

STATE OF OKLAHOMA

2nd Extraordinary Session of the 50th Legislature (2006)

HOUSE BILL 1250

By: Morrissette

AS INTRODUCED

An Act relating to immigration; requiring the Commissioner of Public Safety to negotiate a memorandum of understanding with the United States Department of Justice or Department of Homeland Security; stating purpose; providing for signing of the memorandum; requiring state agencies and political subdivisions to use reasonable efforts to verify the lawful presence in this state of persons applying for state or local public benefits; providing exceptions; providing for eligibility verification; providing penalty for certain acts; authorizing adoption of variations; requiring certain report; providing for report of errors and significant delays; creating the Registration of Immigration Assistance Act; providing short title; stating purpose and intent; defining terms; providing services that are allowed to be performed; providing persons and organizations exempt from the Registration of Immigration Assistance Act; excluding businesses from the Registration of Immigration Assistance Act if regulation is prohibited or preempted by federal law; requiring registration; requiring payment of fee; depositing fee in certain fund; providing for the posting of certain signs; requiring certain notice; prohibiting certain acts; providing penalties; providing for promulgation and adoption of certain rules; defining terms; prohibiting certain deductions; providing exclusions; requiring certain withholding for state income tax purposes; making employers liable for taxes under certain circumstances; defining terms; requiring public employers, contractors and subcontractors to register and participate in the federal work authorization program; providing compliance dates; providing for forms and rules; creating the Joint Task Force on Oklahoma Illegal Immigration Issues; stating purpose; providing for composition; providing for selection of a chair and vice-chair; providing for meetings; providing for vacancies; providing for a report; providing for reimbursement; providing for staff; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-108.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of Public Safety shall negotiate the terms of a memorandum of understanding between this state and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration and custom laws, detention and removals, and investigations in this state.

B. The memorandum of understanding negotiated pursuant to subsection A of this section shall be signed on behalf of the state by the Commissioner and the Governor or as otherwise required by the appropriate federal agency.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 71 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection C of this section or if exempted by federal law, on or after July 1, 2007, every agency or political subdivision of this state shall use reasonable efforts to verify the lawful presence in the United States of any natural person eighteen (18) years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C., Section 1621, or for federal public benefits, as defined in 8 U.S.C., Section 1611, that are administered by an agency or a political subdivision of this state.

B. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

C. Verification of lawful presence under this section shall not be required:

1. For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

2. For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as

defined in 42 U.S.C., Section 1396b(v) (3), of the alien involved and are not related to an organ transplant procedure;

3. For short-term, noncash, in-kind emergency disaster relief;

4. For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

5. For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

a. deliver in-kind services at the community level, including through public or private nonprofit agencies,

b. do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources, and

c. are necessary for the protection of life or safety;

6. For prenatal care; or

7. For treatment provided by the Department of Mental Health and Substance Abuse Services.

D. For any applicant who has executed an affidavit that the applicant is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

E. Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to subsection D of this section shall be guilty of a felony.

F. Agencies or political subdivisions of this state may adopt variations to the requirements of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances if the verification procedures in this section would impose unusual hardship on a legal resident of this state.

G. Any and all errors and significant delays by SAVE shall be reported to the United States Department of Security and to the Department of Human Services which will monitor SAVE and its verification application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of this state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3021 of Title 59, unless there is created a duplication in numbering, reads as follows:

Sections 3 through 6 of this act shall be known and may be cited as the "Registration of Immigration Assistance Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3022 of Title 59, unless there is created a duplication in numbering, reads as follows:

The purpose and intent of the Registration of Immigration Assistance Act is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Registration of Immigration Assistance Act:

1. "Compensation" means money, property, services, promise of payment, or anything else of value;

2. "Employed by" means that a person is on the payroll of the employer and the employer deducts from the employee's paycheck social security and withholding taxes or that a person receives compensation from the employer on a commission basis or as an independent contractor;

3. "Immigration assistance service" means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law; or

4. "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

a. immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country, or

b. action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3024 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any person who provides or offers to provide immigration assistance services may perform the following services:

1. Completing a government agency form, requested by the customer and appropriate to the needs of the customer only if the

completion of that form does not involve a legal judgment for that particular matter;

2. Transcribing responses to a government agency form which is related to an immigration matter but not advising a customer as to answers on those forms;

3. Translating information on forms to a customer and translating the answers of the customer to questions posed on those forms;

4. Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

5. Translating documents from a foreign language into English;

6. Notarizing signatures on government agency forms, if the person performing the service is a notary public commissioned in this state and is lawfully present in the United States;

7. Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter;

8. Preparing or arranging for the preparation of photographs and fingerprints;

9. Arranging for the performance of medical testing and the obtaining of reports of such test results; and

10. Conducting English language and civics courses.

B. The following are exempt from the Registration of Immigration Assistance Act:

1. An attorney licensed to practice law in this state or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

2. A legal intern, clerk, paralegal, or person in a similar position employed by and under the direct supervision of a licensed attorney meeting the requirements in paragraph 1 of this subsection

and rendering immigration assistance service in the course of employment;

3. A not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R., Section 292.2(a) and employees of those organizations accredited under 8 C.F.R., Section 292.2(d); and

4. Any organization employing or desiring to employ an alien or nonimmigrant alien, if the organization, its employees, or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such advice or assistance is provided.

C. Nothing in the Registration of Immigration Assistance Act shall regulate any business to the extent that regulation is prohibited or preempted by federal law.

D. Any person performing services regulated by the Registration of Immigration Assistance Act shall register with the Office of the Secretary of State and as may be required by a local governing authority. The person shall pay the Secretary of State a registration fee of Fifteen Dollars (\$15.00). The fee shall be deposited to the credit of the Revolving Fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes.

E. Any person who provides or offers immigration assistance service and is not exempted under the Registration of Immigration Assistance Act shall post signs at the place of business of the person setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least twelve

(12) inches by seventeen (17) inches and shall contain the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

F. Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

G. Any person who provides or offers immigration assistance service and is not exempted under the Registration of Immigration Assistance Act shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

H. No person engaged in providing immigration services who is not exempted under the Registration of Immigration Assistance Act shall do any of the following:

1. Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

2. Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;

3. Represent or advertise, in connection with the provision of assistance in immigration matters, other titles or credentials, including but not limited to "notary public" or "immigration consultant", that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided, that a certified notary public may use the term "notary public" if the use is accompanied by the statement that the person is not an attorney;

4. Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law; or

5. Make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

I. Any person violating the provisions of the Registration of Immigration Assistance Act shall be subject to a fine of up to One Thousand Dollars (\$1,000.00) per violation. A fine charged pursuant to the Registration of Immigration Assistance Act shall not preempt or preclude additional appropriate civil or criminal penalties.

J. Any person who violates any provision of the Registration of Immigration Assistance Act shall be guilty of a misdemeanor for a first offense and a felony for a second or subsequent offense committed within five (5) years of a previous conviction for the same offense.

K. The Secretary of State may promulgate and adopt rules for registration pursuant to subsection D of this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2385.2A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Authorized employee" means any individual authorized for employment in the United States as defined in paragraph (2) of subsection (a) of 8 U.S.C., Section 1324a; and

2. "Labor services" means the physical performance of services in this state.

B. On or after January 1, 2008, no wages or remuneration for labor services to an individual of Six Hundred Dollars (\$600.00) or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

C. This section shall not apply to any business domiciled in this state which is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

D. This section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

E. This section shall not apply to any taxpayer if the individual being paid is not directly compensated or employed by the taxpayer.

F. The Oklahoma Tax Commission is authorized to prescribe forms and promulgate rules deemed necessary in order to administer and effectuate this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2385.3A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An employer shall be required to withhold state income tax as provided in Section 2385.2 of Title 68 of the Oklahoma Statutes from compensation paid to an individual which compensation is reported on Form 1099 and with respect to which the individual has:

1. Failed to provide a taxpayer identification number;
2. Failed to provide a correct taxpayer identification number;

or

3. Provided an Internal-Revenue-Service-issued taxpayer identification number issued for nonresident aliens.

B. Any employer who fails to comply with the withholding requirements of this section shall be liable for the taxes required to have been withheld unless the withholding agent is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of such form to the Oklahoma Tax Commission.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-1.22 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Federal work authorization program" means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603;

2. "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state; and

3. "Subcontractor" includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

B. On or after July 1, 2007, every public employer shall register and participate in the federal work authorization program to verify information of all new employees.

C. No public employer shall enter into a contract for the physical performance of services within this state unless the

contractor registers and participates in the federal work authorization program to verify information of all new employees.

D. No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.

E. Subsections C and D of this section shall apply as follows:

1. On or after July 1, 2007, with respect to public employers, contractors, or subcontractors of five hundred or more employees;
2. On or after July 1, 2008, with respect to public employers, contractors, or subcontractors of one hundred or more employees; and
3. On or after July 1, 2009, with respect to all public employers, contractors, or subcontractors.

F. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

G. The Office of Personnel Management shall prescribe forms and promulgate rules deemed necessary in order to administer and effectuate this section.

SECTION 10. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. There is hereby created the Joint Task Force on Oklahoma Illegal Immigration Issues to study all issues related to the question of illegal immigration affecting the state.

B. The issues to be addressed by the Task Force shall include, but not be limited to, the following state, county and municipal services as well as private sector business and industry:

1. Social assistance, medical and special needs services;
2. Public elementary and secondary education;
3. Higher education;

4. Public safety, law enforcement, corrections and homeland security;

5. Taxation;

6. Processes for verification of citizenship and residency;

7. Human trafficking; and

8. State and federal coordination.

C. The composition of the Task Force shall be as follows:

1. Two members of the Oklahoma House of Representatives to be appointed by the Speaker of the House of Representatives; provided, one member shall be a member of the minority party;

2. Two members of the Oklahoma State Senate to be appointed by the President Pro Tempore of the Senate; provided, one member shall be a member of the minority party;

3. The Director of the Department of Human Services or a designee;

4. The Commissioner of Public Safety or a designee;

5. The Director of the State Department of Corrections or a designee;

6. The Superintendent of Public Instruction or a designee;

7. The Chancellor of the Oklahoma State Regents for Higher Education or a designee;

8. One owner or chief executive officer of a large Oklahoma business or industry employing more than one hundred employees or a designee, to be appointed by the Speaker of the House of Representatives;

9. One owner or chief executive officer of a small Oklahoma business or industry employing less than one hundred employees or a designee, to be appointed by the President Pro Tempore of the Senate; and

10. Two persons who represent major Hispanic community organizations, one appointed by the Speaker of the House of Representatives and one by the President Pro Tempore of the Senate.

D. The chair shall be appointed by the Speaker of the Oklahoma House of Representatives. The vice-chair shall be appointed by the President Pro Tempore of the Senate. The chair shall convene the first meeting of the Task Force before September 1, 2006. Thereafter, the Task Force shall meet as often as necessary. Any vacancies in the membership of the Task Force shall be filled by the original appointing authority.

E. The Task Force shall submit a report consisting of suggested legislation to the Speaker of the House of Representatives and the President Pro Tempore of the Senate no later than December 29, 2006.

F. Members of the Task Force shall receive no compensation for serving on the Task Force, but shall receive travel reimbursement as follows:

1. Legislative members shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes;

2. Nonlegislative members shall be reimbursed by their respective agencies for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act; and

3. Members of the Task Force who are not otherwise officers or employees of the state shall be reimbursed by the respective house of the Legislature which was the appointing authority.

G. Administrative support for the Task Force shall be provided by the staffs of the House of Representatives and the Senate.

SECTION 11. Sections 1 through 9 of this act shall become effective November 1, 2006.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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