

BILL ANALYSIS

Senate Research Center
88S10097 JRR-F

S.B. 2
By: Birdwell
Border Security
6/2/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Throughout the interim hearings for the Senate Committee on Border Security, landowners, residents, and businesses from border regions testified that they no longer feel safe on their land and they have witnessed firsthand the devastation and destruction as a result of federal abdication of border security. The impact of the border crisis has advanced beyond the border counties and is impacting communities throughout Texas.

Texas reached a record number of illegal immigrant apprehensions in fiscal year 2022, with over 1 million apprehensions in Texas Sectors. As a result of the federal government's unwillingness to enforce federal immigration laws and secure our southern border, the State of Texas has stepped up and devoted time and resources to combat the unprecedented border crisis that the state is facing.

S.B. 2 continues this effort by creating a new state crime for illegally entering the State of Texas from a foreign nation. S.B. 2 authorizes state law enforcement to arrest and prosecute individuals who illegally cross the border anywhere in the state. Punishment for an offense under this section can range from a misdemeanor offense risking one year in jail for first-time offenders up to life in prison for felons convicted of the most serious crimes with multiple illegal entries.

As proposed, S.B. 2 amends current law relating to the creation of the criminal offense of improper entry from a foreign nation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Penal Code, by adding Section 38.20, as follows:

Sec. 38.20. IMPROPER ENTRY FROM FOREIGN NATION. (a) Defines "alien."

(b) Provides that a person who is an alien commits an offense if the person:

- (1) enters or attempts to enter this state from a foreign nation at any location other than a lawful point of entry;
- (2) eludes examination or inspection by United States immigration officers; or
- (3) attempts to enter or obtains entry to this state from a foreign nation by an intentionally false or misleading representation or the intentional concealment of a material fact.

(c) Provides that an offense under this section is a Class A misdemeanor, except that if it is shown on the trial of the offense that the person has previously been finally convicted of:

(1) an offense under this section, the offense is a state jail felony;

(2) a state jail felony described by Subdivision (1) or any other felony not listed in Article 42A.054(a) (relating to providing that Article 42A.053 (Judge-Ordered Community Supervision) does not apply to a defendant adjudged guilty of an offense under certain sections), Code of Criminal Procedure, the offense is a felony of the second degree; or

(3) a felony listed in Article 42A.054(a), Code of Criminal Procedure, the offense is a felony of the first degree.

(d) Provides that it is an affirmative defense to prosecution under this section that:

(1) the actor has been granted a federal immigration benefit entitling the actor to:

(A) lawful presence in the United States; or

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

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

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

(e) Provides that the following federal programs, for purposes of Subsection (d)(1), do not confer federal immigration benefits entitling the actor to lawful presence in the United States:

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

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

(f) Prohibits a court from abating the prosecution of an offense under this section on the basis that a federal determination regarding the immigration status of the actor is pending.

(g) Requires a law enforcement officer of the Department of Public Safety of the State of Texas who arrests a person for an offense under this section, to the extent feasible, to detain the person in a facility established under Operation Lone Star or a similar border security operation of this state.

SECTION 2. Severability clause.

SECTION 3. Effective date: August 1, 2023, or the 91st day after the last day of the legislative session.