HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1446 By: Faught

COMMITTEE SUBSTITUTE

An Act relating to immigration; amending Section 3, Chapter 112, O.S.L. 2007, as amended by Section 2, Chapter 409, O.S.L. 2010 (21 O.S. Supp. 2010, Section 446), which relates to unlawful transport of an alien; providing guidelines for enforcement of prohibited act; making the smuggling of human beings unlawful; providing penalties; authorizing vehicle stops by law enforcement under certain circumstances; defining terms; making certain acts unlawful; providing guidelines for enforcement of prohibited acts; providing penalties; defining terms; amending 21 O.S. 2001, Section 1738, as last amended by Section 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp. 2010, Section 1738), which relates to seizure and forfeiture proceedings; authorizing seizure and forfeiture of property under certain circumstances; 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;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

providing for codification; and providing an effective date.

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

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

Section 446. A. It shall be unlawful for any person to transport, move, or attempt to transport in the State of Oklahoma any alien 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, in furtherance of the illegal presence of the 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.

C. It shall be unlawful for any person to intentionally destroy, hide, alter, abscond with or keep documentation, including birth certificates, visas, passports, green cards or other documents utilized in the regular course of business to either verify or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

legally extend an individual's legal status within the United States for the purpose of trafficking a person in violation of Section 748 of this title.

D. Nothing in this section shall be construed so as to prohibit or restrict the provision of any state or local public benefit described in ~~8 U.S.C.,~~ Section 1621(b) of Title 8 of the United States Code, or regulated public health services provided by a private charity using private funds.

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

D. For the purposes of this section:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

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

C. It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

G. For the purposes of this section:

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

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

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

Section 1738. A. Any commissioned peace officer of this state is authorized to seize any vehicle owned by or registered to the defendant used in the commission of any armed robbery offense defined in Section 801 of this title, or any vehicle owned by or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

registered to the defendant when such vehicle is used to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of this title, or any vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or any vehicle owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any equipment owned by or registered to the defendant which is used in the attempt or commission of any act of burglary in the first or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, or any equipment owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any vehicle, airplane, vessel or equipment owned by or registered to the defendant used in the commission of any arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of this title, or any vehicle or conveyance used in any manner to facilitate or participate in the commission of any human trafficking offense in violation of Section

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

748 of this title, or any vehicle or other conveyance owned, registered or used by any defendant when such vehicle or other conveyance is used in any manner by a prostitute, pimp or panderer to facilitate or participate in the commission of any prostitution offense in violation of Sections 1028, 1029 or 1030 of this title; provided, however, that the vehicle or conveyance of a customer or anyone merely procuring the services of a prostitute shall not be included. Said property may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, the property shall be returned to the owner.

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

8. Any computer and its components and peripherals, including but not limited to the central processing unit, monitor, keyboard, printers, scanners, software, and hardware, when it is used in the commission of any crime in this state;

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

10. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used or intended to be used, in any manner or part, to commit a violation of paragraph 1 of subsection A of Section 1021 of this title, where the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

victim of the crime is a minor child, subsection B of Section 1021 of this title, Section 1021.2 of this title, paragraph 1 of subsection A of Section 1111 of this title, or paragraphs 2 and 3 of subsection A of Section 1123 of this title;

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

12. Any and all property used in any manner or part to facilitate, participate or further the commission of a human trafficking offense in violation of Section 748 of this title, and all property, including monies, real estate, or any other tangible assets or property of or derived from or used by a prostitute, pimp or panderer in any manner or part to facilitate, participate or further the commission of any prostitution offense in violation of Sections 1028, 1029 or 1030 of this title; provided, however, any monies, real estate or any other tangible asset or property of a customer or anyone merely procuring the services of a prostitute shall not be included; and

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

counterfeit mark or used exclusively to manufacture a counterfeit mark.

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

L. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency as provided in the Trademark Anti-Counterfeiting Act. Except for property required to be destroyed pursuant to the Trademark Anti-Counterfeiting Act, the petitioner shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

released by the petitioner shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

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

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

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

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

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

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

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

P. Monies distributed into the revolving fund in the office of the county treasurer from forfeitures initiated under this section by the district attorney shall be limited to One Hundred Thousand Dollars ($100,000.00) at any one time in counties with population in excess of three hundred thousand (300,000) and Twenty-five Thousand Dollars ($25,000.00) at any one time in counties with population less than three hundred thousand (300,000). Any amount in excess of these figures shall be placed in the general fund of the county.

Q. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

section and was not property subject to forfeiture pursuant to subsection B of this section and is not property bearing a counterfeit mark, the court shall order the property released to the owner as the right, title, or interest appears on record in the Tax Commission as of the seizure.

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

S. Whenever any property is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order that the forfeited property may be retained for its official use by the state, county, or municipal law enforcement agency which seized the property.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

2. Resident tuition.

B. The provisions of subsection A of this section shall not apply to a student enrolled in a degree program at a postsecondary educational institution within The Oklahoma State System of Higher Education during the 2006-2007 school year or any prior year who received a resident tuition benefit pursuant to Section 3242 of ~~Title 70 of the Oklahoma Statutes~~ this title at that institution.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

SECTION 8. REPEALER 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), is hereby repealed.

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

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-01-2011 - DO PASS, As Amended.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.