

## **BILL ANALYSIS**

Senate Research Center

S.B. 4  
By: Perry  
State Affairs  
2/9/2024  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 4 is a public safety bill and it is designed to protect not just the people of Texas, but all citizens of the United States. Protecting Texans from the imminent danger of the border crisis, made worse by the rise of human trafficking, fentanyl, cartel enterprises, and terrorist infiltration, is of paramount importance.

S.B. 4 seeks to further address the issue of border security by creating criminal offenses related to illegal entry into this state and illegal reentry by an alien. Furthermore, S.B. 4 allows for a magistrate or judge to order an alien to return to the foreign nation from which the person entered or attempted to enter the state.

(Original Author's/Sponsor's Statement of Intent)

S.B. 4 amends current law relating to prohibitions on the illegal entry into or illegal presence in this state by a person who is an alien, the enforcement of those prohibitions and certain related orders, including immunity from liability and indemnification for enforcement actions, and authorizing or requiring under certain circumstances the removal of persons who violate those prohibitions, and creates criminal offenses.

### **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 Title 1, Code of Criminal Procedure, by adding Chapter 5B, as follows:

#### **CHAPTER 5B. PROCEDURES FOR CERTAIN OFFENSES INVOLVING ILLEGAL ENTRY INTO THIS STATE**

Art. 5B.001. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS. Prohibits a peace officer, notwithstanding any other law, from arresting or detaining a person for purposes of enforcing a provision of Chapter 51, Penal Code, if the person is on the premises or grounds of:

- (1) a public or private primary or secondary school for educational purposes;
- (2) a church, synagogue, or other established place of religious worship;
- (3) a health care facility, as defined by Section 161.471 (Definitions), Health and Safety Code, including a facility a state agency maintains or operates to provide health care, or the office of a health care provider, as defined by Section 161.471, Health and Safety Code, provided that the person is on the premises or grounds of the facility or office for the purpose of receiving medical treatment; or
- (4) a SAFE-ready facility, as defined by Section 323.001 (Definitions), Health and Safety Code, or another facility that provides forensic medical examinations to sexual

assault survivors in accordance with Chapter 323 (Emergency Services and Forensic Examination Programs for Survivors of Sexual Assault), Health and Safety Code, provided that the person is on the premises or grounds of the facility for purposes of obtaining a forensic medical examination and treatment.

Art. 5B.002. ORDER TO RETURN TO FOREIGN NATION. (a) Authorizes a magistrate during a person's appearance under Article 14.06 (Must Take Offender Before Magistrate) or 15.17 (Duties of Arresting Officer and Magistrate) to, after making a determination that probable cause exists for arrest for an offense under Section 51.02 or 51.03, Penal Code, order the person released from custody and issue a written order in accordance with Subsection (c).

(b) Authorizes the judge in a person's case at any time after the person's appearance before a magistrate under Article 14.06 or 15.17 to, in lieu of continuing the prosecution of or entering an adjudication regarding an offense under Section 51.02 (Illegal Entry From Foreign Nation) or 51.03 (Illegal Reentry By Certain Aliens), Penal Code, dismiss the charge pending against the person and issue a written order in accordance with Subsection (c).

(c) Requires that a written order authorized by Subsection (a) or (b) discharge the person and require the person to return to the foreign nation from which the person entered or attempted to enter, and authorizes the issuance of a written order only if:

(1) the person agrees to the order;

(2) the person has not previously been convicted of an offense under Chapter 51, Penal Code, or previously obtained a discharge under an order described by Subsection (a) or (b);

(3) the person is not charged with another offense that is punishable as a Class A misdemeanor or any higher category of offense; and

(4) before the issuance of the order, the arresting law enforcement agency:

(A) collects all available identifying information of the person, which is required to include taking fingerprints from the person and using other applicable photographic and biometric measures to identify the person; and

(B) cross-references the collected information with:

(i) all relevant local, state, and federal criminal databases; and

(ii) federal lists or classifications used to identify a person as a threat or potential threat to national security.

(d) Requires a judge, on a person's conviction of an offense under Chapter 51 (Illegal Entry Into This State), Penal Code, to enter in the judgment in the case an order requiring the person to return to the foreign nation from which the person entered or attempted to enter. Provides that an order issued under this subsection take effect on completion of the term of confinement or imprisonment imposed by the judgment.

(e) Requires that an order issued under Article 5B.002, Code of Criminal Procedure, include:

(1) the manner of transportation of the person to a port of entry, as defined by Section 51.01, Penal Code; and

(2) the law enforcement officer or state agency responsible for monitoring compliance with the order.

(f) Requires that an order issued under Article 5B.002, Code of Criminal Procedure, be filed:

(1) with the county clerk of the county in which the person was arrested, for an order described by Subsection (a); or

(2) with the clerk of the court exercising jurisdiction in the case, for an order described by Subsection (b) or (d).

(g) Requires the law enforcement officer or state agency required to monitor compliance with the order to, not later than the seventh day after the date an order is issued under this article, report the issuance of the order to the Department of Public Safety of the State of Texas for inclusion in the computerized criminal history system under Chapter 66 (Criminal History Record System), Code of Criminal Procedure.

Art. 5B.003. ABATEMENT OF PROSECUTION ON BASIS OF IMMIGRATION STATUS DETERMINATION PROHIBITED. Prohibits a court from abating the prosecution of an offense under Chapter 51, Penal Code, on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.

SECTION 2. Amends Title 10, Penal Code, by adding Chapter 51, as follows:

#### CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

Sec. 51.01. DEFINITIONS. Defines "alien" and "port of entry."

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

(b) Provides that an offense under Section 51.02, Penal Code, is a Class B misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

(c) Provides that it is an affirmative defense to prosecution under Section 51.02, Penal Code, that:

(1) the federal government has granted the defendant:

(A) lawful presence in the United States; or

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

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

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

(d) Provides that the following federal programs do not provide an affirmative defense for purposes of Subsection (c)(1):

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

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

Sec. 51.03. **ILLEGAL REENTRY BY CERTAIN ALIENS.** (a) Provides that a person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state after the person:

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

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

(b) Provides that an offense under Section 51.03, Penal Code, is a Class A misdemeanor, except that the offense is:

(1) a felony of the third degree if:

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

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

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

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

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

(c) Provides that the definition of "removal," for purposes of this section, includes an order issued under Article 5B.002, Code of Criminal Procedure, or any other agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

Sec. 51.04. **REFUSAL TO COMPLY WITH ORDER TO RETURN TO FOREIGN NATION.** (a) Provides that a person who is an alien commits an offense if:

(1) the person has been charged with or convicted of an offense under Chapter 51, Penal Code;

(2) a magistrate or judge, as applicable, has issued an order under Article 5B.002, Code of Criminal Procedure, for the person to return to the foreign nation from which the person entered or attempted to enter; and

(3) the person refuses to comply with the order.

(b) Provides that an offense under Section 51.04, Penal Code, is a felony of the second degree.

SECTION 3. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 117, as follows:

CHAPTER 117. LIABILITY FOR AND INDEMNIFICATION OF CERTAIN CLAIMS  
RELATING TO ENFORCEMENT OF CERTAIN CRIMINAL OFFENSES INVOLVING  
ILLEGAL ENTRY INTO THIS STATE

Sec. 117.001. DEFINITION. Provides that the definition of "damages," in Chapter 117, Civil Practice and Remedies Code, includes any and all damages, fines, fees, penalties, court costs, attorney's fees, or other assessments.

Sec. 117.002. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF LOCAL GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Provides that a local government official, employee, or contractor, except as provided by Subsection (d), is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, 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) Requires a local government, subject to Subsection (c) and except as provided by Subsection (d), to indemnify an official, employee, or contractor of the local government for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, 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.

(c) Prohibits indemnification payments made under Subsection (b) 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.

(d) Provides that Subsections (a) and (b) do not apply if the court or jury determines that the local government official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

(e) 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 Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, 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.

(f) Prohibits Section 117.002, Civil Practice and Remedies Code, from being construed to waive any statutory limits on damages under state law.

Sec. 117.003. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF STATE OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Provides that an elected or appointed state official or a state employee or contractor, except as provided by Subsection (d), is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, 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) Requires the state, except as provided by Subsection (d), to indemnify an elected or appointed state official or a state employee or contractor for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, 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.

(c) Provides that an indemnification payment made under Subsection (b), notwithstanding any other law, is not subject to an indemnification limit under the laws of this state.

(d) Provides that Subsections (a) and (b) do not apply if the court or jury determines that the state official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

(e) 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 Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, 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.

(f) Entitles a state official, employee, or contractor who may be entitled to indemnification under Subsection (b) to representation by the attorney general, subject to Chapter 104 (State Liability for Conduct of Public Servants), Civil Practice and Remedies Code, in an action in connection with which the official, employee, or contractor is authorized to be entitled to that indemnification.

(g) Prohibits Section 117.003, Civil Practice and Remedies Code, 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 to immunity or indemnification under Section 117.002 or 117.003.

Sec. 117.005. OTHER LAWS NOT AFFECTED. Provides that Chapter 117, Civil Practice and Remedies Code, 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 4. 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 CERTAIN OFFENSES INVOLVING ILLEGAL ENTRY INTO THIS STATE. Provides that a defendant, notwithstanding any other provision of Chapter 42A (Community Supervision), Code of Criminal Procedure, 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 Chapter 51, Penal Code.

SECTION 5. Amends Article 66.102, Code of Criminal Procedure, by adding Subsection (i), to require that information in the computerized criminal history system, in addition to the information described by Article 66.102, Code of Criminal Procedure, include any order issued under Article 5B.002.

SECTION 6. Amends Section 508.145(a), Government Code, by adding Subsection (4), as follows:

(4) 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 51.03 or 51.04. Makes nonsubstantive changes.

SECTION 7. Amends Section 508.149, Government Code, by adding Subsection (a-1) to prohibit an inmate serving a sentence for an offense under Section 51.03 or 51.04, Penal Code, from being released to mandatory supervision.

SECTION 8. Severability clause.

SECTION 9. Effective date: the 91st day after the last day of the legislative session.