

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for removing certain prosecuting attorneys for their policies on the enforcement of criminal offenses; providing a private cause of action.

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

SECTION 1. Chapter 41, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. ENFORCEMENT OF CRIMINAL OFFENSES

Sec. 41.371. DEFINITIONS. In this subchapter:

(1) "Policy" includes a formal, written rule or policy or an informal, unwritten policy.

(2) "Prosecuting attorney" means a district attorney, criminal district attorney, or county attorney with criminal jurisdiction.

(3) "Crime of violence" includes any criminal offense established in:

(A) Chapter 170A, Health and Safety Code;

(B) Chapter 171, Health and Safety Code;

(C) Chapter 19, Penal Code;

(D) Chapter 20, Penal Code;

(E) Chapter 20A, Penal Code; or

(F) Chapter 22, Penal Code.

(4) "Criminal offense against property" includes any criminal offense established in Title 7, Penal Code.

1 (5) "Criminal offense under the Election Code"
2 includes any criminal offense established in the following chapters
3 of the Election Code:

4 (A) Chapter 13;

5 (B) Chapter 33;

6 (C) Chapter 51;

7 (D) Chapter 61;

8 (E) Chapter 64; and

9 (F) Chapter 86.

10 Sec. 41.372. RULES. The attorney general may adopt the
11 rules necessary for the attorney general to implement and fulfill
12 the duties assigned under this subchapter.

13 Sec. 41.373. POLICY ON PROSECUTION OF CRIMINAL OFFENSES.

14 (a) Except as provided by Subsection (b), a prosecuting attorney
15 may not adopt, enforce, or implement a policy or practice, whether
16 formal or informal, under which the prosecuting attorney or a
17 subordinate of the attorney:

18 (1) categorically or systematically refuses to bring
19 charges against individuals who commit:

20 (A) a crime of violence;

21 (B) a criminal offense against property; or

22 (C) a criminal offense under the Election Code;

23 (2) categorically or systematically refuses to seek
24 capital punishment against offenders who commit capital crimes; or

25 (3) refuses to prosecute any criminal offense
26 committed by a noncitizen in an effort to shield the offender from
27 deportation or any type of adverse consequence under federal or

1 state immigration law.

2 (b) Notwithstanding Subsection (a), a prosecuting attorney
3 may adopt, enforce, or implement a policy or practice that is
4 necessary to ensure compliance with:

5 (1) an injunction, judgment, or order issued by a
6 court in a case in which the prosecuting attorney or one of the
7 attorney's predecessors or privities was or is a named party; or

8 (2) an interpretation of law adopted by:

9 (A) the United States Supreme Court;

10 (B) the United States Court of Appeals for the
11 Fifth Circuit;

12 (C) the Supreme Court of Texas;

13 (D) the Texas Court of Criminal Appeals; or

14 (E) the state court of appeals with jurisdiction
15 over the prosecuting attorney and that office.

16 (c) The following may be used as evidence to establish that
17 a prosecuting attorney has adopted a policy described by Subsection
18 (a):

19 (1) the attorney's public statements; and

20 (2) evidence showing that the attorney or attorney's
21 subordinates:

22 (A) routinely failed to prosecute criminal
23 offenses described under Subsection (a)(1);

24 (B) routinely failed to pursue capital
25 punishment against offenders who commit capital crimes; or

26 (C) routinely failed to prosecute criminal
27 offenses committed by noncitizens.

1 (d) A prosecuting attorney who adopts, enforces, or
2 implements a policy or practice described by Subsection (a) may be
3 removed from office pursuant to Section 24, Article 5, Texas
4 Constitution, and disbarred.

5 Sec. 41.374. INVESTIGATION. (a) The attorney general may
6 take action under Subsection (b) if the attorney general has reason
7 to believe that a prosecuting attorney has adopted, enforced, or
8 implemented a policy or practice described in Section 41.373(a).

9 (b) In investigating a prosecuting attorney under this
10 section, the attorney general may:

11 (1) require the prosecuting attorney to file on a
12 prescribed form a statement in writing, under oath or affirmation,
13 as to all the facts and circumstances concerning the alleged
14 failure to comply with Section 41.373(a), and other information
15 considered necessary by the attorney general;

16 (2) examine under oath a person in connection with the
17 alleged failure to comply with Section 41.373(a); and

18 (3) execute in writing and serve on the prosecuting
19 attorney a civil investigative demand requiring the prosecuting
20 attorney to produce the documentary material and permit inspection
21 and copying of the material under Section 41.375.

22 (c) The attorney general may use documentary material
23 derived from information obtained under Subsection (b)(1) or (2),
24 or copies of that material, as the attorney general determines
25 necessary in the enforcement of this subchapter, including
26 presentation before a court.

27 (d) If a prosecuting attorney or other person fails to file

1 a statement as required by Subsection (b)(1) or fails to submit to
2 an examination as required by Subsection (b)(2), the attorney
3 general may file in any district court of this state a petition for
4 an order to compel the prosecuting attorney or other person to file
5 the statement or submit to the examination within a period stated by
6 court order. Failure to comply with an order entered under this
7 subsection is punishable as contempt.

8 (e) An order issued by a district court under this section
9 is subject to appeal to the Supreme Court of Texas.

10 Section 41.375. CIVIL INVESTIGATIVE DEMAND. (a) The
11 attorney general may issue a civil investigative demand in
12 compliance with this section.

13 (b) An investigative demand must:

14 (1) state the general subject matter of the
15 investigation;

16 (2) describe the class or classes of documentary
17 material to be produced with reasonable specificity to fairly
18 indicate the documentary material demanded;

19 (3) prescribe a return date within which the
20 documentary material is to be produced; and

21 (4) identify an authorized employee of the attorney
22 general to whom the documentary material is to be made available for
23 inspection and copying.

24 (c) A civil investigative demand may require disclosure of
25 any documentary material that is discoverable under the Texas Rules
26 of Civil Procedure.

27 (d) Service of an investigative demand may be made by:

1 (1) delivering an executed copy of the demand to the
2 person to be served or to a partner, an officer, or an agent
3 authorized by appointment or by law to receive service of process on
4 behalf of that person;

5 (2) delivering an executed copy of the demand to the
6 principal place of business in this state of the person to be
7 served; or

8 (3) mailing by registered or certified mail an
9 executed copy of the demand addressed to the person to be served at
10 the person's principal place of business in this state or, if the
11 person has no place of business in this state, to the person's
12 principal office or place of business.

13 (e) Documentary material demanded under this section shall
14 be produced for inspection and copying during normal business hours
15 at the office of the attorney general or as agreed by the person
16 served and the attorney general.

17 (f) The attorney general shall prescribe reasonable terms
18 and conditions allowing the documentary material to be available
19 for inspection and copying by the person who produced the material
20 or by an authorized representative of that person. The attorney
21 general may use the documentary material or copies of it as the
22 attorney general determines necessary in the enforcement of this
23 subchapter, including presentation before a court.

24 (g) This section does not in any way limit the authority of
25 the attorney general to conduct investigations or to access a
26 person's documentary materials or other information under another
27 state or federal law, the Texas Rules of Civil Procedure, or the

1 Federal Rules of Civil Procedure.

2 (h) If a prosecuting attorney or other person fails to
3 comply with an investigative demand, or if copying and reproduction
4 of the documentary material demanded cannot be satisfactorily
5 accomplished and the person refuses to surrender the documentary
6 material, the attorney general may file in any district court in the
7 state a petition for an order to enforce the investigative demand.

8 (i) If a petition is filed under Subsection (h), the court
9 may determine the matter presented and may enter an order to
10 implement this section.

11 (j) Failure to comply with a final order entered under
12 Subsection (i) is punishable by contempt.

13 (k) A final order issued by a district court under
14 Subsection (i) is subject to appeal to the Supreme Court of Texas.

15 Sec. 41.376. COMPLAINT; REMOVAL BY ATTORNEY GENERAL. (a)
16 Notwithstanding any other law, including Chapter 87, Local
17 Government Code, any resident of this state may file a complaint
18 with the attorney general if the person asserts facts supporting an
19 allegation that a prosecuting attorney in the county where that
20 individual resides has violated or is violating Section 41.373(a).
21 The person must include a sworn statement with the complaint
22 stating that to the best of the person's knowledge, all of the facts
23 asserted in the complaint are true and correct.

24 (b) Notwithstanding any other law, including Chapter 87,
25 Local Government Code, and Chapter 15, Civil Practice and Remedies
26 Code, if the attorney general determines that a complaint filed
27 under Subsection (a) against a prosecuting attorney is valid, or if

1 the attorney general otherwise has reason to believe that a
2 prosecuting attorney has violated or is violating Section
3 41.373(a), the attorney general may bring an action in a district
4 court of the attorney general's choosing for the removal from
5 office of the prosecuting attorney for violating Section 41.373(a).

6 (c) The petition must be addressed to the district judge of
7 the court in which it is filed. The petition must set forth the
8 grounds alleged for the removal of the prosecuting attorney in
9 plain and intelligible language.

10 (d) Notwithstanding any other law, including Chapter 15,
11 Civil Practice and Remedies Code, and Rule 86, Texas Rules of Civil
12 Procedure, an action brought by the attorney general under this
13 section may not be transferred to a different venue without the
14 written consent of all parties.

15 Sec. 41.377. REMOVAL BY PRIVATE ACTION. (a)
16 Notwithstanding any other law, including Chapter 87, Local
17 Government Code, and Chapter 15, Civil Practice and Remedies Code,
18 any resident of this state may bring an action in a district court
19 of that individual's choosing for the removal from office of a
20 prosecuting attorney in the county where that individual resides
21 for violating Section 41.373(a). At least one of the parties who
22 files the petition must swear to it at or before the filing.

23 (b) The petition must be addressed to the district judge of
24 the court in which it is filed. The petition must set forth the
25 grounds alleged for the removal of the prosecuting attorney in
26 plain and intelligible language.

27 (c) The attorney general may intervene in an action brought

1 under this section on the request of the person who brings the
2 action.

3 (d) Notwithstanding any other law, including Chapter 15,
4 Civil Practice and Remedies Code, and Rule 86, Texas Rules of Civil
5 Procedure, an action brought under this section may not be
6 transferred to a different venue without the written consent of all
7 parties.

8 Sec. 41.378. SUSPENSION PENDING TRIAL; TEMPORARY
9 APPOINTEE. (a) After a petition for removal is filed under Section
10 41.376 or 41.377, the district judge may temporarily suspend the
11 prosecuting attorney and may appoint another person to perform the
12 duties of the office.

13 (b) The judge may not suspend the prosecuting attorney until
14 the person appointed to serve executes a bond, with at least two
15 good and sufficient sureties, in an amount fixed by the judge and
16 conditioned as required by the judge. The bond shall be used to pay
17 damages and costs to the suspended prosecuting attorney if the
18 grounds for removal are found at trial to be insufficient or untrue.
19 In an action to recover on the bond, it is necessary to allege and
20 prove that the temporary appointee actively aided and instigated
21 the filing and prosecution of the removal action. The suspended
22 prosecuting attorney must also serve written notice on the
23 temporary appointee and the appointee's bondsman, within 90 days
24 after the date the bond is executed, stating that the attorney
25 intends to hold them liable on the bond and stating the grounds for
26 that liability.

27 (c) If the final judgment establishes the prosecuting

1 attorney's right to the office, the county that employs the
2 attorney shall pay the attorney from the general fund of the county
3 an amount equal to the compensation received by the temporary
4 appointee.

5 Sec. 41.379. TRIAL. (a) Prosecuting attorneys may be
6 removed under this subchapter only following a trial by jury.

7 (b) The trial for removal of a prosecuting attorney and the
8 proceedings connected with the trial shall be conducted as much as
9 possible in accordance with the rules and practice of the court in
10 other civil cases, in the name of the State of Texas, and on the
11 relation of the person filing the petition.

12 (c) Under a proper charge applicable to the facts of the
13 case, the judge shall instruct the jury to find from the evidence
14 whether the grounds for removal alleged in the petition are true.
15 If the petition alleges more than one ground for removal, the jury
16 shall indicate in the verdict which grounds are sustained by the
17 evidence and which are not sustained.

18 (d) Notwithstanding any other law, the attorney general
19 shall represent the state in a proceeding for removal brought under
20 Section 41.376. In a proceeding for removal brought under Section
21 41.377, the state may be represented by the attorney general or by
22 lawyers retained by the person filing the petition.

23 (e) Notwithstanding any other law, a prosecuting attorney
24 may not assert any immunity defense in a removal proceeding brought
25 under Section 41.376 or 41.377, including sovereign immunity,
26 governmental immunity, official immunity, prosecutorial immunity,
27 or qualified immunity, and all such immunity defenses are waived

1 and abolished in any removal proceeding brought under this
2 subchapter.

3 Sec. 41.380. REMOVAL FROM OFFICE. (a) If, after a jury
4 trial held by the district court, the prosecuting attorney is found
5 to have violated Section 41.373(a), the court shall immediately
6 order the prosecuting attorney removed from office. The order of
7 removal shall take effect immediately upon issuance and may not be
8 stayed pending appeal.

9 (b) The governor shall fill the vacancy by appointing a new
10 prosecuting attorney to finish the term of the removed prosecuting
11 attorney.

12 (c) The removed prosecuting attorney shall be restored to
13 office if:

14 (1) an appellate court judgment reversing the jury's
15 findings becomes final by the conclusion of direct appeal; and

16 (2) the term that the removed prosecuting attorney was
17 -serving at the time of the attorney's removal from office has not
18 expired.

19 Sec. 41.381. APPEAL. (a) Either party to a removal action
20 may appeal the final judgment to the court of appeals in the manner
21 provided for in other civil cases. If the prosecuting attorney has
22 not been suspended from office, the attorney is not required to post
23 an appeal bond but may be required to post a bond for costs.

24 (b) Notwithstanding any other law, an appeal of a removal
25 action takes precedence over the ordinary business of the court of
26 appeals and shall be decided with all convenient dispatch. If the
27 trial court judgment is not set aside or suspended, the court of

1 appeals shall issue its mandate in the case within five days after
2 the date the court renders its judgment.

3 Sec. 41.382. DISBARMENT. (a) In this section, "chief
4 disciplinary counsel" has the meaning assigned by Section 81.002.

5 (b) A prosecuting attorney performs an act that constitutes
6 professional misconduct and for which the prosecuting attorney's
7 license to practice law in this state shall be revoked if the
8 prosecuting attorney violates Section 41.373(a).

9 (c) On a prosecuting attorney's removal from office under
10 Section 41.380, the chief disciplinary counsel shall revoke the
11 prosecuting attorney's license to practice law in this state no
12 later than the 30th day from the date the order becomes final.

13 (d) If the chief disciplinary counsel fails to revoke the
14 prosecuting attorney's license to practice law in this state as
15 required by this section, then any resident of this state has
16 standing to bring and may bring an action for injunction or a writ
17 of mandamus directing the chief disciplinary counsel to comply with
18 the requirements of this section. Sovereign immunity, governmental
19 immunity, official immunity, and qualified immunity are waived and
20 abolished in any action brought under this subsection.

21 Sec. 41.383. REMOVAL PROCEEDINGS NONEXCLUSIVE. The removal
22 proceedings established in this subchapter are nonexclusive, and
23 they supplement and do not supplant the removal proceedings for
24 prosecuting attorneys established elsewhere in state law,
25 including the removal proceedings established in Chapter 87, Local
26 Government Code.

27 Sec. 41.384. IMMUNITIES. (a) Notwithstanding any other

1 law, the state and each of its officers and employees shall have
2 sovereign immunity, its political subdivisions and each of their
3 officers and employees shall have governmental immunity, and each
4 officer and employee of this state or a political subdivision shall
5 have official immunity, as well as sovereign or governmental
6 immunity, as appropriate, in any action, claim, counterclaim, or
7 any type of legal or equitable action that challenges the validity
8 of any provision or application of this subchapter, on
9 constitutional grounds or otherwise, or that seeks to prevent or
10 enjoin the state, its political subdivisions, or any officer,
11 employee, or agent of this state or a political subdivision from
12 enforcing any provision or application of this subchapter, or from
13 filing, hearing, adjudicating, or docketing a removal proceeding
14 brought under Section 41.376 or 41.377, unless that immunity has
15 been abrogated or preempted by federal law in a manner consistent
16 with the Constitution of the United States. The sovereign immunity
17 conferred by this section upon the state and each of its officers
18 and employees includes the constitutional sovereign immunity
19 recognized by the United States Supreme Court in *Seminole Tribe of*
20 *Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S.
21 706 (1999), which applies in both state and federal court and which
22 may not be abrogated by Congress or by any state or federal court
23 except pursuant to legislation authorized by Section 5 of the
24 Fourteenth Amendment, by the Bankruptcy Clause of Article I, by the
25 federal government's eminent domain powers, or by Congress's powers
26 to raise and support armies and to provide and maintain a navy.

27 (b) Notwithstanding any other law, the immunities conferred

1 by Subsection (a) shall apply in every court, both state and
2 federal, and in every adjudicative proceeding of any type
3 whatsoever.

4 (c) Notwithstanding any other law, no provision of state law
5 may be construed to waive or abrogate an immunity described in
6 Subsection (a) unless it expressly waives or abrogates immunity
7 with specific reference to this section.

8 (d) Notwithstanding any other law, no attorney representing
9 the state, its political subdivisions, or any officer, employee, or
10 agent of this state or a political subdivision is authorized or
11 permitted to waive an immunity described by Subsection (a) or take
12 any action that would result in a waiver of that immunity, and any
13 such action or purported waiver shall be regarded as a legal nullity
14 and an ultra vires act.

15 (e) Notwithstanding any other law, including Chapter 37,
16 Civil Practice and Remedies Code, and Sections 22.002, 22.221, and
17 24.007 through 24.011, Government Code, no court of this state may
18 award declaratory or injunctive relief, or any type of writ, that
19 would pronounce any provision or application of this subchapter
20 invalid or unconstitutional, or that would restrain the state; its
21 political subdivisions, any officer, employee, or agent of this
22 state or a political subdivision; or any person from enforcing any
23 provision or application of this subchapter, or from filing,
24 hearing, adjudicating, or docketing a removal proceeding brought
25 under Section 41.376 or 41.377, and no court of this state shall
26 have jurisdiction to consider any action, claim, or counterclaim
27 that seeks such relief.

1 (f) Nothing in this section or subchapter shall be construed
2 to prevent a litigant from asserting the invalidity or
3 unconstitutionality of any provision or application of this
4 subchapter as a defense to any action, claim, or counterclaim
5 brought against that litigant.

6 (g) Notwithstanding any other law, any judicial relief
7 issued by a court of this state that disregards the immunities
8 conferred by Subsection (a) or the limitations on jurisdiction and
9 relief imposed by Subsection (e) shall be regarded as a legal
10 nullity because it was issued by a court without jurisdiction, and
11 may not be enforced or obeyed by any officer, employee, or agent of
12 this state or a political subdivision, judicial or otherwise.

13 (h) Notwithstanding any other law, any writ, injunction, or
14 declaratory judgment issued by a court of this state that purports
15 to restrain the state; its political subdivisions; any officer,
16 employee, or agent of this state or a political subdivision; or any
17 person from filing, hearing, adjudicating, or docketing a removal
18 proceeding brought under Section 41.376 or 41.377 shall be regarded
19 as a legal nullity and a violation of the Due Process Clause of the
20 Fourteenth Amendment, and may not be enforced or obeyed by any
21 officer, employee, or agent of this state or a political
22 subdivision, judicial or otherwise.

23 SECTION 2. Chapter 614, Government Code, is amended by
24 adding Subchapter N to read as follows:

25 SUBCHAPTER N. RETALIATION PROHIBITED FOR CERTAIN COMPLAINTS

26 Sec. 614.251. DEFINITION. In this subchapter, "law
27 enforcement agency" means an agency of this state or a political

1 subdivision of this state that employs peace officers.

2 Sec. 614.252. PROHIBITION. A law enforcement agency may
3 not suspend or terminate the employment of, or take other adverse
4 personnel action against, a peace officer or other employee who in
5 good faith submits a complaint to the attorney general under
6 Section 41.376, including a complaint based on the refusal by a
7 prosecuting attorney to prosecute a criminal offense in connection
8 with an affidavit made by a peace officer or other employee alleging
9 that probable cause exists to believe a person committed a criminal
10 offense.

11 Sec. 614.253. RELIEF FOR PEACE OFFICER. (a) A peace
12 officer or other employee whose employment is suspended or
13 terminated or who is subjected to an adverse personnel action in
14 violation of Section 614.252 may bring an action for:

- 15 (1) injunctive relief;
16 (2) compensatory damages;
17 (3) court costs; and
18 (4) reasonable attorney's fees.

19 (b) In addition to relief under Subsection (a), a peace
20 officer or employee whose employment is suspended or terminated in
21 violation of Section 614.252 is entitled to:

- 22 (1) reinstatement to the officer's or employee's
23 former position or an equivalent position;
24 (2) compensation for wages lost during the period of
25 suspension or termination; and
26 (3) reinstatement of fringe benefits and seniority
27 rights lost because of the suspension or termination.

1 Sec. 614.254. WAIVER OF IMMUNITY. Sovereign and
2 governmental immunity to suit and from liability is waived to the
3 extent of liability created by this subchapter.

4 Sec. 614.255. NOTICE TO PEACE OFFICERS. (a) A law
5 enforcement agency shall inform its employees of their rights under
6 this subchapter by posting a sign in a prominent and visible
7 location in the agency.

8 (b) The attorney general shall prescribe the design and
9 content of the sign required by this section.

10 SECTION 3. Subchapter A, Chapter 87, Local Government Code,
11 is amended by adding Section 87.002 to read as follows:

12 Sec. 87.002. REMOVAL PROCEEDINGS NONEXCLUSIVE. The removal
13 proceedings established in this chapter are nonexclusive, and they
14 supplement and do not supplant the removal proceedings established
15 elsewhere in state law, including the removal proceedings for
16 prosecuting attorneys established in Chapter 41, Government Code.

17 SECTION 4. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2023.