

HOUSE BILL 2774

By McCalmon

AN ACT to amend Tennessee Code Annotated, Title 4,
relative to illegal immigration.

WHEREAS, the United States, as every other nation, has the sovereign right to determine the number and character of aliens permitted to cross its border and the time, place, and manner of their entry; and

WHEREAS, consistent with this timeless principle, the United States Congress has exercised its constitutional authority to enact laws to prevent the entry of aliens without lawful authorization to protect the health, safety, welfare, and prosperity of Americans; and

WHEREAS, illegal entry and reentry to the United States, as well as the encouragement and inducement of illegal entry and the transport of illegal aliens within the United States, are criminal offenses under federal law, and those who aid and abet these offenses also commit a criminal act; and

WHEREAS, the Biden Administration, since its inception, has failed to prevent the illicit entry of aliens and has, furthermore, enacted policies designed to undermine the rule of law and encourage and induce the illegal entry of historic numbers of aliens contrary to law; and

WHEREAS, President Joe Biden has thus failed to fulfill his constitutional duties to preserve, protect, and defend the Constitution of the United States to the best of his ability and take care that the laws be faithfully executed; and

WHEREAS, the Biden Administration has systematically dismantled every institution provided by the United States Congress and established by previous administrations to prevent illegal immigration, thereby aiding and abetting the illegal entry into the United States of millions of aliens at the southern border; and

WHEREAS, from January 20, 2021, to the present, the Biden Administration has overseen the largest wave of illegal immigration in this nation's history, with more than three million, eight hundred thousand (3,800,000) aliens illegally entering and remaining in the United States; and

WHEREAS, Congressional reporting estimates that the border crisis created by the Biden Administration costs American taxpayers approximately four hundred fifty-one billion dollars (\$451,000,000,000) annually; and

WHEREAS, the Biden Administration's abandonment of any semblance of border security and immigration enforcement has created historic public safety and humanitarian crises affecting states in the southern border region and beyond; and

WHEREAS, the United States Supreme Court has recognized that States "bear[] many of the consequences of unlawful immigration." *Arizona v. United States*, 567 U.S. 387, 397 (2012); and

WHEREAS, Congressional reporting estimates the illegal alien population in the United States is between sixteen million eight hundred thousand (16,800,000) and twenty-nine million (29,000,000) persons; and

WHEREAS, the overwhelming majority of crimes perpetrated by illegal aliens are for violations of state law, which require substantial state and local resources to investigate, prosecute, adjudicate, incarcerate, and supervise criminal offenders; and

WHEREAS, as a result of the Biden Administration's non-enforcement policies, large numbers of criminal aliens are released into communities across the United States rather than being detained or removed, allowing these criminal aliens to commit additional crimes and increase the number of victims; and

WHEREAS, states are financially burdened by the cost of incarcerating illegal aliens in their prison systems. Although the United States Department of Justice provides limited funding

to the states to offset some of these costs through the State Criminal Alien Assistance Program (SCAAP), congressional reporting found that SCAAP reimbursements are usually less than one percent (1%) of the total cost of incarcerating illegal aliens, leaving the states to pay the balance; and

WHEREAS, the destabilization of the southern border regulation due to the Biden Administration's failure to secure the border has led to a surge in fentanyl smuggling into the United States by Mexican drug cartels. Fentanyl poisoning is now the leading cause of death for Americans between the ages of eighteen (18) and forty-five (45) years of age; and

WHEREAS, Congressional reporting found that the estimated cost of Medicaid fraud attributable to illegal aliens in fiscal year 2022 was eight billion dollars (\$8,000,000,000); and

WHEREAS, more than four hundred thousand (400,000) unaccompanied alien children (UAC) have entered the United States since January 20, 2021, many of whom have been the victims of human smuggling or trafficking. Federal officials in the Biden Administration released approximately three hundred thirty-seven thousand (337,000) UACs to sponsors throughout the United States between fiscal years 2021–2023; and

WHEREAS, the Biden Administration changed longstanding policies on vetting UAC sponsors, resulting in UACs being placed with non-family members and criminals, who trafficked, abused, and exploited the children placed in their care. Media reports from 2023 found that the Biden Administration had lost track of approximately eighty-five thousand (85,000) UACs; and

WHEREAS, it is unclear how many UACs now reside in this state who may be at risk of being trafficked, abused, or exploited after initially being placed with sponsors who had not been properly vetted by federal officials in the Biden Administration. The significant increase in the number of UACs placed with unvetted sponsors in this state, who may be at greater risk of

abuse or neglect, will place additional strains on the limited resources of the agencies of this state that provide welfare services and care for children; and

WHEREAS, Congressional reporting estimates that at least three million eight hundred thousand (3,800,000) illegal alien children at primary and secondary schools in the United States qualify as Limited English Proficiency (LEP) students, costing American taxpayers nearly fifty-nine billion dollars (\$59,000,000,000); and

WHEREAS, Tennessee has a compelling interest in preventing crime, promoting the health, safety, and education of its citizens, protecting children from abuse and exploitation, and conserving the financial resources of the State; and

WHEREAS, illegal immigration causes substantial economic and societal harms to Tennessee and its citizens, including greater expenditures of non-reimbursable public funds in the areas of criminal justice, health care, education, welfare benefits and subsidized housing, and child protective services; and

WHEREAS, the Tennessee attorney general and reporter, along with attorneys general of several other states harmed by the adverse effects of unrestrained illegal immigration have filed numerous lawsuits against the Biden Administration and its agencies to end the illegality and prevent further harm to the states and their citizens; and

WHEREAS, the United States Supreme Court and inferior federal courts have held that the states must establish, among other elements, that they have suffered a concrete, particularized, and actual or imminent injury in fact, that is fairly traceable to the unlawful conduct of the federal officials to satisfy the "case or controversy" requirement of Article III of the Constitution of the United States; and

WHEREAS, Biden Administration officials routinely deny that their unlawful conduct or

illegal immigration causes harm, and federal courts have generally required Tennessee and other states to offer proof that illegal immigrants are causing specific harms to those states or their citizens; and

WHEREAS, because federal officials within the Biden Administration refuse requests by states to provide relevant information within their custody and control regarding the number and location of illegal immigrants and other crucial data concerning border security, the full nature and extent of the harms to Tennessee and its citizens as the result of illegal immigration have not been determined with a reasonable degree of accuracy; and

WHEREAS, the refusal by federal officials to cooperate with the states in sharing information regarding their mutual interest in illegal immigration violates constitutional principles of federalism and statutory mandates on federal officials to respond in good faith to requests by states to provide information; and

WHEREAS, the lack of transparency and failure by federal officials to provide crucial information on illegal immigrants in Tennessee, including their biographic information, relevant details from their immigration history, criminal background, and last-known residence presents an unreasonable risk to Tennessee and its citizens; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 1, Part 4, is amended by adding the following as a new section:

(a) The head of every executive branch agency, department, office, commission, board, or entity of this state shall, to the greatest extent authorized by law, consider the effects of illegal immigration on their respective agency, department, office, commission, board, or entity prior to issuing policies, procedures, and practices, and shall develop policies, procedures, practices, and methods to collect and analyze data that relates to

the provision of public services or the expenditure of public funds directly or indirectly to, or for the benefit of, illegal aliens.

(b) Within sixty (60) days after the effective date of this act, the head of every executive branch state agency, department, office, commission, board, or entity of this state shall conduct a review of their existing policies, procedures, and practices to ensure that they are consistent with subsection (a).

(c) Within one hundred twenty (120) days after the effective date of this act, the head of every executive branch state agency, department, office, commission, board, or entity of this state shall provide a written report to the governor and the speakers of the senate and house of representatives, stating the duties and responsibilities of such agency, department, office, commission, board, or entity relative to the provision of public services or the expenditure of public funds directly or indirectly to, or for the benefit of illegal aliens, which reports must contain one (1) or more recommendations for collecting and analyzing data related to the provision of public services or expenditure of public funds directly or indirectly to, or for the benefit of illegal aliens.

(d) Within ninety (90) days after the effective date of this act, the commissioners of the departments of public safety and corrections and the Tennessee bureau of investigation (TBI), in consultation with sheriffs and other law enforcement agencies, shall jointly develop policies, procedures, practices, and methods to collect and analyze data, and report to the governor and the speakers of the senate and house of representatives on a monthly basis the number of aliens, in comparison with the total number of persons charged or convicted of a criminal offense, which reports must include information regarding the citizenship or nationality and immigration status of the alien, whether the alien is lawfully or unlawfully present in the United States, the specific offenses for which the alien was charged or convicted, the alien's criminal history, any

known or suspected gang affiliation, and the jurisdiction of arrest or conviction, or both. In order to determine the citizenship or immigration status of an alien charged or convicted of a criminal offense, the commissioners, or their designees, shall make a documented request for that information from the United States department of homeland security pursuant to 8 U.S.C. §§ 1373(c), 1644, 1226(d), and 1357(g)(10), which provisions require the department of homeland security to provide assistance regarding the citizenship or immigration status of any person within the jurisdiction of the departments of safety and corrections, including reporting knowledge that a particular alien is not lawfully present in the United States.

(e) Within one hundred eighty (180) days after the effective date of this act, the commissioners of safety and corrections and the TBI, in consultation with sheriffs and local law enforcement agencies, shall jointly develop a method to regularly publish on one (1) or more publicly accessible websites the data collected pursuant to subsection (d) regarding criminal arrests and convictions of illegal aliens, which reports must include information regarding the citizenship or nationality of the illegal alien, the specific offenses for which the alien was arrested, charged, or convicted, the criminal history of the illegal alien, any sentencing information, and the jurisdiction of arrest or conviction, or both. Such information must be disclosed with due consideration for the greatest degree of transparency, while consistent with applicable privacy laws. Such websites must be regularly and timely updated with the most current information regarding illegal alien arrests and convictions.

(f) All executive branch state agencies, departments, offices, commissions, boards, entities, officers, and employees of this state shall promptly respond to requests for information by the attorney general and reporter or concerning matters of illegal immigration that are or may become the subject of litigation involving this state.

(g) As used in this section:

(1) "Illegal alien" means an alien as defined in 8 U.S.C. § 101(a)(3), who is present in the United States without lawful immigration status and therefore subject to removal pursuant to federal law. An alien granted parole under 8 U.S.C. § 1182(d)(5), temporary protected status, deferred action, deferred enforced departure, or similar exercise of administrative grace or prosecutorial discretion is not deemed to have lawful immigration status; and

(2) "Unaccompanied alien child" has the same meaning as in 6 U.S.C. § 279(g)(2).

(h) All executive branch state agencies, departments, offices, commissions, boards, entities, officers, and employees of this state, or any political subdivision thereof, are authorized and directed to cooperate with the implementation of this section.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.