By:  Cain H.B. No. 40

A BILL TO BE ENTITLED

AN ACT

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 authorizing under certain circumstances the removal of persons who violate certain of those prohibitions; creating criminal offenses.

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

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

CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

Sec. 51.01.  DEFINITIONS. In this chapter:

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

(2)  "Child" means a person younger than 18 years of age.

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

Sec. 51.015.  ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS. Notwithstanding any other provision of this chapter, a peace officer may not arrest, remove, or otherwise detain a person for purposes of enforcing a provision of this chapter if the person is on the premises or grounds of:

(1)  a public or private primary or secondary school;

(2)  a church, synagogue, or other established place of religious worship; or

(3)  a hospital licensed under Chapter 241, Health and Safety Code.

Sec. 51.016.  ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS. Notwithstanding any other provision of this chapter, a peace officer may not arrest, remove, or otherwise detain a person for purposes of enforcing a provision of this chapter if, for purposes of obtaining a forensic medical examination and treatment, the person is on the premises or grounds of a SAFE-ready facility, as defined by Section 323.001, Health and Safety Code, or another facility that provides forensic medical examinations to sexual assault survivors in accordance with Chapter 323, Health and Safety Code.

Sec. 51.02.  ILLEGAL ENTRY FROM FOREIGN NATION. (a) 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)  An offense under this section 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)  It is an affirmative defense to prosecution under this section 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)  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).

(e)  Notwithstanding any other law, a peace officer who is charging a person detained for a violation of this section with committing an offense under this section may, in lieu of arresting the person or taking the person before a magistrate, remove the person by:

(1)  collecting available identifying information of the person, which may include the use of photographic and biometric measures that are cross-referenced with all relevant local, state, and federal criminal databases;

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

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

(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 defendant is pending.

Sec. 51.03.  ILLEGAL REENTRY BY CERTAIN ALIENS. (a) 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)  An offense under this section 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)  For purposes of Subsections (a) and (b), "removal" includes any agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

(d)  Notwithstanding any other law, a peace officer who is charging a person detained for a violation of this section with committing an offense under this section may, in lieu of arresting the person or taking the person before a magistrate, remove the person by:

(1)  collecting available identifying information of the person, which may include the use of photographic and biometric measures that are cross-referenced with all relevant local, state, and federal criminal databases;

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

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

(e)  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 defendant is pending.

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

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

Sec. 51.05.  CERTAIN ACTS PROHIBITED. A peace officer enforcing Section 51.02 or 51.03 may not:

(1)  push a child into water;

(2)  deny a child access to drinking water; or

(3)  deny a child urgent medical care.

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 CERTAIN CRIMINAL OFFENSES INVOLVING ILLEGAL ENTRY INTO THIS STATE

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 Chapter 51, 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 Chapter 51, 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 Chapter 51, 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 Chapter 51, 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.  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 4.  This Act takes effect December 1, 2023, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect on the 91st day after the last day of the legislative session.