By: Cook of Harris S.B. No. 369

A BILL TO BE ENTITLED

AN ACT

relating to the use of facial coverings in law enforcement; creating a criminal offense.

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

SECTION 1. Chapter 2B, Code of Criminal Procedure, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. FACIAL COVERINGS

Art. 2B.0351. DEFINITION. In this subchapter, "facial covering" has the meaning assigned by Section 39.08, Penal Code.

Art. 2B.0352. LAW ENFORCEMENT AGENCY POLICY ON FACIAL COVERING. Each law enforcement agency shall adopt and post on the agency's Internet website a policy prohibiting a peace officer from using a facial covering in the performance of the officer's duties unless the officer is wearing the covering for a purpose described by Section 39.08(d), Penal Code.

Art. 2B.0353. DENIAL OF STATE GRANT FUNDS. (a) A law enforcement agency that fails to maintain a policy that complies with the requirements of Article 2B.0352 may not receive state grant funds during the period of noncompliance, and any application for such funds pending during that period shall be denied.

(b) The comptroller shall adopt rules to implement Subsection (a) uniformly among the state agencies from which state grant funds are distributed to local law enforcement agencies.

SECTION 2. Chapter 39, Penal Code, is amended by adding

Section 39.08 to read as follows:

Sec. 39.08. UNLAWFUL USE OF FACIAL COVERING BY LAW ENFORCEMENT OFFICER. (a) In this section, "facial covering" means a mask, helmet, or other similar accessory that, when worn on or about the wearer's face or head, conceals or obscures the identity of the wearer, including a balaclava, tactical mask, gaiter, or ski mask. The term does not include:

(1) a translucent face shield or clear mask that does not conceal the wearer's identity;

(2) a respirator or surgical mask used to protect against the transmission of disease or infection;

(3) a gas mask or other breathing apparatus necessary to protect the wearer from a toxin, a gas, smoke, or another hazardous environmental condition;

(4) a mask, helmet, or device necessary for underwater respiration, including scuba diving equipment; or

(5) eyewear necessary to protect the wearer from the use of retinal weapons, including a laser.

(b) A peace officer, a law enforcement officer of another state or the federal government, or a person acting on behalf of a law enforcement officer of another state or the federal government commits an offense if the officer or person knowingly wears a facial covering in the performance of the officer's or person's duties.

(c) An offense under this section is a Class A misdemeanor.

(d) It is an exception to the application of this section that the officer or person, as applicable, wore the facial covering for purposes of:

(1) participating in an active undercover operation or assignment authorized by the law enforcement agency that employs the officer;

(2) compliance with an applicable occupational health and safety law or regulation;

(3) the safe operation of a motorcycle or other vehicle operated by the officer or person in the performance of the officer's or person's duties; or

(4) protecting the officer's identity during a court proceeding.

SECTION 3. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 108A to read as follows:

CHAPTER 108A. PEACE OFFICER LIABILITY ARISING FROM USE OF FACIAL COVERING

Sec. 108A.001. DEFINITION. In this chapter, "peace officer" has the meaning assigned by Section 1.07, Penal Code, and includes a law enforcement officer of another state or the federal government, or a person acting on behalf of a law enforcement officer of another state or the federal government.

Sec. 108A.002. APPLICABILITY OF CHAPTER. This chapter applies only to an action:

(1) brought against a peace officer arising from the officer's conduct while the officer was wearing a facial covering in violation of Section 39.08, Penal Code; and

(2) that alleges one of the following causes of action:

(A) assault;

(B) battery;

(C) false imprisonment;

(D) false arrest; or

(E) abuse of process.

Sec. 108A.003. PROHIBITED DEFENSE. A peace officer may not assert official immunity as a defense to an action subject to this chapter.

Sec. 108A.004. MINIMUM DAMAGES. Notwithstanding any other law, in an action subject to this chapter, a prevailing claimant is entitled to recover the greater of:

(1) actual damages; or

(2) statutory damages in the amount of $10,000.

SECTION 4. Not later than December 1, 2027, each law enforcement agency in this state shall adopt the policy required by Article 2B.0352, Code of Criminal Procedure, as added by this Act.

SECTION 5. Chapter 108A, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after January 1, 2028.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2027.

(b) Section 39.08, Penal Code, as added by this Act, takes effect January 1, 2028.