
 DIGEST

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SB 388 Engrossed

2024 Regular Session

Hodges

Proposed law creates the crime of unlawful entry or reentry into the state of La. by an alien.

Proposed law provides that the crime of unlawful entry or reentry into the state of La. by an alien is committed when an alien enters or reenters into this state and is unlawfully present in this state.

Proposed law provides that "unlawful entry" refers to an alien 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, without lawful presence in this state. Proposed law provides that "unlawful reentry" refers to an alien 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, without lawful presence in this state.

Proposed law defines "lawfully present in this state" or "lawful presence 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.

Proposed law provides that "unlawfully present in this state" or "unlawful presence in this state" refers to an alien who is not lawfully present in this state because the alien does not meet the definition of "lawfully present in this state" or "lawful presence in this state".

A violation of proposed law is punishable by imprisonment for up to six months, or a fine of up to \$1,000, or both. Further provides that a second or subsequent violation of proposed law is punishable by imprisonment, with or without hard labor, for not less than one year and not more than two years, a fine of up to \$10,000, or both.

Proposed law provides an affirmative defense to the prosecution of the crime of unlawful entry or unlawful reentry 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 La.'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 La. bears 99% of the costs due to incarcerating illegal immigrants who commit secondary crimes in La. 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 La. schools, and threaten the state and local tax base of La. 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 La. to prohibit or limit the unlawful entry or reentry by an illegal alien into La. 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.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the engrossed bill:

1. Change the maximum term of imprisonment for a first violation of proposed law from one year to six months.
2. Change the maximum fine for a first violation of proposed law from \$4,000 to \$1,000.
3. Change the minimum term of imprisonment for a second or subsequent violation of proposed law from six months to one year.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Add definition of "unlawfully present in this state" or "unlawful presence in this state".
2. Make technical changes.