SB 4 (2023) FAQ

Texas Immigration Law Council

Is SB4 (88-4) in effect?

A. **Yes.** The law is in full affect across the state of Texas after a May 29, 2026 court ruling lifting the latest injunction preventing the law from going into effect

Does the illegal entry provision apply to people who entered the country without authorization, but in another state aside from Texas?

A. As written and enacted, Tex. Penal Code § 51.02 [the "illegal entry" provision of SB 4 (2023)] is limited to individuals who entered Texas directly from a foreign country at a location other than a lawful port of entry. Based on the statute's text, it does not appear to criminalize a person who entered the United States through another state and is later present in Texas. That said, it remains unclear how law enforcement agencies will apply the statute on the ground, and enforcement practices may not always align with the narrowest reading of the statutory language.

What are the triggering events that could make someone in Texas vulnerable to an arrest under SB 4 illegal re-entry?

A. A person may be subject to an arrest for Tex. Penal Code § 51.03 [the illegal re-entry provision of SB 4(2023)] if they are found in Texas after they have:

a. been denied admission to the United States;
b. been excluded, deported, or removed from the United States; or
c. left the US while an order of deportation, exclusion, or removal was outstanding.

Does SB4's illegal entry provision apply to children/unaccompanied children?

A. . Children under the age of 10 cannot be charged with a crime under Texas law and therefore cannot be prosecuted under SB 4's illegal entry provision. For children ages 10 and older, the statute does not contain a blanket exemption. However, it remains unclear how the law will be enforced against minors, including unaccompanied children, and there is currently little guidance regarding its application in the juvenile justice system.

Does SB 4 apply to visitors to Texas?

A. Potentially, yes. SB 4 is not limited to Texas residents. A person visiting Texas may be subject to arrest if law enforcement believes they meet the elements of either the illegal entry or illegal reentry provisions of SB 4, regardless of where they currently live.

What should naturalized citizens or LPRs do to prepare?

A. Because SB 4 applies only to non-citizens, U.S. citizens may wish to keep proof of their citizenship readily available, such as a U.S. passport, passport card, or copy of a naturalization certificate. Although U.S. citizens are not required to provide proof of citizenship to state law enforcement, some individuals may choose to do so in order to avoid an unnecessary arrest.

Lawful Permanent Residents are required to carry their green cards at all times. However, they are not required to answer questions without an attorney present – including questions about how they entered the US or their immigration history. An important note is that there is no exception to SB 4's illegal re-entry provision for LPRs or for other lawfully present aliens, so remaining silent as to your immigration history-- *no matter your current status*-- is the best practice.

I entered the country with a visa that has now expired- does SB 4 apply to me?

A. SB 4's illegal entry provision would not apply to you as the provision requires that someone entered the state of Texas without authorization at a place other than an official port of entry. If you entered via a port of entry, you should not be subject to that provision of SB 4. However, SB 4's illegal re-entry provision may still apply if you have a prior immigration history that meets the elements of Tex. Penal Code § 51.03.

Where will people be sent if they are ordered returned under SB4?

A. Under SB 4, a magistrate or judge may issue an order requiring a person to return to the foreign nation from which they entered or attempted to enter. In practice, this generally means Mexico, even if the person is not a Mexican citizen or national.

Is this just a border law ?

A. SB4 is a law that can be enforced state wide.

When can state police officers approach me to ask me questions about my immigration status?

A. There are three types of police interactions that can happen: Consensual encounter, investigatory detention and an arrest based on probable cause.

a. First, you may be approached by law enforcement at any time even if you are not suspected of doing anything wrong. This is called a "consensual encounter." While you are not required to stay and answer questions during a "consensual encounter", if you choose to do so, anything incriminating you say can lead to an arrest. For example, if you answer the question of how you entered Texas by saying you crossed between ports of entry, that statement could provide the officer with probable cause to arrest you for illegal entry.
b. Second, you may be temporarily detained by law enforcement if there is reasonable suspicion of a crime, including a traffic violation. You are not free to leave until the investigation is concluded and if you provide information about how you entered Texas or about prior immigration events that may trigger an SB 4 provision, that information may be used to establish probable cause for your arrest.
c. Third, you may be arrested by law enforcement if there is probable cause to believe you committed a crime. This means that the facts and circumstances known to the officer would lead a reasonable person to believe that a crime has been committed.

What should I do during a police encounter for an SB4 offense?

During any police encounter, you always have the right to remain silent and the right to consult with an attorney. Not invoking your right to remain silent and instead making statements or answering questions about your immigration history, manner of entry, prior removals, deportations, exclusions, denials of admission, or other immigration-related events could lead to your arrest and prosecution under SB 4.

For more information visit TXILC.org or email info@txilc.org