

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1446

6 By: Faught

7 COMMITTEE SUBSTITUTE

8 An Act relating to immigration; amending Section 3,
9 Chapter 112, O.S.L. 2007, as amended by Section 2,
10 Chapter 409, O.S.L. 2010 (21 O.S. Supp. 2010, Section
11 446), which relates to unlawful transport of an
12 alien; providing guidelines for enforcement of
13 prohibited act; making the smuggling of human beings
14 unlawful; providing penalties; authorizing vehicle
15 stops by law enforcement under certain circumstances;
16 defining terms; making certain acts unlawful;
17 providing guidelines for enforcement of prohibited
18 acts; providing penalties; defining terms; amending
19 21 O.S. 2001, Section 1738, as last amended by
20 Section 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp.
21 2010, Section 1738), which relates to seizure and
22 forfeiture proceedings; authorizing seizure and
23 forfeiture of property under certain circumstances;
24 prohibiting employers from hiring persons under
certain circumstances; amending Section 11, Chapter
112, O.S.L. 2007 (70 O.S. Supp. 2010, Section
3242.2), which relates to resident tuition and
benefits for individuals unlawfully in the United
States; deleting certain exception; authorizing
agencies to share information relating to the
immigration status of individuals for certain
purposes; repealing Section 1, Chapter 210, O.S.L.
2003, as amended by Section 13, Chapter 112, O.S.L.
2007 (70 O.S. Supp. 2010, Section 3242), which
relates to eligibility for enrollment and resident
tuition for students with certain immigration status;
providing for codification; and providing an
effective date.

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

2 SECTION 1. AMENDATORY Section 3, Chapter 112, O.S.L.
3 2007, as amended by Section 2, Chapter 409, O.S.L. 2010 (21 O.S.
4 Supp. 2010, Section 446), is amended to read as follows:

5 Section 446. A. It shall be unlawful for any person to
6 transport, move, or attempt to transport in the State of Oklahoma
7 any alien knowing or in reckless disregard of the fact that the
8 alien has come to, entered, or remained in the United States in
9 violation of law, in furtherance of the illegal presence of the
10 alien in the United States.

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

16 C. It shall be unlawful for any person to intentionally
17 destroy, hide, alter, abscond with or keep documentation, including
18 birth certificates, visas, passports, green cards or other documents
19 utilized in the regular course of business to either verify or
20 legally extend an individual's legal status within the United States
21 for the purpose of trafficking a person in violation of Section 748
22 of this title.

23 D. Nothing in this section shall be construed so as to prohibit
24 or restrict the provision of any state or local public benefit

1 described in ~~8 U.S.C.~~, Section 1621(b) of Title 8 of the United
2 States Code, or regulated public health services provided by a
3 private charity using private funds.

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

10 F. A law enforcement official or agency of this state or a
11 county, city, town or other political subdivision of this state may
12 not consider race, color or national origin in the enforcement of
13 this section except to the extent permitted by the United States
14 Constitution or Oklahoma Constitution.

15 G. In the enforcement of this section, the immigration status
16 of an alien may be determined by:

17 1. A law enforcement officer who is authorized by the federal
18 government to verify or ascertain the immigration status of an
19 alien; or

20 2. The United States Immigration and Customs Enforcement or the
21 United States Customs and Border Protection pursuant to Section
22 1373(c) of Title 8 of the United States Code.

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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 447 of Title 21, unless there is
3 created a duplication in numbering, reads as follows:

4 A. It shall be unlawful for a person to intentionally engage in
5 the smuggling of human beings for profit or commercial purpose.

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

11 C. Notwithstanding any other law, in the enforcement of this
12 section a law enforcement officer may lawfully stop any person who
13 is operating a motor vehicle if the officer has reasonable suspicion
14 to believe the person is in violation of any traffic law of this
15 state.

16 D. For the purposes of this section:

17 1. "Smuggling of human beings" means the transportation,
18 procurement of transportation or use of property or real property by
19 a person or an entity that knows or has reason to know that the
20 person or persons transported or to be transported are not United
21 States citizens, permanent resident aliens or persons otherwise
22 lawfully in this state or have attempted to enter, entered or
23 remained in the United States in violation of law; and

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1 2. "Procurement of transportation" means any participation in
2 or facilitation of transportation and includes:

3 a. providing services that facilitate transportation
4 including travel arrangement services or money
5 transmission services, or

6 b. providing property that facilitates transportation,
7 including a weapon, a vehicle or other means of
8 transportation or false identification, or selling,
9 leasing, renting or otherwise making available
10 property or real property.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 448 of Title 21, unless there is
13 created a duplication in numbering, reads as follows:

14 A. It is unlawful for an occupant of a motor vehicle that is
15 stopped on a street, roadway or highway to attempt to hire or hire
16 and pick up passengers for work at a different location if the motor
17 vehicle blocks or impedes the normal movement of traffic.

18 B. It is unlawful for a person to enter a motor vehicle that is
19 stopped on a street, roadway or highway in order to be hired by an
20 occupant of the motor vehicle and to be transported to work at a
21 different location if the motor vehicle blocks or impedes the normal
22 movement of traffic.

23 C. It is unlawful for a person who is unlawfully present in the
24 United States and who is an unauthorized alien to knowingly apply

1 for work, solicit work in a public place or perform work as an
2 employee or independent contractor in this state.

3 D. A law enforcement official or agency of this state or a
4 county, city, town or other political subdivision of this state may
5 not consider race, color or national origin in the enforcement of
6 this section except to the extent permitted by the United States
7 Constitution or Oklahoma Constitution.

8 E. In the enforcement of this section, the immigration status
9 of an alien may be determined by:

10 1. A law enforcement officer who is authorized by the federal
11 government to verify or ascertain the immigration status of an
12 alien; or

13 2. The United States Immigration and Customs Enforcement or the
14 United States Customs and Border Protection pursuant to Section
15 1373(c) of Title 8 of the United States Code.

16 F. Any person violating the provisions of this section shall,
17 upon conviction, be guilty of a misdemeanor punishable by
18 imprisonment in the county jail for not more than one (1) year, or
19 by a fine of Five Hundred Dollars (\$500.00), or by both such
20 imprisonment and fine.

21 G. For the purposes of this section:

22 1. "Solicit" means verbal or nonverbal communication by a
23 gesture or a nod that would indicate to a reasonable person that a
24 person is willing to be employed; and

1 2. "Unauthorized alien" means an alien who does not have the
2 legal right or authorization under federal law to work in the United
3 States as described in Section 1324a(h) (3) of Title 8 of the United
4 States Code.

5 SECTION 4. AMENDATORY 21 O.S. 2001, Section 1738, as
6 last amended by Section 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp.
7 2010, Section 1738), is amended to read as follows:

8 Section 1738. A. Any commissioned peace officer of this state
9 is authorized to seize any vehicle owned by or registered to the
10 defendant used in the commission of any armed robbery offense
11 defined in Section 801 of this title, or any vehicle owned by or
12 registered to the defendant when such vehicle is used to facilitate
13 the intentional discharge of any kind of firearm in violation of
14 Section 652 of this title, or any vehicle, airplane, vessel,
15 vehicles or parts of vehicles whose numbers have been removed,
16 altered or obliterated so as to prevent determination of the true
17 identity or ownership of said property and parts of vehicles which
18 probable cause indicates are stolen but whose true ownership cannot
19 be determined, or any vehicle owned by or registered to the
20 defendant used in violation of the Trademark Anti-Counterfeiting
21 Act, or any equipment owned by or registered to the defendant which
22 is used in the attempt or commission of any act of burglary in the
23 first or second degree, motor vehicle theft, unauthorized use of a
24 vehicle, obliteration of distinguishing numbers on vehicles or

1 criminal possession of vehicles with altered, removed or obliterated
2 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of
3 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma
4 Statutes, or any equipment owned by or registered to the defendant
5 used in violation of the Trademark Anti-Counterfeiting Act, or any
6 vehicle, airplane, vessel or equipment owned by or registered to the
7 defendant used in the commission of any arson offense defined in
8 Section 1401, 1402, 1403, 1404 or 1405 of this title, or any vehicle
9 or conveyance used in any manner to facilitate or participate in the
10 commission of any human trafficking offense in violation of Section
11 748 of this title, or any vehicle or other conveyance owned,
12 registered or used by any defendant when such vehicle or other
13 conveyance is used in any manner by a prostitute, pimp or panderer
14 to facilitate or participate in the commission of any prostitution
15 offense in violation of Sections 1028, 1029 or 1030 of this title;
16 provided, however, that the vehicle or conveyance of a customer or
17 anyone merely procuring the services of a prostitute shall not be
18 included. Said property may be held as evidence until a forfeiture
19 has been declared or a release ordered. Forfeiture actions under
20 this section may be brought by the district attorney in the proper
21 county of venue as petitioner; provided, in the event the district
22 attorney elects not to file such action, or fails to file such
23 action within ninety (90) days of the date of the seizure of such
24 equipment, the property shall be returned to the owner.

1 B. In addition to the property described in subsection A of
2 this section, the following property is also subject to forfeiture
3 pursuant to this section:

4 1. Property used in the commission of theft of livestock or in
5 any manner to facilitate the theft of livestock;

6 2. The proceeds gained from the commission of theft of
7 livestock;

8 3. Personal property acquired with proceeds gained from the
9 commission of theft of livestock;

10 4. All conveyances, including aircraft, vehicles or vessels,
11 and horses or dogs which are used to transport or in any manner to
12 facilitate the transportation for the purpose of the commission of
13 theft of livestock;

14 5. Any items having a counterfeit mark and all property that is
15 owned by or registered to the defendant that is employed or used in
16 connection with any violation of the Trademark Anti-Counterfeiting
17 Act;

18 6. Any weapon possessed, used or available for use in any
19 manner during the commission of a felony within the State of
20 Oklahoma, or any firearm that is possessed by a convicted felon;

21 7. Any police scanner used in violation of Section 1214 of this
22 title;

23 8. Any computer and its components and peripherals, including
24 but not limited to the central processing unit, monitor, keyboard,

1 printers, scanners, software, and hardware, when it is used in the
2 commission of any crime in this state;

3 9. All property used in the commission of, or in any manner to
4 facilitate, a violation of Section 1040.12a of this title;

5 10. All conveyances, including aircraft, vehicles or vessels,
6 monies, coins and currency, or other instrumentality used or
7 intended to be used, in any manner or part, to commit a violation of
8 paragraph 1 of subsection A of Section 1021 of this title, where the
9 victim of the crime is a minor child, subsection B of Section 1021
10 of this title, Section 1021.2 of this title, paragraph 1 of
11 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of
12 subsection A of Section 1123 of this title;

13 11. All conveyances, including aircraft, vehicles or vessels,
14 monies, coins and currency, or other instrumentality used in any
15 manner or part, to commit any violation of the provisions set forth
16 in Section 748 of this title; ~~and~~

17 12. Any and all property used in any manner or part to
18 facilitate, participate or further the commission of a human
19 trafficking offense in violation of Section 748 of this title, and
20 all property, including monies, real estate, or any other tangible
21 assets or property of or derived from or used by a prostitute, pimp
22 or panderer in any manner or part to facilitate, participate or
23 further the commission of any prostitution offense in violation of
24 Sections 1028, 1029 or 1030 of this title; provided, however, any

1 monies, real estate or any other tangible asset or property of a
2 customer or anyone merely procuring the services of a prostitute
3 shall not be included; and

4 13. All conveyances, including aircraft, vehicles or vessels,
5 used in any manner or part to commit any violation of the provisions
6 set forth in Section 446 of this title or Sections 2 and 3 of this
7 act.

8 C. Notice of seizure and intended forfeiture proceeding shall
9 be filed in the office of the clerk of the district court for the
10 county wherein such property is seized and shall be given all owners
11 and parties in interest.

12 D. Notice shall be given according to one of the following
13 methods:

14 1. Upon each owner or party in interest whose right, title, or
15 interest is of record in the Oklahoma Tax Commission or with the
16 county clerk for filings under the Uniform Commercial Code, served
17 in the manner of service of process in civil cases prescribed by
18 Section 2004 of Title 12 of the Oklahoma Statutes;

19 2. Upon each owner or party in interest whose name and address
20 is known, served in the manner of service of process in civil cases
21 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

22 3. Upon all other owners, whose addresses are unknown, but who
23 are believed to have an interest in the property by one publication
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1 in a newspaper of general circulation in the county where the
2 seizure was made.

3 E. Within sixty (60) days after the mailing or publication of
4 the notice, the owner of the property and any other party in
5 interest or claimant may file a verified answer and claim to the
6 property described in the notice of seizure and of the intended
7 forfeiture proceeding.

8 F. If at the end of sixty (60) days after the notice has been
9 mailed or published there is no verified answer on file, the court
10 shall hear evidence upon the fact of the unlawful use and may order
11 the property forfeited to the state, if such fact is proven.

12 G. If a verified answer is filed, the forfeiture proceeding
13 shall be set for hearing.

14 H. At the hearing the petitioner shall prove by clear and
15 convincing evidence that property was used in the attempt or
16 commission of an act specified in subsection A of this section or is
17 property described in subsection B of this section with knowledge by
18 the owner of the property.

19 I. The claimant of any right, title, or interest in the
20 property may prove the lien, mortgage, or conditional sales contract
21 to be bona fide and that the right, title, or interest created by
22 the document was created without any knowledge or reason to believe
23 that the property was being, or was to be, used for the purpose
24 charged.

1 J. In the event of such proof, the court may order the property
2 released to the bona fide or innocent owner, lien holder, mortgagee,
3 or vendor if the amount due such person is equal to, or in excess
4 of, the value of the property as of the date of the seizure, it
5 being the intention of this section to forfeit only the right,
6 title, or interest of the purchaser, except for items bearing a
7 counterfeit mark or used exclusively to manufacture a counterfeit
8 mark.

9 K. If the amount due to such person is less than the value of
10 the property, or if no bona fide claim is established, the property
11 may be forfeited to the state and may be sold pursuant to judgment
12 of the court, as on sale upon execution, and as provided in Section
13 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
14 provided for by law and for property bearing a counterfeit mark
15 which shall be destroyed.

16 L. Property taken or detained pursuant to this section shall
17 not be repleviable, but shall be deemed to be in the custody of the
18 petitioner or in the custody of the law enforcement agency as
19 provided in the Trademark Anti-Counterfeiting Act. Except for
20 property required to be destroyed pursuant to the Trademark Anti-
21 Counterfeiting Act, the petitioner shall release said property to
22 the owner of the property if it is determined that the owner had no
23 knowledge of the illegal use of the property or if there is
24 insufficient evidence to sustain the burden of showing illegal use

1 of such property. If the owner of the property stipulates to the
2 forfeiture and waives the hearing, the petitioner may determine if
3 the value of the property is equal to or less than the outstanding
4 lien. If such lien exceeds the value of the property, the property
5 may be released to the lien holder. Property which has not been
6 released by the petitioner shall be subject to the orders and
7 decrees of the court or the official having jurisdiction thereof.

8 M. The petitioner, or the law enforcement agency holding
9 property pursuant to the Trademark Anti-Counterfeiting Act, shall
10 not be held civilly liable for having custody of the seized property
11 or proceeding with a forfeiture action as provided for in this
12 section.

13 N. Attorney fees shall not be assessed against the state or the
14 petitioner for any actions or proceeding pursuant to Section 1701 et
15 seq. of this title.

16 O. The proceeds of the sale of any property shall be
17 distributed as follows, in the order indicated:

18 1. To the bona fide or innocent purchaser, conditional sales
19 vendor, or mortgagee of the property, if any, up to the amount of
20 such person's interest in the property, when the court declaring the
21 forfeiture orders a distribution to such person;

22 2. To the payment of the actual reasonable expenses of
23 preserving the property;

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1 3. To the victim of the crime to compensate said victim for any
2 loss incurred as a result of the act for which such property was
3 forfeited; and

4 4. The balance to a revolving fund in the office of the county
5 treasurer of the county wherein the property was seized, to be
6 distributed as follows: one-third (1/3) to the investigating law
7 enforcement agency; one-third (1/3) of said fund to be used and
8 maintained as a revolving fund by the district attorney for the
9 victim-witness fund, a reward fund or the evidence fund; and one-
10 third (1/3) to go to the jail maintenance fund, with a yearly
11 accounting to the board of county commissioners in whose county the
12 fund is established. If the petitioner is not the district
13 attorney, then the one-third (1/3) which would have been designated
14 to that office shall be distributed to the petitioner. Monies
15 distributed to the jail maintenance fund shall be used to pay costs
16 for the storage of such property if such property is ordered
17 released to a bona fide or innocent owner, lien holder, mortgagee,
18 or vendor and if such funds are available in said fund.

19 P. Monies distributed into the revolving fund in the office of
20 the county treasurer from forfeitures initiated under this section
21 by the district attorney shall be limited to One Hundred Thousand
22 Dollars (\$100,000.00) at any one time in counties with population in
23 excess of three hundred thousand (300,000) and Twenty-five Thousand
24 Dollars (\$25,000.00) at any one time in counties with population

1 less than three hundred thousand (300,000). Any amount in excess of
2 these figures shall be placed in the general fund of the county.

3 Q. If the court finds that the property was not used in the
4 attempt or commission of an act specified in subsection A of this
5 section and was not property subject to forfeiture pursuant to
6 subsection B of this section and is not property bearing a
7 counterfeit mark, the court shall order the property released to the
8 owner as the right, title, or interest appears on record in the Tax
9 Commission as of the seizure.

10 R. No vehicle, airplane, or vessel used by a person as a common
11 carrier in the transaction of business as a common carrier shall be
12 forfeited pursuant to the provisions of this section unless it shall
13 be proven that the owner or other person in charge of such
14 conveyance was a consenting party or privy to the attempt or
15 commission of an act specified in subsection A or B of this section.
16 No property shall be forfeited pursuant to the provisions of this
17 section by reason of any act or omission established by the owner
18 thereof to have been committed or omitted without the knowledge or
19 consent of such owner, and by any person other than such owner while
20 such property was unlawfully in the possession of a person other
21 than the owner in violation of the criminal laws of the United
22 States or of any state.

23 S. Whenever any property is forfeited pursuant to this section,
24 the district court having jurisdiction of the proceeding may order

1 that the forfeited property may be retained for its official use by
2 the state, county, or municipal law enforcement agency which seized
3 the property.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 701 of Title 40, unless there is
6 created a duplication in numbering, reads as follows:

7 Employers shall be prohibited from hiring aliens who do not have
8 a valid state-issued identification card, driver license, immigrant
9 visa, permanent resident card, or other acceptable form of
10 identification, issued by either a state or federal agency.

11 SECTION 6. AMENDATORY Section 11, Chapter 112, O.S.L.
12 2007 (70 O.S. Supp. 2010, Section 3242.2), is amended to read as
13 follows:

14 Section 3242.2 A. ~~Except as otherwise provided in Section 3242~~
15 ~~of Title 70 of the Oklahoma Statutes, an~~ An individual who is not
16 lawfully present in the United States shall not be eligible on the
17 basis of residence within the state for:

18 1. Any postsecondary education benefit, including, but not
19 limited to, scholarships or financial aid; or

20 2. Resident tuition.

21 B. The provisions of subsection A of this section shall not
22 apply to a student enrolled in a degree program at a postsecondary
23 educational institution within The Oklahoma State System of Higher
24 Education during the 2006-2007 school year or any prior year who

1 received a resident tuition benefit pursuant to Section 3242 of
2 ~~Title 70 of the Oklahoma Statutes~~ this title at that institution.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3120 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 Except as provided in federal law, officials or agencies of this
7 state and counties, cities and other political subdivisions of this
8 state may not be prohibited or in any way be restricted from
9 sending, receiving or maintaining information relating to the
10 immigration status, lawful or unlawful, of any individual or
11 exchanging that information with any other federal, state or local
12 governmental entity for the following official purposes:

13 1. Determining eligibility for any public benefit, service or
14 license provided by any federal, state, local or other political
15 subdivision of this state;

16 2. Verifying any claim of residence or domicile if
17 determination of residence or domicile is required under the laws of
18 this state or a judicial order issued pursuant to a civil or
19 criminal proceeding in this state;

20 3. If the person is an alien, determining whether the person is
21 in compliance with the federal registration laws prescribed by Part
22 VII, Subchapter 2 of Chapter 12 of Title 8 of the Federal
23 Immigration and Nationality Act; or

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1 4. Pursuant to the provisions of Section 1373 of Title 8 of the
2 United States Code and Section 1644 of Title 8 of the United States
3 Code.

4 SECTION 8. REPEALER Section 1, Chapter 210, O.S.L. 2003,
5 as amended by Section 13, Chapter 112, O.S.L. 2007 (70 O.S. Supp.
6 2010, Section 3242), is hereby repealed.

7 SECTION 9. This act shall become effective November 1, 2011.

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