

BILL ANALYSIS

C.S.S.B. 2424
By: Birdwell
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to data from the U.S. Customs and Border Protection, there were nearly 2.4 million migrant encounters along the United States' southern border in fiscal year 2022 (FY 2022)—a record-high figure. U.S. Customs and Border Protection data also indicates that over one million encounters were recorded in Texas sectors alone in FY 2022, as opposed to under 300,000 encounters in FY 2020. Due to the increase in border encounters since FY 2020, the State of Texas has stepped up and devoted time and resources to combat the border crisis that the state is facing through the launch of Operation Lone Star in March 2021. C.S.S.B. 2424 seeks to further address the issue of border security by creating state-level border-related offenses that can be enforced by law enforcement officials in Texas. Specifically, the bill creates a Class B misdemeanor offense, or a state jail felony for subsequent offenses, for certain persons who illegally cross the Texas-Mexico border at a place other than a port of entry and creates a second degree felony offense for a person who commits that offense and then refuses to comply with an order from a peace officer to return to Mexico.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 2424 amends the Penal Code to create the Class B misdemeanor offense for illegal entry from Mexico for a person who is not a citizen or legal permanent resident of the United States and who enters or attempts to enter Texas by crossing its border with Mexico at any place other than a "port of entry," which the bill defines by reference to applicable federal regulations as any place designated by executive order of the president of the United States, by order of the U.S. secretary of the treasury, or by an act of the U.S. Congress, at which a U.S. Customs and Border Protection officer is authorized to accept entries of merchandise to collect duties and to enforce the various provisions of the customs and navigation laws.

C.S.S.B. 2424 enhances the penalty for illegal entry from Mexico to a state jail felony if it is shown on the trial of the offense that the actor has previously been finally convicted of that offense. The bill authorizes a peace officer, in lieu of arrest, to remove a person detained for illegal entry from Mexico by collecting any identifying information the person may have, transporting the person to a port of entry, and ordering the person to return to Mexico. The bill requires a law enforcement officer of the Department of Public Safety who arrests a person for

illegal entry from Mexico, to the extent feasible, to detain the person in a facility established under Operation Lone Star or a similar state border security operation. The bill prohibits a court from abating the prosecution of illegal entry from Mexico on the basis that a federal determination regarding the actor's immigration status is pending.

C.S.S.B. 2424 creates the second degree felony offense of refusal to comply with an order to return to Mexico for a person who, following the commission of illegal entry from Mexico, refuses to comply with an order to return to Mexico delivered by a peace officer as provided for by the bill.

C.S.S.B. 2424 amends the Civil Practice and Remedies Code to require a county, city, town, special purpose district, or any other political subdivision of the state to pay actual damages, court costs, and attorney's fees awarded against an employee of that local government if the damages arise from a cause of action resulting from actions taken by the person to enforce the bill's Penal Code provisions during the course and scope of the person's employment for the local government. The bill expands the circumstances under which the state is liable for indemnification of a qualifying public servant for actual damages, court costs, and attorney's fees adjudged against the person based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of their agency, institution, or department to include when the damages arise out of a cause of action resulting from actions taken by the person to enforce the bill's Penal Code provisions.

C.S.S.B. 2424 amends the Local Government Code to require an order adopted by a county indemnifying an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties that was not the result of the officer's negligence or criminal action to indemnify the officer for damages resulting from actions taken by the officer to enforce the bill's Penal Code provisions during the performance of official duties.

C.S.S.B. 2424 establishes that it is the legislature's intent that every provision, section, subsection, sentence, clause, phrase, or word in the bill, and every application of the bill's provisions to every person, group of persons, or circumstances, is severable from each other and further establishes that if any application of any bill provision 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 are to be severed and may not be affected.

EFFECTIVE DATE

July 1, 2023, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2424 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The engrossed created the Class A misdemeanor offense of improper entry from a foreign nation for a person who is an alien, as that term is defined under 8 U.S.C. Section 1101, as that provision existed on January 1, 2023, and who:

- enters or attempts to enter Texas from a foreign nation at any location other than a lawful point of entry;
- eludes examination or inspection by U.S. immigration officers; or
- attempts to enter or obtains entry to Texas from a foreign nation by an intentionally false or misleading representation or the intentional concealment of a material fact.

The substitute creates instead the Class B misdemeanor offense of the illegal entry from Mexico for a person who is not a citizen or legal permanent resident of the United States and who enters

or attempts to enter Texas by crossing its border with Mexico at any place other than a port of entry. While the term "port of entry" was undefined in the engrossed, the substitute defines the term by reference to applicable federal regulations as any place designated by executive order of the president of the United States, by order of the U.S. secretary of the treasury, or by an act of the U.S. Congress, at which a U.S. Customs and Border Protection officer is authorized to accept entries of merchandise to collect duties and to enforce the various provisions of the customs and navigation laws.

While both the engrossed and the substitute provide for the enhancement of the penalty for their respective offenses—improper entry from a foreign nation and illegal entry from Mexico—to a state jail felony if it is shown on the trial of the offense that the person has previously been finally convicted of that offense, the engrossed also provided for the further enhancement of the penalty to a second or first degree felony under the following circumstances:

- a second degree felony if it is shown on the trial of the offense that the person has previously been finally convicted of an offense of improper entry from a foreign nation punishable as a state jail felony or any other felony not listed among the offenses for which a defendant is ineligible for judge-ordered community supervision; or
- a first degree felony if it is shown on the trial of the offense that the person has previously been finally convicted of an offense listed among the offenses for which a defendant is ineligible for judge-ordered community supervision.

The substitute provides only for the state jail felony enhancement.

While the substitute provides no affirmative defenses to prosecution for the offense of illegal entry from Mexico, the engrossed established the following as affirmative defenses to prosecution for the offense of improper entry from a foreign nation:

- the actor having been granted a federal immigration benefit entitling the actor to lawful presence in the United States or asylum under federal law;
- the actor's conduct not constituting the federal offense of improper entry by an alien; or
- the actor having been approved for benefits under the federal Deferred Action for Childhood Arrivals program between June 15, 2012, and July 16, 2021.

Accordingly, the substitute omits the provisions from the engrossed establishing that certain federal programs do not confer federal immigration benefits entitling the actor to lawful presence in the United States for that purpose.

The substitute includes a provision not present in the engrossed authorizing a peace officer, in lieu of arrest, to remove a person detained for the offense of illegal entry from Mexico by collecting any identifying information the person may have, transporting the person to a port of entry, and ordering the person to return to Mexico. In addition, the substitute also includes provisions not in the engrossed creating the second degree felony offense of refusal to comply with an order to return to Mexico for a person who refuses to comply with such an order delivered by a peace officer following the commission of the offense of illegal entry from Mexico.

The substitute includes the following provisions that were not in the engrossed:

- a provision requiring a county, city, town, special purpose district, or any other political subdivision of the state to pay actual damages, court costs, and attorney's fees awarded against an employee of that local government if the damages arise from a cause of action resulting from actions taken by the person to enforce the bill's Penal Code provisions during the course and scope of the person's employment for the local government;
- a provision expanding the circumstances under which the state is liable for indemnification of a qualifying public servant for actual damages, court costs, and attorney's fees adjudged against the person based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of their agency, institution, or department to include when the damages arise out of a cause of action resulting from actions taken by the person to enforce the bill's Penal Code provisions; and

- a provision requiring an order adopted by a county indemnifying an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties that was not the result of the officer's negligence or criminal action to indemnify the officer for damages resulting from actions taken by the officer to enforce the bill's Penal Code provisions during the performance of official duties.