 (A) the first sentence of Section 1 of the  
23 Fourteenth Amendment to the United States Constitution; or

24 (B) 8 U.S.C. Section 1101(a)(20).

25 (4) "Port of entry" means a port of entry described by  
26 Part 101, Title 19, Code of Federal Regulations (19 C.F.R. part  
27 101), or 22 C.F.R. Section 40.1.

1       Sec. 81B.002. SUSPENSION OF ENTRY. (a) To the extent  
2 consistent with the United States Constitution, all persons  
3 entering this state by land from another country must pass through a  
4 port of entry for appropriate medical review during:

5           (1) the pendency of any federally declared public  
6 health emergency for COVID-19;

7           (2) any time that a federal agency has in place any  
8 vaccination requirement for any person lawfully residing in the  
9 United States, including government contractors or health care  
10 workers, for the purposes of preventing the spread of COVID-19 in  
11 the United States; or

12           (3) any time the United States Department of State has  
13 in place any travel warning related to COVID-19 for any country from  
14 which citizens have unlawfully entered the United States during the  
15 most recent year for which there is available data.

16       (b) A person who enters this state from a foreign country  
17 other than in accordance with Subsection (a), to the extent  
18 consistent with the United States Constitution, shall be removed to  
19 the country from which they entered the United States, their  
20 country of origin, or another location as practicable, as rapidly  
21 as possible with as little time spent in congregate settings as  
22 practicable under the circumstances.

23       Sec. 81B.003. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*  
24 *L.*, 518 U.S. 137 (1996), in which in the context of determining the  
25 severability of a state statute the Supreme Court of the United  
26 States held that an explicit statement of legislative intent is  
27 controlling, it is the intent of the legislature that every

1 provision, section, subsection, sentence, clause, phrase, or word  
2 in this chapter, and every application of the provisions in this  
3 chapter to every person, group of persons, or circumstances, are  
4 severable from each other.

5 (b) If any application of any provision in this chapter to  
6 any person, group of persons, or circumstances is found by a court  
7 to be invalid, preempted, or unconstitutional, for any reason  
8 whatsoever, then the remaining applications of that provision to  
9 all other persons and circumstances shall be severed and preserved,  
10 and shall remain in effect. All constitutionally valid  
11 applications of the provisions in this chapter shall be severed  
12 from any applications that a court finds to be invalid, preempted,  
13 or unconstitutional, because it is the legislature's intent and  
14 priority that every single valid application of every statutory  
15 provision be allowed to stand alone.

16 (c) The legislature further declares that it would have  
17 enacted this chapter, and each provision, section, subsection,  
18 sentence, clause, phrase, or word, and all constitutional  
19 applications of the provisions of this chapter, irrespective of the  
20 fact that any provision, section, subsection, sentence, clause,  
21 phrase, or word, or applications of this chapter were to be declared  
22 invalid, preempted, or unconstitutional.

23 (d) If any provision of this chapter is found by any court to  
24 be unconstitutionally vague, then the applications of that  
25 provision that do not present constitutional vagueness problems  
26 shall be severed and remain in force, consistent with the  
27 severability requirements of Subsections (a), (b), and (c).

1       (e) No court may decline to enforce the severability  
2 requirements of Subsections (a), (b), (c), and (d) on the ground  
3 that severance would "rewrite" the statute or involve the court in  
4 legislative or lawmaking activity. A court that declines to  
5 enforce or enjoins a state official from enforcing a statutory  
6 provision is never rewriting a statute or engaging in legislative  
7 or lawmaking activity, as the statute continues to contain the same  
8 words as before the court's decision. A judicial injunction or  
9 declaration of unconstitutionality:

10           (1) is nothing more than an edict prohibiting  
11 enforcement of the disputed statute against the named parties to  
12 that lawsuit, which may subsequently be vacated by a later court if  
13 that court has a different understanding of the requirements of the  
14 Texas Constitution or the United States Constitution or federal  
15 law;

16           (2) is not a formal amendment of the language in a  
17 statute; and

18           (3) no more rewrites a statute than a decision by the  
19 executive not to enforce a duly enacted statute in a limited and  
20 defined set of circumstances.

21       (f) If any state or federal court disregards any of the  
22 severability requirements in Subsections (a), (b), (c), (d), or  
23 (e), and declares or finds any provision of this chapter facially  
24 invalid, preempted, or unconstitutional, when there are discrete  
25 applications of that provision that can be enforced against a  
26 person, group of persons, or circumstances without violating  
27 federal law or the federal or state constitutions, then that



1 provision shall be interpreted, as a matter of state law, as if the  
2 legislature had enacted a provision limited to the persons, group  
3 of persons, or circumstances for which the provision's application  
4 will not violate federal law or the federal or state constitutions,  
5 and every court shall adopt this saving construction of that  
6 provision until the court ruling that pronounced the provision  
7 facially invalid, preempted, or unconstitutional is vacated or  
8 overruled.

9 ARTICLE 4. SEVERABILITY; EFFECTIVE DATE

10 SECTION 4.01. (a) If any provision of this Act or its  
11 application to any person or circumstance is held invalid, the  
12 invalidity does not affect other provisions or applications of this  
13 Act that can be given effect without the invalid provision or  
14 application, and to this end the provisions of this Act are declared  
15 to be severable.

16 (b) Subsection (a) of this section does not affect another  
17 severability provision contained in this Act.

18 SECTION 4.02. This Act takes effect immediately 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 immediate  
22 effect, this Act takes effect on the 91st day after the last day of  
23 the legislative session.