

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1446

6 By: Faught, Osborn and Cockroft  
7 of the House

8 and

9 Justice and Shortey of the  
10 Senate

11 [ immigration - amending 21 O.S., Sections 446 and  
12 1738 - unlawful transport - amending 70 O.S., Section  
13 3242.2 - resident tuition - repealing 70 O.S.,  
14 Section 3242 - enrollment - codification - effective  
15 date ]

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

17 SECTION 1. AMENDATORY Section 3, Chapter 112, O.S.L.  
18 2007, as amended by Section 2, Chapter 409, O.S.L. 2010 (21 O.S.  
19 Supp. 2010, Section 446), is amended to read as follows:

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

26 B. It shall be unlawful for any person to conceal, harbor, or  
27 shelter from detection any alien in any place within the State of

1 Oklahoma, including any building or means of transportation, knowing  
2 or in reckless disregard of the fact that the alien has come to,  
3 entered, or remained in the United States in violation of law.

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

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

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

22 F. A law enforcement official or agency of this state or a  
23 county, city, town or other political subdivision of this state may  
24 not consider race, color or national origin in the enforcement of

1 this section except to the extent permitted by the United States  
2 Constitution or Oklahoma Constitution.

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

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

8 2. The United States Immigration and Customs Enforcement or the  
9 United States Customs and Border Protection pursuant to Section  
10 1373(c) of Title 8 of the United States Code.

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

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

16 B. Any person violating the provisions of this section shall,  
17 upon conviction, be guilty of a felony punishable by incarceration  
18 in the custody of the Department of Corrections for not less than  
19 one (1) year, or by a fine of not less than One Thousand Dollars  
20 (\$1,000.00), or by both such fine and imprisonment.

21 C. Notwithstanding any other law, in the enforcement of this  
22 section a law enforcement officer may lawfully stop any person who  
23 is operating a motor vehicle if the officer has reasonable suspicion

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1 to believe the person is in violation of any traffic law of this  
2 state.

3 D. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

21       1. A law enforcement officer who is authorized by the federal  
22 government to verify or ascertain the immigration status of an  
23 alien; or  
24

1           2. The United States Immigration and Customs Enforcement or the  
2 United States Customs and Border Protection pursuant to Section  
3 1373(c) of Title 8 of the United States Code.

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

9           G. For the purposes of this section:

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

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

17          SECTION 4.           AMENDATORY           21 O.S. 2001, Section 1738, as  
18 last amended by Section 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp.  
19 2010, Section 1738), is amended to read as follows:

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

1 the intentional discharge of any kind of firearm in violation of  
2 Section 652 of this title, or any vehicle, airplane, vessel,  
3 vehicles or parts of vehicles whose numbers have been removed,  
4 altered or obliterated so as to prevent determination of the true  
5 identity or ownership of said property and parts of vehicles which  
6 probable cause indicates are stolen but whose true ownership cannot  
7 be determined, or any vehicle owned by or registered to the  
8 defendant used in violation of the Trademark Anti-Counterfeiting  
9 Act, or any equipment owned by or registered to the defendant which  
10 is used in the attempt or commission of any act of burglary in the  
11 first or second degree, motor vehicle theft, unauthorized use of a  
12 vehicle, obliteration of distinguishing numbers on vehicles or  
13 criminal possession of vehicles with altered, removed or obliterated  
14 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of  
15 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma  
16 Statutes, or any equipment owned by or registered to the defendant  
17 used in violation of the Trademark Anti-Counterfeiting Act, or any  
18 vehicle, airplane, vessel or equipment owned by or registered to the  
19 defendant used in the commission of any arson offense defined in  
20 Section 1401, 1402, 1403, 1404 or 1405 of this title, or any vehicle  
21 or conveyance used in any manner to facilitate or participate in the  
22 commission of any human trafficking offense in violation of Section  
23 748 of this title, or any vehicle or other conveyance owned,  
24 registered or used by any defendant when such vehicle or other

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

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

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

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

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

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

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

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

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

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

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

18 10. All conveyances, including aircraft, vehicles or vessels,  
19 monies, coins and currency, or other instrumentality used or  
20 intended to be used, in any manner or part, to commit a violation of  
21 paragraph 1 of subsection A of Section 1021 of this title, where the  
22 victim of the crime is a minor child, subsection B of Section 1021  
23 of this title, Section 1021.2 of this title, paragraph 1 of  
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1 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of  
2 subsection A of Section 1123 of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 K. If the amount due to such person is less than the value of  
2 the property, or if no bona fide claim is established, the property  
3 may be forfeited to the state and may be sold pursuant to judgment  
4 of the court, as on sale upon execution, and as provided in Section  
5 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise  
6 provided for by law and for property bearing a counterfeit mark  
7 which shall be destroyed.

8 L. Property taken or detained pursuant to this section shall  
9 not be repleviable, but shall be deemed to be in the custody of the  
10 petitioner or in the custody of the law enforcement agency as  
11 provided in the Trademark Anti-Counterfeiting Act. Except for  
12 property required to be destroyed pursuant to the Trademark Anti-  
13 Counterfeiting Act, the petitioner shall release said property to  
14 the owner of the property if it is determined that the owner had no  
15 knowledge of the illegal use of the property or if there is  
16 insufficient evidence to sustain the burden of showing illegal use  
17 of such property. If the owner of the property stipulates to the  
18 forfeiture and waives the hearing, the petitioner may determine if  
19 the value of the property is equal to or less than the outstanding  
20 lien. If such lien exceeds the value of the property, the property  
21 may be released to the lien holder. Property which has not been  
22 released by the petitioner shall be subject to the orders and  
23 decrees of the court or the official having jurisdiction thereof.

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

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

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

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

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

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

20 4. The balance to a revolving fund in the office of the county  
21 treasurer of the county wherein the property was seized, to be  
22 distributed as follows: one-third (1/3) to the investigating law  
23 enforcement agency; one-third (1/3) of said fund to be used and  
24 maintained as a revolving fund by the district attorney for the

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

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

19 Q. If the court finds that the property was not used in the  
20 attempt or commission of an act specified in subsection A of this  
21 section and was not property subject to forfeiture pursuant to  
22 subsection B of this section and is not property bearing a  
23 counterfeit mark, the court shall order the property released to the  
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1 owner as the right, title, or interest appears on record in the Tax  
2 Commission as of the seizure.

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

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

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

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

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

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

- 12 1. Any postsecondary education benefit, including, but not  
13 limited to, scholarships or financial aid; or
- 14 2. Resident tuition.

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

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

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

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

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

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

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

22 SECTION 8. REPEALER Section 1, Chapter 210, O.S.L. 2003,  
23 as amended by Section 13, Chapter 112, O.S.L. 2007 (70 O.S. Supp.  
24 2010, Section 3242), is hereby repealed.

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

2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-11 - DO  
3 PASS, As Amended and Coauthored.  
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