

By: Perry, et al.

S.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 may, after making a determination that probable cause exists
14 for arrest for an offense under Section 51.02 or 51.03, Penal Code,
15 order the person released from custody and issue a written order in
16 accordance with Subsection (c).

17 (b) The judge in a person's case at any time after the
18 person's appearance before a magistrate under Article 14.06 or
19 15.17 may, in lieu of continuing the prosecution of or entering an
20 adjudication regarding an offense under Section 51.02 or 51.03,
21 Penal Code, dismiss the charge pending against the person and issue
22 a written order in accordance with Subsection (c).

23 (c) A written order authorized by Subsection (a) or (b) must
24 discharge the person and require the person to return to the foreign
25 nation from which the person entered or attempted to enter, and may
26 be issued only if:

27 (1) the person agrees to the order;

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

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

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

9 (A) collects all available identifying
10 information of the person, which must include taking fingerprints
11 from the person and using other applicable photographic and
12 biometric measures to identify the person; and

13 (B) cross-references the collected information
14 with:

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

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

20 (d) On a person's conviction of an offense under Chapter 51,
21 Penal Code, the judge shall enter in the judgment in the case an
22 order requiring the person to return to the foreign nation from
23 which the person entered or attempted to enter. An order issued
24 under this subsection takes effect on completion of the term of
25 confinement or imprisonment imposed by the judgment.

26 (e) An order issued under this article must include:

27 (1) the manner of transportation of the person to a

1 port of entry, as defined by Section 51.01, Penal Code; and

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

4 (f) An order issued under this article must be filed:

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

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

10 (g) Not later than the seventh day after the date an order is
11 issued under this article, the law enforcement officer or state
12 agency required to monitor compliance with the order shall report
13 the issuance of the order to the Department of Public Safety for
14 inclusion in the computerized criminal history system under Chapter
15 66.

16 Art. 5B.003. ABATEMENT OF PROSECUTION ON BASIS OF
17 IMMIGRATION STATUS DETERMINATION PROHIBITED. A court may not abate
18 the prosecution of an offense under Chapter 51, Penal Code, on the
19 basis that a federal determination regarding the immigration status
20 of the defendant is pending or will be initiated.

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

23 CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

24 Sec. 51.01. DEFINITIONS. In this chapter:

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

27 (2) "Port of entry" means a port of entry in the United

1 States as designated by 19 C.F.R. Part 101.

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

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

10 (c) It is an affirmative defense to prosecution under this
11 section that:

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

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

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

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

17 (3) the defendant was approved for benefits under the
18 federal Deferred Action for Childhood Arrivals program between June
19 15, 2012, and July 16, 2021.

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

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

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

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 this section, "removal" includes an
24 order issued under Article 5B.002, Code of Criminal Procedure, or
25 any other agreement in which an alien stipulates to removal
26 pursuant to a criminal proceeding under either federal or state
27 law.

1 Sec. 51.04. REFUSAL TO COMPLY WITH ORDER TO RETURN TO
2 FOREIGN NATION. (a) A person who is an alien commits an offense if:

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

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

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

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

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

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

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

20 Sec. 117.002. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF
21 LOCAL GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a)
22 Except as provided by Subsection (d), a local government official,
23 employee, or contractor is immune from liability for damages
24 arising from a cause of action under state law resulting from an
25 action taken by the official, employee, or contractor to enforce
26 Chapter 51, Penal Code, or an order issued under Article 5B.002,
27 Code of Criminal Procedure, during the course and scope of the

1 official's, employee's, or contractor's office, employment, or
2 contractual performance for or service on behalf of the local
3 government.

4 (b) Subject to Subsection (c) and except as provided by
5 Subsection (d), a local government shall indemnify an official,
6 employee, or contractor of the local government for damages arising
7 from a cause of action under federal law resulting from an action
8 taken by the official, employee, or contractor to enforce Chapter
9 51, Penal Code, or an order issued under Article 5B.002, Code of
10 Criminal Procedure, during the course and scope of the official's,
11 employee's, or contractor's office, employment, or contractual
12 performance for or service on behalf of the local government.

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

15 (1) \$100,000 to any one person or \$300,000 for any
16 single occurrence in the case of personal injury or death; or

17 (2) \$10,000 for a single occurrence of property
18 damage.

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

23 (e) A local government shall indemnify an official,
24 employee, or contractor of the local government for reasonable
25 attorney's fees incurred in defense of a criminal prosecution
26 against the official, employee, or contractor for an action taken
27 by the official, employee, or contractor to enforce Chapter 51,

1 Penal Code, or an order issued under Article 5B.002, Code of
2 Criminal Procedure, during the course and scope of the official's,
3 employee's, or contractor's office, employment, or contractual
4 performance for or service on behalf of the local government.

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

7 Sec. 117.003. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF
8 STATE OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Except as
9 provided by Subsection (d), an elected or appointed state official
10 or a state employee or contractor is immune from liability for
11 damages arising from a cause of action under state law resulting
12 from an action taken by the official, employee, or contractor to
13 enforce Chapter 51, Penal Code, or an order issued under Article
14 5B.002, Code of Criminal Procedure, during the course and scope of
15 the official's, employee's, or contractor's office, employment, or
16 contractual performance for or service on behalf of the state.

17 (b) Except as provided by Subsection (d), the state shall
18 indemnify an elected or appointed state official or a state
19 employee or contractor for damages arising from a cause of action
20 under federal law resulting from an action taken by the official,
21 employee, or contractor to enforce Chapter 51, Penal Code, or an
22 order issued under Article 5B.002, Code of Criminal Procedure,
23 during the course and scope of the official's, employee's, or
24 contractor's office, employment, or contractual performance for or
25 service on behalf of the state.

26 (c) Notwithstanding any other law, an indemnification
27 payment made under Subsection (b) is not subject to an

1 indemnification limit under the laws of this state.

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

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

13 (f) A state official, employee, or contractor who may be
14 entitled to indemnification under Subsection (b) is entitled to
15 representation by the attorney general, subject to Chapter 104, in
16 an action in connection with which the official, employee, or
17 contractor may be entitled to that indemnification.

18 (g) This section may not be construed to waive any statutory
19 limits on damages under state law.

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

24 Sec. 117.005. OTHER LAWS NOT AFFECTED. This chapter does
25 not affect a defense, immunity, or jurisdictional bar available to
26 the state or a local government or an official, employee, or
27 contractor of the state or a local government.

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

3 Art. 42A.059. PLACEMENT ON COMMUNITY SUPERVISION
4 PROHIBITED FOR CERTAIN OFFENSES INVOLVING ILLEGAL ENTRY INTO THIS
5 STATE. Notwithstanding any other provision of this chapter, a
6 defendant is not eligible for community supervision, including
7 deferred adjudication community supervision, under this chapter if
8 the defendant is charged with or convicted of an offense under
9 Chapter 51, Penal Code.

10 SECTION 5. Article 66.102, Code of Criminal Procedure, is
11 amended by adding Subsection (i) to read as follows:

12 (i) In addition to the information described by this
13 article, information in the computerized criminal history system
14 must include any order issued under Article 5B.002.

15 SECTION 6. Section 508.145(a), Government Code, is amended
16 to read as follows:

17 (a) An inmate is not eligible for release on parole if the
18 inmate is under sentence of death, serving a sentence of life
19 imprisonment without parole, or serving a sentence for any of the
20 following offenses under the Penal Code:

21 (1) Section 20A.03, if the offense is based partly or
22 wholly on conduct constituting an offense under Section
23 20A.02(a)(5), (6), (7), or (8);

24 (2) Section 21.02; ~~[or]~~

25 (3) Section 22.021, if the offense is punishable under
26 Subsection (f) of that section; or

27 (4) Section 51.03 or 51.04.

1 SECTION 7. Section 508.149, Government Code, is amended by
2 adding Subsection (a-1) to read as follows:

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

6 SECTION 8. It is the intent of the legislature that every
7 provision, section, subsection, sentence, clause, phrase, or word
8 in this Act, and every application of the provisions in this Act to
9 every person, group of persons, or circumstances, is severable from
10 each other. If any application of any provision in this Act to any
11 person, group of persons, or circumstances is found by a court to be
12 invalid for any reason, the remaining applications of that
13 provision to all other persons and circumstances shall be severed
14 and may not be affected.

15 SECTION 9. This Act takes effect on the 91st day after the
16 last day of the legislative session.