

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 2098

By: Garrison

4
5
6 AS INTRODUCED

7 An Act relating to immigration; amending Section 3,
8 Chapter 112, O.S.L. 2007 (21 O.S. Supp. 2007, Section
9 446), which relates to unlawful transportation and
10 harboring of aliens; amending Section 7, Chapter 112,
11 O.S.L. 2007 (25 O.S. Supp. 2007, Section 1313), which
12 relates to employee verification requirements for
13 employing entities; providing exemption from certain
14 unlawful acts; providing exemption from certain
15 requirement and liability; creating the Oklahoma
16 Employer Security and Accountability Act; providing
17 short title; authorizing application for certain
18 permit; providing condition for employment; requiring
19 the Department of Labor to accept certain
20 applications upon effective date of act; providing
21 for assessment of certain fee; providing for
22 adjustment of fee; establishing timeframe for
23 processing of certain application; providing for
24 issuance of certain permit; prohibiting reapplication
upon certain conditions; requiring certain background
checks; directing certain cooperation between the
Department and the Oklahoma State Bureau of
Investigation; establishing certain ineligibility;
providing for voidance of certain application or
permit; authorizing the Commissioner of Labor to
establish certain additional conditions; establishing
timeframe for permit validity; providing for voidance
of permit upon failure to file certain paperwork;
providing eligibility for certain extension;
requiring voidance and retrieval of permit upon
certain determination; requiring certain annual cap;
providing for federal preemption; authorizing the
Commissioner and the Attorney General to hire certain
workforce; requiring certain confirmation and
notification; requiring certain compliance with state
and federal law; requiring the Department to

1 establish certain telephone hotlines; requiring the
2 Department to establish certain confirmation system;
3 requiring the Department to establish certain
4 database; requiring inclusion of certain information
5 in database; requiring certain maintenance of
6 database; establishing certain tax obligations;
7 directing the Commissioner to promulgate certain
8 rules; directing certain enforcement; providing
9 penalties; providing for penalty modification upon
10 certain determination; creating the Oklahoma Employer
11 Security and Accountability Act Revolving Fund;
12 providing for fund income; providing for fund
13 expenditures; providing for codification; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY Section 3, Chapter 112, O.S.L.
17 2007 (21 O.S. Supp. 2007, Section 446), is amended to read as
18 follows:

19 Section 446. A. It shall be unlawful for any person to
20 transport, move, or attempt to transport in the State of Oklahoma
21 any alien knowing or in reckless disregard of the fact that the
22 alien has come to, entered, or remained in the United States in
23 violation of law, in furtherance of the illegal presence of the
24 alien in the United States.

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

1 C. Nothing in this section shall be construed so as to prohibit
2 or restrict the provision:

3 1. Provision of any state or local public benefit described in
4 8 U.S.C., Section 1621(b), or regulated public health services
5 provided by a private charity using private funds; and

6 2. Transportation, harboring, or sheltering of any person who
7 possesses a valid Oklahoma Work Permit issued pursuant to Section 4
8 of this act.

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

15 SECTION 2. AMENDATORY Section 7, Chapter 112, O.S.L.
16 2007 (25 O.S. Supp. 2007, Section 1313), is amended to read as
17 follows:

18 Section 1313. A. Every public employer shall register with and
19 utilize a Status Verification System as described in subparagraphs a
20 or b of paragraph 1 of Section ~~6~~ 1312 of this ~~act~~ title to verify
21 the federal employment authorization status of all new employees.

22 B. 1. After July 1, 2008, no public employer shall enter into
23 a contract for the physical performance of services within this
24 state unless the contractor registers and participates in the Status

1 Verification System to verify the work eligibility status of all new
2 employees.

3 2. After July 1, 2008, no contractor or subcontractor who
4 enters into a contract with a public employer shall enter into such
5 a contract or subcontract in connection with the physical
6 performance of services within this state unless the contractor or
7 subcontractor registers and participates in the Status Verification
8 System to verify information of all new employees.

9 3. The provisions of this subsection shall not apply to any
10 contracts entered into prior to ~~the effective date of this section~~
11 November 1, 2007, even though such contracts may involve the
12 physical performance of services within this state after July 1,
13 2008.

14 C. 1. It shall be a discriminatory practice for an employing
15 entity to discharge an employee working in Oklahoma who is a United
16 States citizen or permanent resident alien while retaining an
17 employee who the employing entity knows, or reasonably should have
18 known, is an unauthorized alien hired after July 1, 2008, and who is
19 working in Oklahoma in a job category that requires equal skill,
20 effort, and responsibility, and which is performed under similar
21 working conditions, as defined by 29 U.S.C., Section 206(d)(1), as
22 the job category held by the discharged employee.

23 2. An employing entity which, on the date of the discharge in
24 question, was currently enrolled in and used a Status Verification

1 System to verify the employment eligibility of its employees in
2 Oklahoma hired after July 1, 2008, shall be exempt from liability,
3 investigation, or suit arising from any action under this section.

4 3. No cause of action for a violation of this subsection shall
5 arise anywhere in Oklahoma law but from the provisions of this
6 subsection.

7 D. An employing entity which, pursuant to the requirements of
8 Section 4 of this act, verifies the Oklahoma Work Permit of an
9 applicant for employment shall be exempt from the requirements of
10 this section and from liability or suit arising from any action
11 under this section.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1314 of Title 25, unless there
14 is created a duplication in numbering, reads as follows:

15 Sections 3 through 5 of this act shall be known and may be cited
16 as the "Oklahoma Employer Security and Accountability Act".

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1315 of Title 25, unless there
19 is created a duplication in numbering, reads as follows:

20 A. All persons in this state who are not United States citizens
21 or legal permanent resident aliens and do not possess a federal work
22 visa, green card, or any federal employment authorization status, or
23 are otherwise ineligible for employment in this state under the
24 provisions of Section 1313 of Title 25 of the Oklahoma Statutes, may

1 apply to the Department of Labor for an Oklahoma Work Permit. Such
2 persons shall not be eligible for employment in this state until
3 such application has been approved by the Department and an Oklahoma
4 Work Permit has been issued. The Department shall begin to accept
5 applications for Oklahoma Work Permits upon the effective date of
6 this act.

7 B. Applicants for an Oklahoma Work Permit shall be assessed a
8 fee of One Thousand Dollars (\$1,000.00) and shall be fingerprinted
9 for identification and security purposes. Such fee may be annually
10 adjusted by the Department to ensure that it defrays the costs of
11 registration, enforcement, maintenance, and implementation
12 activities required by this section.

13 C. Upon receipt of an application for an Oklahoma Work Permit,
14 the Department shall process such application within ten (10)
15 business days. Approved applicants shall be issued an Oklahoma Work
16 Permit and a corresponding work identification number. Once
17 approved or denied, an applicant may not reapply.

18 D. Applicants shall be subject to a preliminary statewide
19 criminal background check. The Department shall work in conjunction
20 with the Oklahoma State Bureau of Investigation in conducting such
21 criminal background checks. The existence of any criminal history
22 shall constitute an applicant's ineligibility for an Oklahoma Work
23 Permit. Any applicant who is found ineligible for an Oklahoma Work
24 Permit due to a criminal history either prior to or after approval

1 of their application shall have their application or permit voided
2 immediately and permanently. Application approval shall be subject
3 to any other conditions deemed necessary by the Commissioner of
4 Labor to conform to the purposes of this section.

5 E. Oklahoma Work Permits shall be valid for three (3) years
6 from the date of issuance. If a permitted worker has not filed
7 paperwork leading to United States citizenship, legal permanent
8 residence, a federal work visa, green card, or any federal
9 employment authorization status by the expiration of the permit, his
10 or her Oklahoma Work Permit shall be permanently void. Permitted
11 workers who have not received United States citizenship, legal
12 permanent residence, a federal work visa, green card, or any federal
13 employment authorization status by the expiration of the permit are
14 eligible for a one-year extension subject to annual renewal if such
15 worker is able to provide evidence of due diligence and reasonable
16 progress, as determined by the Department, toward United States
17 citizenship, legal permanent residence, a federal work visa, green
18 card, or any federal employment authorization status.

19 F. Upon confirmation by the Department of a permitted worker's
20 attainment of United States citizenship, legal permanent residence,
21 a federal work visa, green card, or any federal employment
22 authorization status, the Department shall void and retrieve such
23 worker's permit, and the applicable federal program's timeline for
24 such worker's employment eligibility shall govern.

1 G. The number of Oklahoma Work Permits issued in this state
2 shall be capped annually at a predetermined number, which shall be
3 determined by the Commissioner of Labor under a formula that takes
4 into account state unemployment levels and estimated workforce
5 needs.

6 H. No part of this section shall be construed to preempt any
7 provision of federal immigration law, including a person's legal
8 status in the United States.

9 I. The Commissioner of Labor and the Attorney General may hire
10 a workforce as they deem necessary to implement and enforce the
11 provisions of this section.

12 J. Employers shall confirm with the Department the validity of
13 any potential employee applicant with an Oklahoma Work Permit, and
14 shall notify the Department when they have hired such an applicant.
15 Workers possessing an Oklahoma Work Permit shall comply with all
16 employment hours and standards as defined by state and federal law.

17 K. The Department shall establish:

18 1. A telephone hotline for employers to call to verify the
19 Oklahoma Work Permit numbers of potential employee applicants;

20 2. A telephone hotline for persons who suspect employers of
21 hiring workers without an Oklahoma Work Permit;

22 3. A system whereby employers calling to verify a person's
23 Oklahoma Work Permit will receive a confirmation number to confirm
24 the validity of such person's permit. The confirmation number shall

1 be entered into the employer's record for such person for
2 enforcement purposes; and

3 4. A database for maintaining records of persons who have been
4 issued an Oklahoma Work Permit. At a minimum, such records shall
5 include a permit holder's employment status, name, fingerprints,
6 work history, confirmation numbers, hours employed to work, hours
7 eligible to work, and all additional information deemed necessary by
8 the Commissioner of Labor. Such database shall be maintained in
9 perpetuity to ensure that the employment and Oklahoma Work Permit
10 status of each permitted worker is accurately reflected, or until
11 superseded by federal law or repealed by subsequent action of the
12 Legislature.

13 L. Fees collected pursuant to this section do not relieve a
14 person from any obligation to pay all applicable state and federal
15 taxes. Fees collected pursuant to this section may not serve as a
16 substitute or payment in lieu of obligated state and federal taxes.

17 M. The Commissioner of Labor shall promulgate rules and
18 procedures for the creation, implementation, maintenance, and
19 enforcement of the provisions of this section. Enforcement of this
20 section shall begin three (3) months after the effective date of
21 this act.

22 N. Any employer in this state who knowingly and intentionally
23 hires a person who does not possess a valid Oklahoma Work Permit,
24 unless such person has been identified as eligible for employment

1 pursuant to Section 1313 of Title 25 of the Oklahoma Statutes, shall
2 be subject to a civil penalty to be assessed and collected by the
3 Department. Such penalty shall be:

4 1. Upon a first offense, not less than Two Hundred Fifty
5 Dollars (\$250.00) and not more than Two Thousand Dollars (\$2,000.00)
6 for each worker without a permit in the employment of that employer;

7 2. Upon a second offense, not less than Two Thousand Dollars
8 (\$2,000.00) and not more than Five Thousand Dollars (\$5,000.00) for
9 each worker without a permit in the employment of that employer; or

10 3. Upon a third or subsequent offense, not less than Three
11 Thousand Dollars (\$3,000.00) and not more than Ten Thousand Dollars
12 (\$10,000.00) for each worker without a permit in the employment of
13 that employer.

14 O. The penalties specified in subsection N of this section
15 shall be subject to modification should they be found to exceed the
16 maximum amount of any civil sanction allowed under federal law that
17 may be imposed against an employer who knowingly hires a person who
18 is not authorized to work in the United States.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1316 of Title 25, unless there
21 is created a duplication in numbering, reads as follows:

22 There is hereby created in the State Treasury a revolving fund
23 for the Department of Labor to be designated the "Oklahoma Employer
24 Security and Accountability Act Revolving Fund". The fund shall be

1 a continuing fund, not subject to fiscal year limitations, and shall
2 consist of all fees and penalties assessed pursuant to Section 3 of
3 this act. Monies accruing to the credit of the fund are hereby
4 appropriated and may be budgeted and expended by the Department of
5 Labor for costs associated with administration, enforcement, and
6 implementation of this act. Expenditures from the fund shall be
7 made upon warrants issued by the State Treasurer against claims
8 filed as prescribed by law with the Director of State Finance for
9 approval and payment.

10 SECTION 6. This act shall become effective November 1, 2008.

11
12 51-2-2218 LTL 1/22/2008 5:48:40 PM
13
14
15
16
17
18
19
20
21
22
23
24