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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 certain related orders, including  
5 immunity from liability and indemnification for enforcement  
6 actions, and authorizing or requiring under certain circumstances  
7 the removal of persons who violate those prohibitions; creating  
8 criminal offenses.

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

10 SECTION 1. Title 1, Code of Criminal Procedure, is amended  
11 by adding Chapter 5B to read as follows:

12 CHAPTER 5B. PROCEDURES FOR CERTAIN OFFENSES INVOLVING ILLEGAL  
13 ENTRY INTO THIS STATE

14 Art. 5B.001. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS.

15 Notwithstanding any other law, a peace officer may not arrest or  
16 detain a person for purposes of enforcing a provision of Chapter 51,  
17 Penal Code, if the person is on the premises or grounds of:

18 (1) a public or private primary or secondary school  
19 for educational purposes;

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

22 (3) a health care facility, as defined by Section  
23 161.471, Health and Safety Code, including a facility a state  
24 agency maintains or operates to provide health care, or the office

1 of a health care provider, as defined by Section 161.471, Health and  
2 Safety Code, provided that the person is on the premises or grounds  
3 of the facility or office for the purpose of receiving medical  
4 treatment; or

5 (4) a SAFE-ready facility, as defined by Section  
6 323.001, Health and Safety Code, or another facility that provides  
7 forensic medical examinations to sexual assault survivors in  
8 accordance with Chapter 323, Health and Safety Code, provided that  
9 the person is on the premises or grounds of the facility for  
10 purposes of obtaining a forensic medical examination and treatment.

11 Art. 5B.002. ORDER TO RETURN TO FOREIGN NATION. (a) A  
12 magistrate during a person's appearance under Article 14.06 or  
13 15.17 or the judge in the person's case at any time after that  
14 appearance may, in lieu of continuing the prosecution of or  
15 entering an adjudication regarding an offense under Section 51.02  
16 or 51.03, Penal Code, dismiss the charge pending against the person  
17 and issue a written order that discharges the person and requires  
18 the person to return to the foreign nation from which the person  
19 entered or attempted to enter, if:

20 (1) the person agrees to the order;

21 (2) the person has not previously been convicted of an  
22 offense under Chapter 51, Penal Code, or previously obtained a  
23 dismissal and discharge under this subsection;

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

27 (4) before the issuance of the order dismissing the

1 charge and discharging the person, the arresting law enforcement  
2 agency:

3 (A) collects all available identifying  
4 information of the person, which must include taking fingerprints  
5 from the person and using other applicable photographic and  
6 biometric measures to identify the person; and

7 (B) cross-references the collected information  
8 with:

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

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

14 (b) On conviction of an offense under Chapter 51, Penal  
15 Code, the judge shall enter in the judgment in the case an order  
16 requiring the person to return to the foreign nation from which the  
17 person entered or attempted to enter. An order issued under this  
18 subsection takes effect on completion of the term of confinement or  
19 imprisonment imposed by the judgment.

20 (c) An order issued under this article must include:

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

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

25 Art. 5B.003. ABATEMENT OF PROSECUTION ON BASIS OF  
26 IMMIGRATION STATUS DETERMINATION PROHIBITED. A court may not abate  
27 the prosecution of an offense under Chapter 51, Penal Code, on the

1 basis that a federal determination regarding the immigration status  
2 of the defendant is pending or will be initiated.

3 SECTION 2. Title 10, Penal Code, is amended by adding  
4 Chapter 51 to read as follows:

5 CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

6 Sec. 51.01. DEFINITIONS. In this chapter:

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

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

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

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

19 (c) It is an affirmative defense to prosecution under this  
20 section that:

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

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

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

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

26 (3) the defendant was approved for benefits under the  
27 federal Deferred Action for Childhood Arrivals program between June

1 15, 2012, and July 16, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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           (1) the person has been charged with or convicted of an  
13 offense under this chapter;

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

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

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

21          SECTION 3. Title 5, Civil Practice and Remedies Code, is  
22 amended by adding Chapter 117 to read as follows:

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

26          Sec. 117.001. DEFINITION. In this chapter, "damages"  
27 includes any and all damages, fines, fees, penalties, court costs,

1 attorney's fees, or other assessments.

2 Sec. 117.002. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF  
3 LOCAL GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a)  
4 Except as provided by Subsection (d), a local government official,  
5 employee, or contractor is immune from liability for damages  
6 arising from a cause of action under state law resulting from an  
7 action taken by the official, employee, or contractor to enforce  
8 Chapter 51, Penal Code, or an order issued under Article 5B.002,  
9 Code of Criminal Procedure, during the course and scope of the  
10 official's, employee's, or contractor's office, employment, or  
11 contractual performance for or service on behalf of the local  
12 government.

13 (b) Subject to Subsection (c) and except as provided by  
14 Subsection (d), a local government shall indemnify an official,  
15 employee, or contractor of the local government for damages arising  
16 from a cause of action under federal law resulting from an action  
17 taken by the official, employee, or contractor to enforce Chapter  
18 51, Penal Code, or an order issued under Article 5B.002, Code of  
19 Criminal Procedure, during the course and scope of the official's,  
20 employee's, or contractor's office, employment, or contractual  
21 performance for or service on behalf of the local government.

22 (c) Indemnification payments made under Subsection (b) by a  
23 local government may not exceed:

24 (1) \$100,000 to any one person or \$300,000 for any  
25 single occurrence in the case of personal injury or death; or

26 (2) \$10,000 for a single occurrence of property  
27 damage.

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

5       (e) A local government shall indemnify an official,  
6 employee, or contractor of the local government for reasonable  
7 attorney's fees incurred in defense of a criminal prosecution  
8 against the official, employee, or contractor for an action taken  
9 by the official, employee, or contractor to enforce Chapter 51,  
10 Penal Code, or an order issued under Article 5B.002, Code of  
11 Criminal Procedure, during the course and scope of the official's,  
12 employee's, or contractor's office, employment, or contractual  
13 performance for or service on behalf of the local government.

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

16       Sec. 117.003. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF  
17 STATE OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Except as  
18 provided by Subsection (d), an elected or appointed state official  
19 or a state employee or contractor is immune from liability for  
20 damages arising from a cause of action under state law resulting  
21 from an action taken by the official, employee, or contractor to  
22 enforce Chapter 51, Penal Code, or an order issued under Article  
23 5B.002, Code of Criminal Procedure, during the course and scope of  
24 the official's, employee's, or contractor's office, employment, or  
25 contractual performance for or service on behalf of the state.

26       (b) Except as provided by Subsection (d), the state shall  
27 indemnify an elected or appointed state official or a state



1 employee or contractor for damages arising from a cause of action  
2 under federal law resulting from an action taken by the official,  
3 employee, or contractor to enforce Chapter 51, Penal Code, or an  
4 order issued under Article 5B.002, Code of Criminal Procedure,  
5 during the course and scope of the official's, employee's, or  
6 contractor's office, employment, or contractual performance for or  
7 service on behalf of the state.

8 (c) Notwithstanding any other law, an indemnification  
9 payment made under Subsection (b) is not subject to an  
10 indemnification limit under the laws of this state.

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

14 (e) The state shall indemnify a state official, employee, or  
15 contractor for reasonable attorney's fees incurred in defense of a  
16 criminal prosecution against the official, employee, or contractor  
17 for an action taken by the official, employee, or contractor to  
18 enforce Chapter 51, Penal Code, or an order issued under Article  
19 5B.002, Code of Criminal Procedure, during the course and scope of  
20 the official's, employee's, or contractor's office, employment, or  
21 contractual performance for or service on behalf of the state.

22 (f) A state official, employee, or contractor who may be  
23 entitled to indemnification under Subsection (b) 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 (g) This section may not be construed to waive any statutory

1 limits on damages under state law.

2 Sec. 117.004. APPEAL TO SUPREME COURT. For a civil action  
3 brought against a person who may be entitled to immunity or  
4 indemnification under Section 117.002 or 117.003, an appeal must be  
5 taken directly to the supreme court.

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

10 SECTION 4. Subchapter B, Chapter 42A, Code of Criminal  
11 Procedure, is amended by adding Article 42A.059 to read as follows:

12 Art. 42A.059. PLACEMENT ON COMMUNITY SUPERVISION  
13 PROHIBITED FOR CERTAIN OFFENSES INVOLVING ILLEGAL ENTRY INTO THIS  
14 STATE. Notwithstanding any other provision of this chapter, a  
15 defendant is not eligible for community supervision, including  
16 deferred adjudication community supervision, under this chapter if  
17 the defendant is charged with or convicted of an offense under  
18 Chapter 51, Penal Code.

19 SECTION 5. Section 508.145(a), Government Code, is amended  
20 to read as follows:

21 (a) An inmate is not eligible for release on parole if the  
22 inmate is under sentence of death, serving a sentence of life  
23 imprisonment without parole, or serving a sentence for any of the  
24 following offenses under the Penal Code:

25 (1) Section 20A.03, if the offense is based partly or  
26 wholly on conduct constituting an offense under Section  
27 20A.02(a)(5), (6), (7), or (8);

- 1           (2) Section 21.02; [~~or~~]
- 2           (3) Section 22.021, if the offense is punishable under
- 3 Subsection (f) of that section; or
- 4           (4) Section 51.03 or 51.04.

5           SECTION 6. Section 508.149, Government Code, is amended by  
6 adding Subsection (a-1) to read as follows:

7           (a-1) An inmate serving a sentence for an offense under  
8 Section 51.03 or 51.04, Penal Code, may not be released to mandatory  
9 supervision.

10           SECTION 7. It is the intent of the legislature that every  
11 provision, section, subsection, sentence, clause, phrase, or word  
12 in this Act, and every application of the provisions in this Act to  
13 every person, group of persons, or circumstances, is severable from  
14 each other. If any application of any provision in this Act to any  
15 person, group of persons, or circumstances is found by a court to be  
16 invalid for any reason, the remaining applications of that  
17 provision to all other persons and circumstances shall be severed  
18 and may not be affected.

19           SECTION 8. This Act takes effect on the 91st day after the  
20 last day of the legislative session.