

SENATE BILL NO. 44

February 04, 2025, Introduced by Senators ALBERT, LINDSEY, RUNESTAD, DALEY, THEIS, BELLINO, HOITENGA and HAUCK and referred to Committee on Government Operations.

A bill to prohibit the illegal entry into or illegal presence in this state by an individual who is an alien; to provide penalties; to prohibit criminal arrests at certain locations; to provide for certain court orders; to grant immunity from liability and indemnification for enforcement actions to certain state and local government officials, employees, and contractors; to provide for the powers and duties of certain state and local government officers and entities; to provide for the legal defense of state officials, employees, and contractors; and to provide for reimbursement of certain state and local government officials,

employees, and contractors for certain legal expenses.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) An individual who is an alien and who enters or
2 attempts to enter this state at any location other than a lawful
3 port of entry is guilty of a crime as provided in this section.

4 (2) Except as provided in subsection (3), an individual who
5 violates this section is guilty of a misdemeanor punishable by
6 imprisonment for not more than 180 days and a fine of not more than
7 \$2,000.00.

8 (3) An individual who commits a second or subsequent violation
9 of this section is guilty of a felony. The court shall sentence the
10 individual to imprisonment for not less than 180 days or more than
11 2 years and may impose a fine of not more than \$10,000.00.

12 (4) If 1 or more of the following circumstances apply to the
13 defendant, the defendant has an affirmative defense to prosecution
14 under this section:

15 (a) The federal government has granted 1 of the following to
16 the defendant:

17 (i) Lawful presence in the United States.

18 (ii) Asylum under 8 USC 1158.

19 (b) The defendant's conduct does not constitute a violation of
20 8 USC 1325(a).

21 (c) The defendant was approved for benefits under the federal
22 Deferred Action for Childhood Arrivals program between June 15,
23 2012 and July 16, 2021.

24 (5) The following federal programs do not provide an
25 affirmative defense under subsection (4):

26 (a) The Deferred Action for Parents of Americans and Lawful
27 Permanent Residents program.

1 (b) Any program not enacted by the United States Congress that
2 is a successor to or materially similar to the program described by
3 subsection (4)(c) or subdivision (a).

4 (6) As used in this section:

5 (a) "Alien" means that term as defined in 8 USC 1101(a)(3).

6 (b) "Port of entry" means a port of entry in the United
7 States as designated by 19 CFR part 101.

8 Sec. 2. (1) An individual who is an alien and who enters,
9 attempts to enter, or is at any time found in this state after 1 of
10 the following has occurred with respect to the individual is guilty
11 of a crime as provided in this section:

12 (a) The individual has been denied admission to or has been
13 excluded, deported, or removed from the United States.

14 (b) The individual has departed from the United States while
15 an order of exclusion, deportation, or removal is outstanding.

16 (2) Except as provided in subsections (3) and (4), a violation
17 under this section is a misdemeanor. The court shall sentence the
18 individual to imprisonment for not less than 90 days or more than 1
19 year and shall impose a fine of not more than \$4,000.00.

20 (3) If 1 or more of the following apply, a violation of this
21 section is a felony and the court shall sentence the individual to
22 imprisonment for not less than 2 years or more than 10 years and
23 may impose a fine of not more than \$4,000.00:

24 (a) The defendant's removal was subsequent to a
25 conviction for commission of 2 or more misdemeanors involving a
26 controlled substance or a crime against an individual, or any
27 combination of both.

28 (b) The defendant was excluded pursuant to 8 USC 1225(c)
29 because the defendant was excludable under 8 USC 1182(a)(3)(B).

1 (c) The defendant was removed pursuant to the provisions of
2 subchapter V of 8 USC Chapter 12.

3 (d) The defendant was removed pursuant to 8 USC 1231(a)(4)(B).

4 (4) If the defendant was removed subsequent to a conviction
5 for the commission of a felony, a violation of this section is a
6 felony. The court shall sentence the individual to imprisonment for
7 not less than 2 years or more than 20 years and may impose a fine
8 of not more than \$10,000.00

9 (5) For purposes of this section, "removal" includes an
10 order issued by a court of this state or any other agreement in
11 which an alien stipulates to removal pursuant to a criminal
12 proceeding under either federal or state law.

13 (6) As used in this section, "alien" means that term as
14 defined in 8 USC 1101(a)(3).

15 Sec. 3. (1) An individual who is an alien to whom all of the
16 following circumstances apply is guilty of a felony and the court
17 shall sentence the individual to imprisonment for not less than 2
18 years or more than 20 years and may impose a fine of not more than
19 \$10,000.00:

20 (a) The individual has been charged with or convicted of an
21 offense under section 1.

22 (b) A court of this state has issued an order requiring the
23 individual to return to the foreign nation from which the
24 individual entered or attempted to enter.

25 (c) The individual refuses to comply with the order.

26 (2) As used in this section, "alien" means that term as
27 defined in 8 USC 1101(a)(3).

28 Sec. 4. (1) Notwithstanding any other law, a law enforcement
29 officer shall not arrest or detain an individual for purposes of

1 enforcing a violation of section 1, 2, or 3 if the individual is on
2 the premises or grounds of any of the following places:

3 (a) A school for educational purposes.

4 (b) A church, synagogue, or other established place of
5 religious worship.

6 (c) A health care facility, provided that the individual is on
7 the premises or grounds of the health care facility for the purpose
8 of receiving medical treatment.

9 (2) As used in this section, "school" means a public, private,
10 denominational, or parochial school offering developmental
11 kindergarten, kindergarten, or any grade from 1 through 12.

12 Sec. 5. (1) If, during an individual's appearance for a
13 violation of section 1, 2, or 3, the court determines that probable
14 cause exists that the individual violated section 1, 2, or 3, the
15 court may order the individual released from custody and issue a
16 written order in accordance with subsection (3).

17 (2) The court at any time after an individual's first
18 appearance before the court for an alleged violation of section 1,
19 2, or 3 may, in lieu of continuing the prosecution of or entering a
20 conviction for an offense under section 1, 2, or 3, dismiss the
21 charge pending against the individual and issue a written order in
22 accordance with subsection (3).

23 (3) A written order authorized by subsection (1) or (2) must
24 discharge the individual and require the individual to return to
25 the foreign nation from which the individual entered or attempted
26 to enter. An order under this subsection must not be issued unless
27 all of following conditions are met:

28 (a) The individual agrees to the order.

29 (b) The individual has not previously been convicted of an

1 offense under section 1, 2, or 3, or previously obtained a
2 discharge under an order described by subsection (1) or (2).

3 (c) The individual is not charged with another offense that is
4 punishable as a felony.

5 (4) Before the issuance of the order under subsection (3), the
6 arresting law enforcement agency shall do all of the following:

7 (a) Collect all available identifying information of the
8 individual, which must include taking fingerprints from the
9 individual and using other applicable photographic and biometric
10 measures to identify the individual.

11 (b) Cross-reference all the information collected under
12 subdivision (a) with both of the following:

13 (i) All relevant local, state, and federal criminal databases.

14 (ii) Federal lists or classifications used to identify an
15 individual as a threat or potential threat to national security.

16 (5) On an individual's conviction under section 1, 2, or 3,
17 the court shall enter an order requiring the individual's return to
18 the foreign nation from which the individual entered or attempted
19 to enter. An order issued under this subsection takes effect on
20 completion of the term of imprisonment imposed at sentencing.

21 (6) An order issued under this section must include both of
22 the following:

23 (a) The manner of transportation of the individual to a port
24 of entry.

25 (b) The law enforcement officer or state agency responsible
26 for monitoring compliance with the order.

27 (7) An order issued under this section must be filed with the
28 following entities:

29 (a) For an order under subsection (1), the county clerk of the

1 county in which the individual was arrested.

2 (b) For an order under subsection (2) or (5), the clerk of the
3 court exercising jurisdiction in the case.

4 (8) An order under this section requires that the individual
5 be transported to a port of entry. This state is not responsible
6 for the cost of or for the completion of a transport to a foreign
7 nation under this section.

8 Sec. 6. A court shall not abate the prosecution of an offense
9 under section 1, 2, or 3 on the basis that a federal determination
10 regarding the immigration status of the defendant is pending or
11 will be initiated.

12 Sec. 7. (1) Except as provided by subsection (4), a local
13 government official, employee, or contractor is immune from
14 liability for damages arising from a cause of action under state
15 law resulting from an action taken by the official, employee, or
16 contractor to enforce section 1, 2, or 3, or an order issued under
17 section 5, during the course and scope of the official's,
18 employee's, or contractor's office, employment, or contractual
19 performance for or service on behalf of the local government.

20 (2) Subject to subsection (3) and except as provided by
21 subsection (4), a local government shall indemnify an official,
22 employee, or contractor of the local government for damages arising
23 from a cause of action under federal law resulting from an action
24 taken by the official, employee, or contractor to enforce section
25 1, 2, or 3, or an order issued under section 5, during the course
26 and scope of the official's, employee's, or contractor's office,
27 employment, or contractual performance for or service on behalf of
28 the local government.

29 (3) Indemnification payments made under subsection (2) by a

1 local government must not exceed the following:

2 (a) In the case of personal injury or death, \$100,000.00 to
3 any 1 person or \$300,000.00 for any single occurrence.

4 (b) \$10,000.00 for a single occurrence of property damage.

5 (4) Subsections (1) and (2) do not apply if the court or a
6 jury determines that the local government official, employee, or
7 contractor acted in bad faith, with conscious indifference, or with
8 recklessness.

9 (5) A local government shall indemnify an official, employee,
10 or contractor of the local government for reasonable attorney fees
11 incurred in defense of a criminal prosecution against the official,
12 employee, or contractor for an action taken by the official,
13 employee, or contractor to enforce section 1, 2, or 3, or an order
14 issued under section 5, during the course and scope of the
15 official's, employee's, or contractor's office, employment, or
16 contractual performance for or service on behalf of the local
17 government.

18 (6) This section may not be construed to waive any statutory
19 limits on damages under state law.

20 (7) As used in this section:

21 (a) "Damages" includes any and all damages, fines, fees,
22 penalties, court costs, attorney fees, or other assessments.

23 (b) "Local government" means a county, city, township, or
24 village.

25 Sec. 8. (1) Except as provided by subsection (4), an elected
26 or appointed state official or a state employee or contractor is
27 immune from liability for damages arising from a cause of action
28 under state law resulting from an action taken by the official,
29 employee, or contractor to enforce section 1, 2, or 3, or an order

1 issued under section 5, during the course and scope of the
2 official's, employee's, or contractor's office, employment, or
3 contractual performance for or service on behalf of this state.

4 (2) Except as provided by subsection (4), this state shall
5 indemnify an elected or appointed official or a state employee or
6 contractor for damages arising from a cause of action under federal
7 law resulting from an action taken by the official, employee, or
8 contractor to enforce section 1, 2, or 3, or an order issued under
9 section 5, during the course and scope of the official's,
10 employee's, or contractor's office, employment, or contractual
11 performance for or service on behalf of this state.

12 (3) Notwithstanding any other law, an indemnification payment
13 made under subsection (2) is not subject to an indemnification
14 limit under the laws of this state.

15 (4) Subsections (1) and (2) do not apply if the court or jury
16 determines that the state official, employee, or contractor acted
17 in bad faith, with conscious indifference, or with recklessness.

18 (5) This state shall indemnify a state official, employee, or
19 contractor for reasonable attorney fees incurred in defense of a
20 criminal prosecution against the official, employee, or contractor
21 for an action taken by the official, employee, or contractor to
22 enforce section 1, 2, or 3, or an order issued under section 5,
23 during the course and scope of the official's, employee's, or
24 contractor's office, employment, or contractual performance for or
25 service on behalf of this state.

26 (6) A state official, employee, or contractor who may be
27 entitled to indemnification under subsection (2) is entitled to
28 representation by the attorney general in an action in which the
29 official, employee, or contractor may be entitled to

1 indemnification.

2 (7) This section may not be construed to waive any statutory
3 limits on damages under state law.

4 (8) As used in this section, "damages" includes any and all
5 damages, fines, fees, penalties, court costs, attorney fees, or
6 other assessments.

7 Sec. 9. If a civil action is brought against an individual who
8 may be entitled to immunity or indemnification under section 7 or
9 8, for actions related to the protections under this act, an appeal
10 must be taken directly to the supreme court.

11 Sec. 10. This act does not affect a defense, immunity, or
12 jurisdictional bar available to this state or a local government or
13 an official, employee, or contractor of this state or a local
14 government.

15 Enacting section 1. This act takes effect 90 days after the
16 date it is enacted into law.