

By: Geren

H.B. No. 889

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the enforcement by certain governmental entities of
3 state and federal laws governing immigration and to the duties of
4 law enforcement agencies concerning certain arrested persons.

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

6 SECTION 1. Chapter 2, Code of Criminal Procedure, is
7 amended by adding Articles 2.251, 2.252, and 2.253 to read as
8 follows:

9 Art. 2.251. ENFORCEMENT OF FEDERAL IMMIGRATION LAW. (a) A
10 peace officer may not stop a motor vehicle or conduct a search of a
11 business or residence solely to enforce a federal law relating to
12 immigrants or immigration, including the federal Immigration and
13 Nationality Act (8 U.S.C. Section 1101 et seq.), unless the officer
14 is acting:

21 (b) A peace officer may arrest an undocumented person only
22 if the officer is acting under the authority granted under Article
23 2.13.

24 Art. 2.252. DUTIES RELATED TO CERTAIN ARRESTED PERSONS.

1 (a) If a person is arrested and is unable to provide proof of the
2 person's lawful presence in the United States, not later than 48
3 hours after the person is arrested and before the person is released
4 on bond, a law enforcement agency performing the booking process
5 shall:

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

9 (2) if information obtained under Subdivision (1)
10 reveals that the person is not a citizen or national of the United
11 States and is unlawfully present in the United States according to
12 the terms of the federal Immigration and Nationality Act (8 U.S.C.
13 Section 1101 et seq.):

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

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

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

23 (c) A judge or magistrate who receives notice of a person's
24 immigration status under this article shall record that status in
25 the court record.

26 Art. 2.253. DUTIES RELATED TO IMMIGRATION DETAINER. (a) A
27 law enforcement agency that has custody of a person subject to an

1 immigration detainer issued by United States Immigration and
2 Customs Enforcement shall:

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

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

8 (3) comply with, honor, and fulfill the requests made
9 in the detainer.

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

15 (c) A judge or magistrate who receives notice that a person
16 is subject to a detainer under this article shall record that fact
17 in the court record, regardless of whether the notice is received
18 before or after a judgment in the case.

19 SECTION 2. Chapter 42, Code of Criminal Procedure, is
20 amended by adding Article 42.039 to read as follows:

21 Art. 42.039. RELEASE INTO FEDERAL CUSTODY. (a) This
22 article applies only to a criminal case in which:

23 (1) the judgment requires the defendant to be confined
24 in a secure correctional facility; and

25 (2) the judge:

26 (A) indicates in the record under Article 2.253
27 that the defendant is subject to an immigration detainer; or

(B) otherwise indicates in the record that the defendant is subject to a transfer into federal custody.

(b) In a criminal case described by Subsection (a), the judge shall, at the time of pronouncement of a sentence of confinement, 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) If the applicable information described by Subsection (a)(2)(A) or (B) is not available at the time sentence is pronounced in the case, the judge shall issue the order described by Subsection (b) as soon as the information becomes available.

(d) For purposes of Subsection (b), "secure correctional facility" has the meaning assigned by Section 1.07, Penal Code.

SECTION 3. Subtitle C, Title 11, Local Government Code, is amended by adding Chapter 364 to read as follows:

CHAPTER 364. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS

Sec. 364.001. DEFINITIONS. In this chapter:

(1) "Immigration detainer" means a United States Department of Homeland Security Form I-247 or a similar or successor form that requests a local entity to maintain temporary custody of an alien for the federal government.

(2) "Immigration laws" means the laws of this state or federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et

1 seq.).

2 (3) "Lawful detention" means the detention of an
3 individual by a local entity for the investigation of a criminal
4 offense. The term excludes a detention if the sole reason for the
5 detention is that the individual:

6 (A) is a victim of or witness to a criminal
7 offense; or

8 (B) is reporting a criminal offense.

9 (4) "Local entity" means:

10 (A) the governing body of a municipality, county,
11 or special district or authority, subject to Sections 364.002(a)
12 and (b);

13 (B) an officer or employee of or a division,
14 department, or other body that is part of a municipality, county, or
15 special district or authority, including a sheriff, municipal
16 police department, municipal attorney, or county attorney; and

17 (C) a district attorney or criminal district
18 attorney.

19 (5) "Policy" includes a formal, written rule, order,
20 ordinance, or policy and an informal, unwritten policy.

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

27 (b) This chapter does not apply to a hospital or hospital

1 district created under Subtitle C or D, Title 4, Health and Safety
2 Code, or a hospital district created under a general or special law
3 authorized by Article IX, Texas Constitution, to the extent that
4 the hospital or hospital district is providing access to or
5 delivering medical or health care services as required under the
6 following applicable federal or state laws:

- 7 (1) 42 U.S.C. Section 1395dd;
- 8 (2) 42 U.S.C. Section 1396b(v);
- 9 (3) Subchapter C, Chapter 61, Health and Safety Code;
- 10 (4) Chapter 81, Health and Safety Code; and
- 11 (5) Section 311.022, Health and Safety Code.

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

15 Sec. 364.003. LOCAL GOVERNMENT POLICY REGARDING
16 IMMIGRATION ENFORCEMENT. (a) A local entity shall not adopt,
17 enforce, or endorse a policy under which the entity prohibits or
18 discourages the enforcement of immigration laws.

19 (b) In compliance with Subsection (a), a local entity shall
20 not prohibit or discourage a person who is a commissioned peace
21 officer described by Article 2.12, Code of Criminal Procedure, a
22 corrections officer, a booking clerk, a magistrate, or a district
23 attorney, criminal district attorney, or other prosecuting
24 attorney and who is employed by or otherwise under the direction or
25 control of the entity from doing any of the following:

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

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

4 (A) sending the information to or requesting or
5 receiving the information from United States Citizenship and
6 Immigration Services or United States Immigration and Customs
7 Enforcement, including information regarding a person's place of
8 birth;

9 (B) maintaining the information; or
10 (C) exchanging the information with another
11 local entity or a federal or state governmental entity;

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

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

18 Sec. 364.004. DISCRIMINATION PROHIBITED. A local entity or
19 a person employed by or otherwise under the direction or control of
20 the entity may not consider race, color, language, or national
21 origin while enforcing immigration laws except to the extent
22 permitted by the United States Constitution or Texas Constitution.

23 Sec. 364.005. COMPLAINT; EQUITABLE RELIEF. (a) Any
24 person, including the federal government, may file a complaint with
25 the attorney general if the person offers evidence to support an
26 allegation that a local entity has adopted, enforced, or endorsed a
27 policy under which the entity prohibits or discourages the

1 enforcement of immigration laws or that the entity, by consistent
2 actions, prohibits or discourages the enforcement of those laws.
3 The person must include with the complaint the evidence the person
4 has that supports the complaint.

5 (b) A local entity for which the attorney general has
6 received a complaint under Subsection (a) shall comply with a
7 document request, including a request for supporting documents,
8 from the attorney general related to the complaint.

9 (c) If the attorney general determines that a complaint
10 filed under Subsection (a) against a local entity is valid, the
11 attorney general shall, not later than the 10th day after the date
12 of the determination, provide written notification to the entity
13 that:

14 (1) the complaint has been filed;
15 (2) the attorney general has determined that the
16 complaint is valid;

17 (3) the attorney general is authorized to file an
18 action to enjoin the violation if the entity does not come into
19 compliance with the requirements of Section 364.003 on or before
20 the 90th day after the date the notification is provided; and

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

24 (d) Not later than the 30th day after the day a local entity
25 receives written notification under Subsection (c), the local
26 entity shall provide the attorney general with a copy of:

27 (1) the entity's written policies related to

1 immigration enforcement actions;
2 (2) each immigration detainer received by the entity
3 from the United States Department of Homeland Security; and
4 (3) each response sent by the entity for a detainer
5 described by Subdivision (2).

6 (e) If the attorney general determines that a complaint
7 filed under Subsection (a) against a local entity is valid, the
8 attorney general may file a petition for a writ of mandamus or apply
9 for other appropriate equitable relief in a district court in
10 Travis County or in a county in which the principal office of the
11 entity is located to compel the entity that adopts, enforces, or
12 endorses a policy under which the local entity prohibits or
13 discourages the enforcement of immigration laws or that, by
14 consistent actions, prohibits or discourages the enforcement of
15 those laws to comply with Section 364.003. The attorney general may
16 recover reasonable expenses incurred in obtaining relief under this
17 subsection, including court costs, reasonable attorney's fees,
18 investigative costs, witness fees, and deposition costs.

19 (f) An appeal of a suit brought under Subsection (e) is
20 governed by the procedures for accelerated appeals in civil cases
21 under the Texas Rules of Appellate Procedure. The appellate court
22 shall render its final order or judgment with the least possible
23 delay.

24 Sec. 364.006. DENIAL OF STATE GRANT FUNDS. (a) A local
25 entity may not receive state grant funds if the entity adopts,
26 enforces, or endorses a policy under which the entity prohibits or
27 discourages the enforcement of immigration laws or, by consistent

1 actions, prohibits or discourages the enforcement of immigration
2 laws.

3 (b) State grant funds for a local entity shall be denied for
4 the state fiscal year following the year in which a final judicial
5 determination in an action brought under Section 364.005 is made
6 that the entity has intentionally prohibited or discouraged the
7 enforcement of immigration laws.

8 (c) The comptroller shall adopt rules to implement this
9 section uniformly among the state agencies from which state grant
10 funds are distributed to a municipality or county.

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

14 SECTION 4. Not later than January 1, 2018, each local law
15 enforcement agency subject to this Act shall:

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

18 (2) update the agency's policies to be consistent with
19 this Act and to include:

20 (A) provisions prohibiting an agency officer or
21 employee from preventing agency personnel from taking immigration
22 enforcement actions described by Section 364.003, Local Government
23 Code, as added by this Act; and

24 (B) provisions requiring each agency officer or
25 employee to comply with Articles 2.251, 2.252, and 2.253, Code of
26 Criminal Procedure, as added by this Act, if applicable.

27 SECTION 5. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2017.