

BILL ANALYSIS

Senate Research Center
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S.B. 4
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Senate Bill 4 looks to prohibit "sanctuary city" policies, that prohibit local law enforcement from inquiring about a person's immigration status and complying with detainer requests. These policies often also prohibit the sharing of information regarding a person's immigration status with the federal government.

Opponents of such policies argue that the state should pass legislation that prohibits cities and other government entities from the creation and enforcement of policies and ordinances that prohibit or impede the enforcement of state and federal immigration law.

S.B. 4 amends current law relating to the enforcement of state and federal laws governing immigration by certain governmental entities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 3 (Section 346.006, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Articles 2.251, 2.252, and 2.253, as follows:

Art. 2.251. ENFORCEMENT OF FEDERAL IMMIGRATION LAW. (a) Prohibits a peace officer from stopping a motor vehicle or conducting a search of a business or residence solely to enforce a federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.), unless the officer is acting at the request of, and providing assistance to, an appropriate federal law enforcement officer or under the terms of an agreement between the law enforcement agency employing the officer and the federal government under which the agency receives delegated authority to enforce federal law relating to immigrants or immigration.

(b) Authorizes a peace officer to arrest an undocumented person only if the officer is acting under the authority granted under Article 2.13 (Duties and Powers).

Art. 2.252. DUTIES RELATED TO CERTAIN ARRESTED PERSONS. (a) Requires a law enforcement agency performing the booking process, if a person is arrested and is unable to provide proof of the person's lawful presence in the United States, not later than 48 hours after the person is arrested and before the person is released on bond, to:

(1) review any available information from the federal Priority Enforcement Program operated by United States Immigration and Customs Enforcement (ICE) or a successor program; and

(2) if information obtained reveals that the person is not a citizen or national of the United States and is unlawfully present in the United States:

(A) provide notice of that fact to the judge or magistrate authorized to grant or deny the person's release on bail under Chapter 17 (Bail); and

(B) record that fact in the person's case file.

(b) Provides that a law enforcement agency is not required to perform a duty imposed by Subsection (a) with respect to a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed that duty before transferring custody of the person.

(c) Requires a judge or magistrate who receives notice of a person's immigration status to record that status in the court record.

Art. 2.253. DUTIES RELATED TO IMMIGRATION DETAINER. (a) Requires a law enforcement agency that has custody of a person subject to an immigration detainer issued by ICE to:

(1) provide to the judge or magistrate authorized to grant or deny the person's release on bail under Chapter 17 (Bail) notice that the person is subject to an immigration detainer;

(2) record in the person's case file that the person is subject to an immigration detainer; and

(1) comply with, honor, and fulfill the requests made in the detainer.

(b) Provides that a law enforcement agency is not required to perform a duty imposed by Subsection (a)(1) or (2) with respect to a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed that duty before transferring custody of the person.

(c) Requires a judge or magistrate who receives notice that a person is subject to a detainer to record that fact in the court record, regardless of whether the notice is received before or after a judgment in the case.

SECTION 2. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.039, as follows:

Art. 42.039. RELEASE INTO FEDERAL CUSTODY. (a) Provides that this article applies only to a criminal case in which the judgment requires the defendant to be confined in a secure correctional facility and the judge indicates in the record that the defendant is subject to an immigration detainer or otherwise indicates in the record that the defendant is subject to a transfer into federal custody.

(b) Requires the judge, at the time of the pronouncement of a sentence of confinement in applicable criminal cases, to issue an order requiring the secure correctional facility in which the defendant is to be confined to reduce the defendant's sentence by a period of not more than seven days on the facility's determination that the reduction in sentence will facilitate the seamless transfer of the defendant into federal custody.

(c) Requires the judge to issue the order as soon as the information becomes available, if the applicable information described by Subsection (a) is not available at the time sentence is pronounced in the case.

(d) Defines "secure correctional facility."

SECTION 3. Amends Subtitle C, Title 11, Local Government Code, by adding Chapter 364, as follows:

CHAPTER 364. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION
LAWS

Sec. 364.001. DEFINITIONS. Defines "immigration detainer," "immigration laws," "lawful detention," "local entity," and "policy."

Sec. 364.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter does not apply to a school district or open-enrollment charter school or to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(b) Provides that this chapter does not apply to certain hospitals or certain hospital districts, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under certain enumerated federal or state laws.

(c) Provides that Subsection (b) does not exclude the application of this chapter to a commissioned peace officer employed or commissioned by a hospital or hospital district subject to Subsection (b).

Sec. 364.003. LOCAL GOVERNMENT POLICY REGARDING IMMIGRATION ENFORCEMENT. (a) Prohibits a local entity from adopting, enforcing, or endorsing a policy under which the entity prohibits or discourages the enforcement of immigration laws.

(b) Prohibits a local entity from prohibiting or discouraging a person who is a commissioned peace officer described by Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, and certain other related professionals from doing any of following:

(1) inquiring into the immigration status of a person under a lawful detention or under arrest;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest:

(A) sending the information to, or requesting or receiving the information from United States Citizenship and Immigration Services or ICE, including information regarding a person's place of birth;

(B) maintaining the information; or

(C) exchanging the information with another local entity or a federal or state governmental entity;

(3) assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a municipal or county jail to enforce federal immigration laws.

Sec. 364.004. DISCRIMINATION PROHIBITED. Prohibits a local entity or a person employed by or otherwise under the direction or control of the entity from considering race, color, language, or national origin while enforcing immigration laws except to the extent permitted by United States Constitution or Texas Constitution.

Sec. 364.005. COMPLAINT; EQUITABLE RELIEF. (a) Authorizes any person, including the federal government, to file a complaint with the attorney general if the person offers evidence to support an allegation that a local entity has adopted, enforced, or endorsed a policy under which the entity prohibits or discourages the enforcement of immigration laws or that the entity, by consistent actions, prohibits or discourages the enforcement of those laws. Requires the person to include with the complaint the evidence the person has that supports the complaint.

(b) Requires a local entity for which the attorney general has received a complaint to comply with a document request, including a request for supporting documents, from the attorney general related to the complaint.

(c) Requires the attorney general, if the attorney general determines that a complaint filed against a local entity is valid, to provide written notification to the entity, not later than the 10th day after the date of the determination, that:

(1) the complaint has been filed;

(2) the attorney general has determined that the complaint is valid;

(3) the attorney general is authorized to file an action to enjoin the violation if the entity does not come into compliance with the requirements on or before the 90th day after the date the notification is provided; and

(4) the entity will be denied state grant funds for the state fiscal year following the year in which a final judicial determination in an action brought under Subsection (e) is made.

(d) Requires the local entity to provide the attorney general, not later than the 30th day after the day a local entity receives written notification, with a copy of:

(1) the entity's written policies related to immigration enforcement actions;

(2) each immigration detainer received by the entity from the United States Department of Homeland Security; and

(3) each response sent by the entity for a detainer.

(e) Authorizes the attorney general to take certain legal actions to compel the local entity if the attorney general determines that a complaint filed against the entity is valid. Authorizes the attorney general to recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) Provides that an appeal of a suit is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. Requires the appellate court to render its final order or judgment with the least possible delay.

Sec. 364.006. DENIAL OF STATE GRANT FUNDS. (a) Prohibits a local entity from receiving state grant funds if the entity adopts, enforces, or endorses a policy under which the entity prohibits or discourages the enforcement of immigration laws or, by consistent actions, prohibits or discourages the enforcement of immigration laws.

(b) Requires that state grant funds for a local entity be denied for the state fiscal year following the year in which a final judicial determination in an action is made that the entity has intentionally prohibited or discouraged the enforcement of immigration laws.

(c) Requires the Comptroller of Public Accounts of the State of Texas to adopt rules to implement this section uniformly among the state agencies from which state grant funds are distributed to a municipality or county.

(d) Provides that a local entity that has not violated Section 364.003 may not be denied state grant funds, regardless of whether the entity is a part of another entity that is in violation of that section.

SECTION 4. Requires each local law enforcement agency subject to this Act, not later than January 1, 2018, to:

(1) formalize in writing any unwritten, informal policies relating to the enforcement of immigration laws; and

(2) update the agency's policies to be consistent with this Act and to include provisions prohibiting an agency officer or employee from preventing agency personnel from taking immigration enforcement actions described by Section 364.003, Local Government Code, as added by this Act, and provisions requiring each agency officer or employee to comply with Articles 2.251, 2.252, and 2.253, Code of Criminal Procedures, as added by this Act, if applicable.

SECTION 5. Effective date: upon passage or September 1, 2017.