

2024 Regular Session

SENATE BILL NO. 388

BY SENATORS HODGES AND KLEINPETER

CRIME/PUNISHMENT. Creates the crime of unlawful entry or reentry into the state of Louisiana by an alien. (See Act)

1 AN ACT

2 To enact Subpart E of Part VI of Chapter 1 of Title 14 of the Louisiana Revised Statutes of  
3 1950, to be comprised of R.S. 14:112.21 through 112.23, and R.S. 49:216, relative  
4 to offenses affecting the public; to deter unlawful entry into this state by certain  
5 persons; to create the crime of unlawful entry or reentry by an alien; to prohibit  
6 abatement or termination of prosecutions under certain circumstances; to provide  
7 definitions; to provide penalties; to authorize the governor to develop and negotiate  
8 an interstate compact to deter unlawful entry or reentry into this state with the  
9 assistance of the attorney general; to provide for severability; to provide for effective  
10 dates; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Subpart E of Part VI of Chapter 1 of Title 14 of the Louisiana Revised  
13 Statutes of 1950, comprised of R.S. 14:112.21 through 112.23, is hereby enacted to read as  
14 follows:

15 **SUBPART E. UNLAWFUL ENTRY INTO THIS STATE BY AN ALIEN**

16 **§112.21. Definitions**

17 **For purposes of this Subpart:**

1           **(1) "Alien" means a person who is unlawfully present in this state and**  
2           **shall have the same meaning as "alien" is defined by 8 U.S.C. Section 1101.**

3           **(2) "Lawfully present in this state" or "lawful presence in this state"**  
4           **means a person within the borders of this state who is either:**

5           **(a) A natural person who is a United States citizen, regardless of whether**  
6           **the United States citizenship was acquired by birth or granted because the**  
7           **person has met the requirements for asylum established by the United States**  
8           **Congress in the Immigration and Nationality Act, in particular 8 U.S.C. 1158.**

9           **(b) Legally present in this state by virtue of authorization by the United**  
10           **States Department of Homeland Security on the basis of any one of the**  
11           **following:**

12           **(i) The person is a permanent legal resident.**

13           **(ii) The person holds an unexpired student visa.**

14           **(iii) The person holds an unexpired work permit.**

15           **(c) Legally present or entitled to be present in the United States pursuant**  
16           **to an unexpired visitor or tourist visa, or pursuant to any other provision of**  
17           **federal law.**

18           **(3) "Unlawfully enters into this state" means an alien who is found**  
19           **entering or has entered into this state by automobile, watercraft, airplane, or**  
20           **any other method of entry or means of conveyance, whether or not entry is**  
21           **made directly from a foreign nation or indirectly from another state, without**  
22           **lawful presence in this state.**

23           **(4) "Unlawfully reenters into this state" means that an alien has entered,**  
24           **attempted to enter, or at any time is found in this state after the alien has been**  
25           **found to have been subject to any of the following:**

26           **(a) Denied admission, excluded, deported, or otherwise removed from**  
27           **the United States.**

28           **(b) Departed from the United States while an order of exclusion,**  
29           **deportation, or removal is outstanding.**

1           **§112.22. Unlawful entry or reentry into the state of Louisiana by an alien**

2                   **A.(1) Unlawful entry into this state by an alien is committed when an**  
3                   **alien unlawfully enters into this state.**

4                   **(2) Unlawful reentry into this state by an alien is committed when an**  
5                   **alien unlawfully reenters into this state.**

6                   **B.(1) Whoever violates the provisions of Subsection A of this Section**  
7                   **upon a first offense shall be imprisoned for not more than one year, fined not**  
8                   **more than four thousand dollars, or both.**

9                   **(2) Whoever violates the provisions of Subsection A of this Section upon**  
10                   **a second or subsequent offense shall be imprisoned, with or without hard labor,**  
11                   **for not less than six months nor more than two years, fined not more than ten**  
12                   **thousand dollars, or both.**

13                   **C. It shall be an affirmative defense to a prosecution for a violation of**  
14                   **Subsection A of this Section that either:**

15                   **(1) The defendant is lawfully present in this state because the federal**  
16                   **government has granted the defendant lawful presence in the United States or**  
17                   **asylum pursuant to 8 U.S.C. Section 1158.**

18                   **(2) The defendant's conduct does not constitute a violation of 8 U.S.C.**  
19                   **Section 1325(a), relative to illegal entry into the United States.**

20                   **D. This Section shall not apply to an alien unlawfully present in the**  
21                   **United States if he has been a necessary witness to or victim of a crime of**  
22                   **domestic violence, rape, sexual exploitation, sexual assault, murder,**  
23                   **manslaughter, assault, battery, human trafficking, kidnapping, false**  
24                   **imprisonment, involuntary servitude, fraud in foreign labor contracting,**  
25                   **blackmail, extortion, or witness tampering.**

26           **§112.23. Abatement or termination of prosecution on basis of an immigration**  
27                   **status determination**

28                   **No court shall abate or terminate the prosecution of an offense pursuant**  
29                   **to this Subpart on the basis that a federal determination regarding the**

1 immigration status of the defendant has not been determined or may possibly  
2 be initiated at a future date.

3 Section 2. R.S. 49:216 is hereby enacted to read as follows:

4 §216. Interstate compact for border security; deterrence of unlawful entry into  
5 this state; procedures; assistance; approval; purposes; legislative  
6 findings

7 A. This Section shall be known and may be cited as the "Interstate  
8 Compact for Border Security Act".

9 B. The purpose of this compact is to deter unlawful entry and unlawful  
10 reentry into this state by an alien, as defined by R.S. 14:112.21, and to join with  
11 other states in mutual assistance in order for border states to control the influx  
12 with respect to illegal immigration that consequentially threatens the safety and  
13 security of Louisiana citizens.

14 C. The legislature finds all of the following:

15 (1) In 2024, an executive order was issued by Governor Jeff Landry,  
16 JML 24-05, entitled "Identifying, Qualifying, and Mitigating the Adverse  
17 Effects of Illegal Immigration on Louisiana" and provided findings, as follows:

18 (a) "[I]llegal entry and reentry to the United States, as well as the  
19 encouragement and inducement of illegal entry and transportation of illegal  
20 aliens within the United States, are criminal offenses under federal law, and  
21 those who aid and abet these offenses also commit a criminal act."

22 (b) "[T]he United States Supreme Court has recognized States 'bear[]  
23 many of the consequences of unlawful immigration.' *Arizona v. United States,*  
24 567 U.S. 387, 397 (2012)."

25 (c) As a result of the federal government's "non-enforcement policies,  
26 large numbers of aliens who commit subsequent crimes are [being] released into  
27 communities across the United States," including Louisiana, "rather than being  
28 detained or removed, allowing these criminal aliens to commit additional crimes  
29 and increase the number of victims".

1           (d) "[S]tates are financially burdened by the cost of incarcerating illegal  
2           aliens in their prison systems. Although the U.S. Department of Justice provides  
3           limited funding to the states to offset some of these costs...reimbursements are  
4           usually less than one percent of the total cost of incarcerating aliens, leaving the  
5           states," including Louisiana, "to pay the balance".

6           (e) "Article I, Section 1 of the Louisiana Constitution declares that  
7           government is instituted by the people 'to protect the rights of the individual  
8           and for the good of the whole. Its only legitimate ends are to secure justice for  
9           all, preserve peace, protect the rights, and promote the happiness and general  
10          welfare of the people.'"

11          (2) In his executive order, the governor directed the head of every  
12          executive branch agency, department, office, commission, board, or entity of the  
13          State of Louisiana shall . . .review the expenditures of public funds directly or  
14          indirectly to, or for the benefit of illegal aliens.

15          (3) In the 2024 Second Extraordinary Session of the Louisiana  
16          Legislature, the legislature appropriated funds and the governor issued an  
17          executive order to deploy the Louisiana National Guard to assist the state of  
18          Texas in securing the southern border of the United States of America to curb  
19          the invasion by illegal immigrants at the international border in South Texas.

20          (4) The economic and human costs born by the taxpayers and citizens of  
21          Louisiana include all of the following:

22                (a) Increased violent crimes are being committed against Louisiana  
23                citizens by illegal immigrants. Each murder committed by an illegal alien is one  
24                hundred percent preventable if that illegal alien had been barred from entering  
25                the state by the federal government, which has been derelict in its duty to  
26                enforce immigration laws.

27                (b) Schools and school teachers have been overburdened by the  
28                unfunded mandates forced on Louisiana schools by the federal government. The  
29                letter grades for certain school districts have been substantially lowered due to

1 school overcrowding, the lack of certified teachers who are bilingual, and the  
2 lack of a local tax base needed to pay the bilingual teachers even if they were  
3 available.

4 D. The governor, with the legal assistance of the attorney general, is  
5 hereby authorized to negotiate and assist the state of Texas in an interstate  
6 compact for border security among interested states with the governor of the  
7 state of Texas in securing the southern border of the United States of America.

8 E. Any interstate compact that may be developed and executed under the  
9 authority of this Section shall, in order to take effect, represent a voluntary  
10 association of sovereign states of this United States of America, with the  
11 understanding that any such interstate compact shall not in any way increase  
12 the political authority of the compacting states in relation to the federal  
13 government or in any other manner that violates the Constitution of the United  
14 States of America.

15 F. The interstate compact authorized by this Section shall provide for  
16 joint action among the states that participate in the compact to pursue all  
17 security priorities, as follows:

18 (1) Sharing of law enforcement intelligence on illegal activity occurring  
19 at or in proximity to the United States-Mexico border.

20 (2) Sharing of state resources in order to build physical barriers,  
21 comprehensive technological surveillance systems, or combinations of barriers  
22 and surveillance systems on state property for the purposes of deterring and  
23 detecting illegal activity at or in proximity to the United States-Mexico border.

24 (3) Sharing of other law enforcement resources to ensure the protection  
25 of personnel and property of citizens of the states participating in the compact.

26 G. Once the governor, with the assistance of the attorney general,  
27 negotiates and assists the governor of the state of Texas with preparation and  
28 finalization of the compact to secure the United States-Mexico border, the  
29 governor shall promptly submit the Interstate Compact for Border Security to

1           **the legislature for approval and the appropriation of necessary funds to fulfill**  
2           **the purposes provided for in Subsection F of this Section.**

3           Section 3. If any provision or item of this Act, or the application thereof, is held  
4           invalid, such invalidity shall not affect other provisions, items, or applications of the Act  
5           which can be given effect without the invalid provision, item, or application and to this end  
6           the provisions of this Act are hereby declared severable.

7           Section 4. The provisions of this Section and Section 1 shall take effect on and  
8           become effective immediately upon, and to the extent permitted, by the occurrence of any  
9           of the following circumstances:

10           (A) Any decision of the Supreme Court of the United States in the case of *United*  
11           *States v. Texas*, Docket No. 23A814, which affirms the Act which originated as Texas  
12           Senate Bill No. 4 of the 2023 88th Legislature Fourth Called Legislative Session of the  
13           Texas Legislature, which enacted Texas Penal Code Section 51.01 et seq, entitled "Illegal  
14           Entry Into the State", that recognizes the right of states to protect their citizens of their  
15           respective states when "actually invaded, or in such imminent Danger as will not admit  
16           delay", pursuant to Article 1, Section 10 of the Constitution of the United States of America.

17           (B) Adoption of an amendment to the Constitution of the United States of America  
18           that, in whole or in part, restores or increases the authority of the state of Louisiana to  
19           prohibit or limit the unlawful entry or reentry by an alien without lawful presence in this  
20           state should the Supreme Court of the United States fail to affirm the provisions of  
21           Subsection A of this Section.

22           Section 5. The provisions of this Section and Section 2 of this Act shall become  
23           effective upon any executive order or other such executive action by the governor of the  
24           state of Texas in furtherance of the Act which originated as Texas Senate Bill No. 1403 of  
25           the 2023 Regular Session of the 88th Texas Legislature, which enacted Texas Government  
26           Code Section 794 et seq, entitled "Interstate Compact for Border Security" which authorizes  
27           the governor of the state of Texas to develop and execute an interstate compact for border  
28           security for among interested states.

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The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Alden A. Clement, Jr.

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DIGEST

SB 388 Engrossed                      2024 Regular Session                      Hodges

Proposed law creates the crime of unlawful entry or reentry into the state of Louisiana by an alien. Proposed law provides that the crime of unlawful entry or reentry into the state of Louisiana by an alien is committed when a person who is an alien unlawfully enters into this state. Proposed law defines "unlawfully enters" as alien without lawful presence in this state who is found entering or has entered into the state, whether by automobile, watercraft, airplane, or by any other method or means of conveyance, either directly from a foreign nation or indirectly from another state.

Proposed law provides that the crime of unlawful reentry by an alien is committed when an alien has unlawfully reentered into this state. Proposed law defines "unlawfully reenters" to mean an alien without lawful presence in this state who has entered, attempted to enter, or at any time is found in this state after the person has been found to have been denied admission, excluded, deported, or otherwise removed from the U.S. or departed from the U.S. while an order of exclusion, deportation, or removal is outstanding.

Proposed law defines "lawfully present in this state" as:

- (1) A natural person who is a U.S. citizen, regardless of whether citizenship was acquired by birth or granted because the person has met the requirements for asylum established by Congress in the Immigration and Nationality Act.
- (2) Legally present in this state by virtue of authorization by the U.S. Dept. of Homeland Security on the basis of any one of the following:
  - (a) The person is a permanent legal resident.
  - (b) The person holds an unexpired student visa.
  - (c) The person holds an unexpired work permit.
- (3) Legally present or entitled to be present in the U.S. pursuant to an unexpired visitor or tourist visa or pursuant to any other provision of federal law.

A violation of proposed law is punishable by imprisonment for up to one year, or a fine of up to \$4,000, or both. A second or subsequent violation of proposed law is punishable by imprisonment, with or without hard labor, for between six months and two years, a fine of up to \$10,000, or both.

Proposed law provides an affirmative defense to a prosecution if the federal government has granted the defendant lawful presence or asylum in the U.S. or the defendant's conduct does not violate federal law relative to illegal entry into the U.S.

Proposed law does not apply to an alien unlawfully present in the U.S. if he has been a necessary witness to or victim of a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering.

Proposed law provides that a court cannot abate or terminate the prosecution of a violation of proposed law on the basis that a federal determination regarding the immigration status



of the defendant has not been determined or may possibly be initiated at a future date.

In an effort to further deter unlawful entry or reentry into the state, proposed law provides for an interstate compact for border security.

Present constitution provides that Louisiana's government is instituted by the people to protect the rights of the individual for the good of the whole and state government's only legitimate ends are to secure justice for all, preserve peace, protect rights, and to promote the happiness and general welfare of the people.

Proposed law authorizes the governor, with the assistance of the attorney general, to assist the governor of the state of Texas to establish an interstate compact for border security at the southern border at the U.S.-Mexico border to control the influx with respect to illegal immigration that threatens the safety and security of La. citizens.

Proposed law provides legislative finding, as follows:

- (1) In 2024, an executive order was issued by Governor Jeff Landry, JML 24-05, entitled "Identifying, Qualifying, and Mitigating the Adverse Effects of Illegal Immigration on Louisiana". The executive order found that illegal entry and reentry to the U.S., as well as the encouragement and inducement of illegal entry and transportation of illegal aliens within the U.S., are criminal offenses under federal law, and those who aid and abet these offenses also commit a criminal act. The state of Louisiana bears 99% of the costs due to incarcerating illegal immigrants who commit secondary crimes in Louisiana other than unlawful entry by an alien.
- (2) The U.S. Supreme Court has recognized that states bear the consequences of unlawful immigration.
- (3) Open border policies by the federal government result in increased prison overcrowding, overcrowding at Louisiana schools, and threaten the state and local tax base of Louisiana citizens.
- (4) In the 2024 Second Extraordinary Session, the legislature appropriated funds and the governor issued an executive order to deploy the La. National Guard to assist the state of Texas in securing the southern border of the U.S., in order to curb the invasion by illegal immigrants at the international border in Texas.

Proposed law provides that the governor, with the legal assistance of the attorney general, is hereby authorized to negotiate an interstate compact with the governor of Texas to assist Texas in securing the border.

Proposed law provides that this interstate compact may do all of the following:

- (1) Share law enforcement intelligence on illegal activity occurring at or in proximity to the U.S.-Mexico border.
- (2) Share state resources in order to build physical barriers, comprehensive technological surveillance systems, or combinations of barriers and surveillance systems on state property for the purposes of detecting and deterring illegal activity at or in proximity to the U.S.-Mexico border.
- (3) Share law enforcement resources to ensure the protection of personnel and property of the citizens of the states participating in the compact.

Proposed law provides that once the governor, with the assistance of the attorney general, has negotiated and assisted the governor of Texas with preparation and Texas finalizes the compact to protect its southern border, the governor will promptly submit the Interstate

Compact for Border Security to the legislature for approval, and for the purposes of appropriating necessary funds to fulfill the purposes of proposed law.

Proposed law provides that if any provision or item of proposed law, or the application thereof, is held invalid by a court, the invalid portion will be severed and the rest of proposed law will be valid.

Proposed law provides that the portion of proposed law that creates the crime of unlawful entry by an illegal alien without lawful presence in this state is to become effective immediately upon, and to the extent permitted by, the occurrence of any of the following:

- (1) Any decision of the U.S. Supreme Court in *U.S. v. Texas* that affirms the Act which originated as Texas Senate Bill No. 4 of the 2023 88th Legislature Fourth Called Legislative Session of the Texas Legislature, which enacted the Texas Penal Code provision entitled "Illegal Entry Into the State", which recognizes the right of states to protect their citizens when "actually invaded, or in such imminent Danger as will not admit delay," pursuant to Art. 1, Section 10 of the Constitution of the U.S.
- (2) Adoption of an amendment to the U.S. Constitution that, in whole or in part, restores or increases the authority of Louisiana to prohibit or limit the unlawful entry or reentry by an illegal alien into Louisiana should the U.S. Supreme Court fail to affirm the provisions of Texas Senate Bill No. 4.

Further, proposed law is to become effective upon any executive order or other executive action by the Texas governor in furtherance of the Act by the Texas legislature that provides for the "Interstate Compact for Border Security," which authorizes the governor of Texas to develop and execute an interstate compact for border security for among interested states.

(Adds R.S. 14:112.21-112.23 and R.S. 49:216)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Add that persons lawfully present in the U.S. pursuant to a tourist visa or other provisions of federal law are exempt from certain provisions of proposed law.
2. Add that proposed law does not apply to an alien unlawfully present in the U.S. if he has been a necessary witness to or victim of certain crimes.
2. Make technical changes.