

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1804

By: Terrill

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6 COMMITTEE SUBSTITUTE

7
8 An Act relating to illegal immigration; creating the
9 Oklahoma Taxpayer and Citizen Protection Act of 2007;
10 stating legislative purpose; making certain acts
11 unlawful; providing penalties; amending 21 O.S. 2001,
12 Section 1550.42, which relates to identification
13 documentation; requiring issuance of identification
14 documents to certain persons; providing exceptions;
15 stating period of validity; providing for renewal
16 under certain circumstances; providing presumption of
17 validity for renewal, duplication or reissuance of
18 driver license; requiring determination of
19 citizenship status for persons charged with certain
20 crime; requiring verification of persons determined
21 to be a foreign national; providing time limitation
22 for verification; requiring notification to certain
23 entities; providing rebuttable presumption that
24 certain persons are a flight risk; requiring certain
entity to prepare and issue certain guidelines and
procedures; defining terms; requiring participation
in certain verification system; prohibiting certain
persons from entering into contracts; providing an
exception; providing for cause of action under
certain circumstances; providing liability provisions
for employing entities found to have violated certain
prohibited act; providing exemption from liability;
requiring certain agency to promulgate certain rules
and regulations; requiring agencies and political
subdivisions to verify lawful presence of persons
applying for certain benefits; providing for
nondiscriminatory treatment; excluding verification
under certain circumstances; requiring execution of
affidavit; requiring certain applicant to receive
benefits through the Systematic Alien Verification of
Entitlement Program; making certain actions subject

1 to certain criminal penalties; authorizing adoption
2 of variations to stated requirements; requiring
3 certain entities to submit an annual compliance
4 report; requiring certain entities to monitor certain
5 program; requiring publication of annual report and
6 certain recommendations; requiring certain entities
7 to submit a report of errors to certain agency;
8 requiring the withholding of percentage of state
9 income tax under certain circumstances; providing for
10 tax liability for noncompliance; providing an
11 exception; directing Attorney General to negotiate
12 terms of certain memorandum; requiring certain
13 signatures; prohibiting certain actions by government
14 entities; authorizing private right of action under
15 certain circumstances; providing that certain persons
16 shall not be eligible for postsecondary education
17 benefits or resident tuition; repealing Section 1,
18 Chapter 210, O.S.L. 2003 (70 O.S. Supp. 2006, Section
19 3242), which relates to eligibility for enrollment
20 and resident tuition; providing for codification;
21 providing for noncodification; and providing an
22 effective date.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma
Taxpayer and Citizen Protection Act of 2007".

SECTION 2. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

The State of Oklahoma finds that illegal immigration is causing
economic hardship and lawlessness in this state and that illegal
immigration is encouraged by public agencies within this state that
provide public benefits without verifying immigration status. The

1 State of Oklahoma further finds that illegal immigrants have been
2 harbored and sheltered in this state and encouraged to reside in
3 this state through the issuance of identification cards that are
4 issued without verifying immigration status, and that these
5 practices impede and obstruct the enforcement of federal immigration
6 law, undermine the security of our borders, and impermissibly
7 restrict the privileges and immunities of the citizens of Oklahoma.
8 Therefore, the people of the State of Oklahoma declare that it is a
9 compelling public interest of this state to discourage illegal
10 immigration by requiring all agencies within this state to fully
11 cooperate with federal immigration authorities in the enforcement of
12 federal immigration laws. The State of Oklahoma also finds that
13 other measures are necessary to ensure the integrity of various
14 governmental programs and services.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 446 of Title 21, unless there is
17 created a duplication in numbering, reads as follows:

18 A. It shall be unlawful for any person to transport, move, or
19 attempt to transport in the State of Oklahoma any alien knowing or
20 in reckless disregard of the fact that the alien has come to,
21 entered, or remained in the United States in violation of law, in
22 furtherance of the illegal presence of the alien in the United
23 States.

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1 B. It shall be unlawful for any person to conceal, harbor, or
2 shelter from detection any alien in any place within the State of
3 Oklahoma, including any building or means of transportation, knowing
4 or in reckless disregard of the fact that the alien has come to,
5 entered, or remained in the United States in violation of law.

6 C. Any person violating the provisions of subsections A or B of
7 this section shall, upon conviction, be guilty of a felony
8 punishable by imprisonment in the custody of the Department of
9 Corrections for not less than one (1) year, or by a fine of not less
10 than One Thousand Dollars (\$1,000.00), or by both such fine and
11 imprisonment.

12 SECTION 4. AMENDATORY 21 O.S. 2001, Section 1550.42, is
13 amended to read as follows:

14 Section 1550.42 A. The following entities may create, publish
15 or otherwise manufacture an identification document, identification
16 card, or identification certificate and may possess an engraved
17 plate or other such devise for the printing of such identification;
18 provided, the name of the issuing entity shall be clearly printed
19 upon the face of the identification:

20 1. Businesses, companies, corporations, service organizations
21 and federal, state and local governmental agencies for employee
22 identification which is designed to identify the bearer as an
23 employee;

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1 2. Businesses, companies, corporations and service
2 organizations for customer identification which is designed to
3 identify the bearer as a customer or member;

4 3. Federal, state and local government agencies for purposes
5 authorized or required by law or any legitimate purpose consistent
6 with the duties of such an agency, including but not limited to,
7 voter identification cards, ~~driver's~~ driver licenses, ~~nondriver's~~
8 nondriver identification cards, passports, birth certificates and
9 social security cards;

10 4. Any public school or state or private educational
11 institution, as defined by Sections 1-106, 21-101 or 3102 of Title
12 70 of the Oklahoma Statutes, to identify the bearer as an
13 administrator, faculty member, student or employee;

14 5. Any professional organization or labor union to identify the
15 bearer as a member of the professional organization or labor union;
16 and

17 6. Businesses, companies or corporations which manufacture
18 medical-alert identification for the wearer thereof.

19 B. All identification documents as provided for in paragraph 3
20 or 4 of subsection A of this section shall be issued only to United
21 States citizens, nationals and legal permanent resident aliens.

22 C. The provisions of subsection B of this section shall not
23 apply when an applicant presents, in person, valid documentary
24 evidence of:

- 1 1. A valid, unexpired immigrant or nonimmigrant visa status for
2 admission into the United States;
- 3 2. A pending or approved application for asylum in the United
4 States;
- 5 3. Admission into the United States in refugee status;
- 6 4. A pending or approved application for temporary protected
7 status in the United States;
- 8 5. Approved deferred action status; or
- 9 6. A pending application for adjustment of status to legal
10 permanent residence status or conditional resident status.

11 Upon approval, the applicant may be issued an identification
12 document provided for in paragraph 3 or 4 of subsection A of this
13 section. Such identification document shall be valid only during
14 the period of time of the authorized stay of the applicant in the
15 United States or if there is no definite end to the period of
16 authorized stay, a period of one (1) year. Any identification
17 document issued pursuant to the provisions of this subsection shall
18 clearly indicate that it is temporary and shall state the date that
19 the identification document expires. Such identification document
20 may be renewed only upon presentation of valid documentary evidence
21 that the status by which the applicant qualified for the
22 identification document has been extended by the United States
23 Immigration and Naturalization Service or the Bureau of Citizenship
24

1 and Immigration Services of the United States Department of Homeland
2 Security.

3 D. Any driver license for which an application has been made
4 for renewal, duplication or reissuance shall be presumed to have
5 been issued in accordance with the provisions of subsection C of
6 this section, provided that, at the time the application is made,
7 the driver license has not expired, or been cancelled, suspended or
8 revoked. The requirements of subsection C of this section shall
9 apply, however, to a renewal, duplication or reissuance if the
10 Department of Public Safety is notified by a local, state or federal
11 government agency of information in the possession of the agency
12 indicating a reasonable suspicion that the individual seeking such
13 renewal, duplication or reissuance is present in the United States
14 in violation of law.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 171.2 of Title 22, unless there
17 is created a duplication in numbering, reads as follows:

18 A. When a person charged with a felony or with driving under
19 the influence pursuant to Section 11-902 of Title 47 of the Oklahoma
20 Statutes is confined, for any period, in the jail of the county, any
21 municipality or a jail operated by a regional jail authority, a
22 reasonable effort shall be made to determine the citizenship status
23 of the person so confined.

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1 B. If the prisoner is a foreign national, the keeper of the
2 jail or other officer shall make a reasonable effort to verify that
3 the prisoner has been lawfully admitted to the United States and if
4 lawfully admitted, that such lawful status has not expired. If
5 verification of lawful status can not be made from documents in the
6 possession of the prisoner, verification shall be made within forty-
7 eight hours through a query to the Law Enforcement Support Center of
8 the United States Department of Homeland Security or other office or
9 agency designated for that purpose by the United States Department
10 of Homeland Security. If the lawful immigration status of the
11 prisoner cannot be verified, the keeper of the jail or other officer
12 shall notify the United States Department of Homeland Security.

13 C. For the purpose of determining the grant of or issuance of
14 bond, it shall be a rebuttable presumption that a person whose
15 citizenship status has been verified pursuant to subsection B of
16 this section to be a foreign national who has not been lawfully
17 admitted to the United States, is at risk of flight.

18 D. The Oklahoma Sheriffs' Association shall prepare and issue
19 guidelines and procedures used to comply with the provisions of this
20 section.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1312 of Title 25, unless there
23 is created a duplication in numbering, reads as follows:

24 As used in Sections 6 and 7 of this act, the term:

1 1. "Status Verification System" shall mean an electronic system
2 operated by the federal government, through which an authorized
3 official of an agency of the State of Oklahoma or of a political
4 subdivision therein may make an inquiry, by exercise of authority
5 delegated pursuant to Section 1373 of Title 8 of the United States
6 Code, to verify or ascertain the citizenship or immigration status
7 of any individual within the jurisdiction of the agency for any
8 purpose authorized by Section 7 of this act. The Status
9 Verification System shall be deemed to include the electronic
10 verification of work authorization program of the Illegal
11 Immigration Reform and Immigration Responsibility Act of 1996, P.L
12 104-208, Division C, Section 403(a); 8 U.S.C. 1324a, and operated by
13 the United States Department of Homeland Security, known as the
14 Basic Pilot Program, or any equivalent federal work authorization
15 program designated by the United States Department of Homeland
16 Security or any other federal agency authorized to verify the work
17 authorization status of newly hired employees, pursuant to the
18 Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603;

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

22 3. "Subcontractor" includes a subcontractor, contract employee,
23 staffing agency, or any contractor regardless of its tier; and
24

1 4. "Unauthorized alien" means an alien as defined in Section
2 1324a(h) (3) of Title 8 of the United States Code.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1313 of Title 25, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Every public employer shall register and participate in the
7 Status Verification System to verify the work authorization status
8 of all new employees.

9 B. 1. No public employer shall enter into a contract for the
10 physical performance of services within this state unless the
11 contractor registers and participates in the Status Verification
12 System to verify the work authorization status of all new employees.

13 2. No contractor or subcontractor who enters a contract with a
14 public employer shall enter into such a contract or subcontract in
15 connection with the physical performance of services within this
16 state unless the contractor or subcontractor registers and
17 participates in the Status Verification System to verify information
18 of all new employees.

19 3. The discharge of any United States citizen or permanent
20 resident alien employee by an employer of this state, who, on the
21 date of the discharge employed an unauthorized alien in this state,
22 shall be considered an unfair employment practice. The discharged
23 employee shall have a private cause of action against the employing
24 entity for the unfair employment practice. The employing entity

1 found to have violated this paragraph shall be liable to the
2 aggrieved employee for:

3 a. actual loss of compensation and benefits sustained by
4 the employee, plus liquidated damages in the amount of
5 two percent (2%) for each day after the date of
6 discharge or in an amount equal to the actual loss of
7 compensation and benefits, whichever is smaller, from
8 the date of the discharge until either the date the
9 employee has been offered reemployment in writing at
10 an equivalent or higher compensation level, or the
11 date the employee has commenced any new employment at
12 an equivalent rate of compensation, whichever occurs
13 first, up to a maximum period of one hundred eighty
14 (180) days from the date of discharge, plus reasonable
15 interest from the date of discharge until the date of
16 payment of the liability, and

17 b. reasonable attorney fees and costs.

18 4. An employing entity which, on the date of the discharge in
19 question, was currently enrolled in and used the Basic Pilot Program
20 or other electronic status verification system, as referred to in
21 Section 6 of this act, to verify the employment authorization of its
22 employees in Oklahoma shall be exempt from liability for suit under
23 this section.

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1 C. The provisions of this section shall be enforced without
2 regard to race or national origin.

3 D. The Department of Labor shall prescribe forms and promulgate
4 rules and regulations deemed necessary in order to administer and
5 effectuate the provisions of this section and publish such rules and
6 regulations on the Department of Labor web site.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 71 of Title 56, unless there is
9 created a duplication in numbering, reads as follows:

10 A. Except as provided in subsection C of this section or where
11 exempted by federal law, every agency or a political subdivision of
12 this state shall verify the lawful presence in the United States of
13 any natural person fourteen (14) years of age or older who has
14 applied for state or local public benefits, as defined in 8 U.S.C.
15 Section 1621, or for federal public benefits, as defined in 8 U.S.C.
16 Section 1611, that is administered by an agency or a political
17 subdivision of this state.

18 B. The provisions of this section shall be enforced without
19 regard to race, religion, gender, ethnicity, or national origin.

20 C. Verification of lawful presence under the provisions of this
21 section shall not be required:

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

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1 2. For assistance for health care items and services that are
2 necessary for the treatment of an emergency medical condition, as
3 defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and
4 are not related to an organ transplant procedure;

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

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

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

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

18 b. do not condition the provision of assistance, the
19 amount of assistance provided, or the cost of
20 assistance provided on the income or resources of the
21 individual recipient, and

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

23 D. Verification of lawful presence in the United States by the
24 agency or political subdivision required to make such verification

1 shall require that the applicant execute an affidavit under penalty
2 of perjury that:

3 1. He or she is a United States citizen; or

4 2. He or she is a qualified alien under the federal Immigration
5 and Nationality Act, and is lawfully present in the United States.

6 The agency or political subdivision providing the state or local
7 public benefits shall provide notary public services at no cost to
8 the applicant.

9 E. For any applicant who has executed the affidavit described
10 in paragraph 2 of subsection D of this section, eligibility for
11 benefits shall be made through the Systematic Alien Verification of
12 Entitlement program operated by the United States Department of
13 Homeland Security or a successor program designated by the United
14 States Department of Homeland Security. Until such eligibility
15 verification is made, the affidavit may be presumed to be proof of
16 lawful presence for the purposes of this section.

17 F. Any person who knowingly and willfully makes a false,
18 fictitious, or fraudulent statement of representation in an
19 affidavit executed pursuant to subsection D of this section shall be
20 subject to criminal penalties applicable in this state for
21 fraudulently obtaining public assistance program benefits. If the
22 affidavit constitutes a false claim of U.S. citizenship under 18
23 U.S.C. Section 911 a complaint shall be filed by the agency
24 requiring the affidavit with the United States Attorney for the

1 applicable district based upon the venue in which the affidavit was
2 executed.

3 G. Agencies or political subdivisions of this state may adopt
4 variations to the requirements of the provisions of this section
5 which demonstrably improve the efficiency or reduce delay in the
6 verification process, or to provide for adjudication of unique
7 individual circumstances where the verification procedures in this
8 section would impose unusual hardship on a legal resident of
9 Oklahoma.

10 H. It shall be unlawful for any agency or a political
11 subdivision of this state to provide any state, local, or federal
12 benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section
13 1611, in violation of the provisions of this section.

14 I. Each state agency or department which administers any
15 program of state or local public benefits shall provide an annual
16 report to the Governor, the President Pro Tempore of the Senate and
17 the Speaker of the House of Representatives with respect to its
18 compliance with the provisions of this section. Each agency or
19 department shall monitor the Systematic Alien Verification of
20 Entitlement program for verification application errors and
21 significant delays and shall provide an annual public report on such
22 errors and significant delays, and recommendations to ensure that
23 the application of the Systematic Alien Verification of Entitlement
24 program is not erroneously denying benefits to legal residents of

1 Oklahoma. Errors shall also be reported to the United States
2 Department of Homeland Security by each agency or department.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2385.32 of Title 68, unless
5 there is created a duplication in numbering, reads as follows:

6 A. The employer shall be required to withhold state income tax
7 at the rate of six percent (6%) of the amount of either wages which
8 are subject to withholding tax pursuant to the Internal Revenue Code
9 of 1986, as amended or the amount of compensation paid to an
10 individual which compensation is required to be reported on Form
11 1099 and in both cases with respect to which the individual has
12 failed to provide a valid Social Security Number, issued by the U.S.
13 Social Security Administration.

14 B. Any employer who fails to comply with the withholding
15 requirements of this subsection shall be liable for the taxes
16 required to have been withheld unless such employer is exempt from
17 federal withholding with respect to such individual pursuant to a
18 properly filed Internal Revenue Service Form 8233 or its equivalent,
19 and has provided a copy of such form to the Oklahoma Tax Commission.

20 SECTION 10. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 20J of Title 74, unless there is
22 created a duplication in numbering, reads as follows:

23 A. The Attorney General is authorized and directed to negotiate
24 the terms of a Memorandum of Understanding between the State of

1 Oklahoma and the United States Department of Justice or the United
2 States Department of Homeland Security, as provided by Section
3 1357(g) of Title 8 of the Untied States Code, concerning the
4 enforcement of federal immigration and custom laws, detention and
5 removals, and investigations in the State of Oklahoma.

6 B. The Memorandum of Understanding negotiated pursuant to
7 subsection A of this section shall be signed on behalf of this state
8 by the Attorney General and the Governor or as otherwise required by
9 the appropriate federal agency.

10 C. No local government, whether acting through its governing
11 body or by an initiative, referendum, or any other process, shall
12 enact any ordinance or policy that limits or prohibits a law
13 enforcement officer, local official, or local government employee
14 from communicating or cooperating with federal officials with regard
15 to the immigration status of any person within this state.

16 D. Notwithstanding any other provision of law, no government
17 entity or official within the State of Oklahoma, may prohibit, or in
18 any way restrict, any government entity or official from sending to,
19 or receiving from, the United States Department of Homeland
20 Security, information regarding the citizenship or immigration
21 status, lawful or unlawful, of any individual.

22 E. Notwithstanding any other provision of law, no person or
23 agency may prohibit, or in any way restrict, a public employee from
24

1 doing any of the following with respect to information regarding the
2 immigration status, lawful or unlawful, of any individual:

- 3 1. Sending such information to, or requesting or receiving such
4 information from, the U.S. Department of Homeland Security;
- 5 2. Maintaining such information; or
- 6 3. Exchanging such information with any other federal, state,
7 or local government entity.

8 F. The provisions of this section shall allow for a private
9 right of action by any natural or legal person lawfully domiciled in
10 this state to file for a writ of mandamus to compel any non-
11 cooperating local state governmental agency to comply with such
12 reporting laws.

13 SECTION 11. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3242.2 of Title 70, unless there
15 is created a duplication in numbering, reads as follows:

16 An individual who is not lawfully present in the United States
17 shall not be eligible on the basis of residence within the state
18 for:

- 19 1. Any postsecondary education benefit including, but not
20 limited to, scholarships or financial aid; or
- 21 2. Resident tuition.

22 SECTION 12. REPEALER Section 1, Chapter 210, O.S.L. 2003
23 (70 O.S. Supp. 2006, Section 3242), is hereby repealed.

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SECTION 13. This act shall become effective November 1, 2007.

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