

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1477

By: Armes

4  
5  
6 AS INTRODUCED

7 An Act relating to immigration status; amending 40  
8 O.S. 2001, Section 1-208, as last amended by Section  
9 2, Chapter 132, O.S.L. 2008 (40 O.S. Supp. 2010,  
10 Section 1-208), which relates to the Employment  
11 Security Act of 1980; modifying definition; amending  
12 47 O.S. 2001, Section 6-112, as amended by Section 8,  
13 Chapter 326, O.S.L. 2007 (47 O.S. Supp. 2010, Section  
14 6-112), which relates to driver licenses; requiring  
15 the possession of certain identification; amending  
16 Section 2, Chapter 455, O.S.L. 2009 (57 O.S. Supp.  
17 2010, Section 530.4), which relates to the Oklahoma  
18 Criminal Illegal Alien Rapid Repatriation Act of  
19 2009, requiring the Department of Corrections to  
20 release certain prisoners into certain custody;  
21 amending 60 O.S. 2001, Section 121, which relates to  
22 property; prohibiting certain persons from renting,  
23 leasing, and purchasing certain property; amending 63  
24 O.S. 2001, Section 1-311, which relates to birth  
certificates; requiring record of live birth to be  
forwarded to certain agencies; amending 70 O.S. 2001,  
Section 1-113, as last amended by Section 154,  
Chapter 234, O.S.L. 2009 (70 O.S. Supp. 2010, Section  
1-113), which relates to school district residency;  
prohibiting school districts from admitting certain  
persons; and providing an effective date.

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

1 SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-208, as  
2 last amended by Section 2, Chapter 132, O.S.L. 2008 (40 O.S. Supp.  
3 2010, Section 1-208), is amended to read as follows:

4 Section 1-208. EMPLOYER.

5 "Employer" means:

6 1. Any employing unit, except as provided under paragraphs 10  
7 and 11 of this section, which:

8 a. for some portion of a day, but not necessarily  
9 simultaneously, in each of twenty (20) different  
10 calendar weeks, whether or not such weeks are or were  
11 consecutive, within either the calendar year or the  
12 preceding calendar year, and for the purpose of this  
13 definition if any week includes both December 31 and  
14 January 1, the days up to January 1 shall be deemed  
15 one (1) calendar week and the days beginning January 1  
16 another such week, has or had in employment one or  
17 more individuals, irrespective of whether the same  
18 individuals are or were employed in each such day, or

19 b. in any calendar quarter, in either the calendar year  
20 or preceding calendar year paid for service in  
21 employment wages of One Thousand Five Hundred Dollars  
22 (\$1,500.00) or more;

23 2. Any individual or employing unit, whether or not an  
24 employing unit at the time of the acquisition, which acquired

1 substantially all of the organization, employees, trade, business,  
2 or assets thereof, of another which at the time of such acquisition  
3 was an employer subject to the Employment Security Act of 1980; or  
4 which acquired a part of the organization, employees, trade, or  
5 business of another employing unit which at the time of such  
6 acquisition was an employer subject to the Employment Security Act  
7 of 1980;

8       3. Any individual or employing unit, whether or not an  
9 employing unit at the time of acquisition, which acquired  
10 substantially all of the organization, employees, trade, business,  
11 or assets thereof, of another employing unit, if the employment  
12 record of such individual or employing unit subsequent to such  
13 acquisition, together with the employment record of the acquired  
14 unit prior to such acquisition, both within the same calendar year,  
15 would be sufficient to constitute an employing unit and employer  
16 subject to the Employment Security Act of 1980 under paragraph 1 of  
17 this section; or any individual or employing unit which acquired  
18 substantially all of the organization, employees, trade, business,  
19 or assets of another employing unit if such employing unit  
20 subsequent to such acquisition, and such acquired unit prior to such  
21 acquisition, both within the same calendar quarter, together paid  
22 for service in employment wages totaling One Thousand Five Hundred  
23 Dollars (\$1,500.00) or more;

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1       4. Any employing unit which, together with one or more other  
2 employing units, is owned or controlled, by legally enforceable  
3 means or otherwise, directly by the same interest, or which owns or  
4 controls one or more other employing units, by legally enforceable  
5 means or otherwise, and which, if treated as a single unit with such  
6 other employing unit, would be an employer under paragraph 1 of this  
7 section;

8       5. Any employing unit which, having become an employer under  
9 paragraph 1, 2, 3, 4, 6, 8, 10, 11 or 12 of this section has not,  
10 under Section 3-202 of this title, ceased to be an employer subject  
11 to the Employment Security Act of 1980;

12       6. For the effective period of its election pursuant to Section  
13 3-203 of this title any other employing unit which has elected to  
14 become subject to the Employment Security Act of 1980;

15       7. Any department of this state, any other state, and all  
16 instrumentalities thereof, including any political subdivisions and  
17 their instrumentalities, for which service in employment, as defined  
18 in paragraph (3) of Section 1-210 of this title, is performed,  
19 except as provided under paragraphs 10 and 11 of this section;

20       8. Any employing unit for which service in employment, as  
21 defined in paragraph (4) of Section 1-210 of this title, is  
22 performed, except as provided under paragraphs 10 and 11 of this  
23 section;

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1           9. For purposes of paragraphs 1, 8, 10 and 11 of this section,  
2 employment shall include service which would constitute employment  
3 but for the fact that the service is deemed to be performed entirely  
4 within another state pursuant to an election under an arrangement  
5 entered into in accordance with Section 4-702 of this title by the  
6 Oklahoma Employment Security Commission and an agency charged with  
7 the administration of any other state or federal unemployment  
8 compensation law;

9           10. Any employing unit for which agricultural labor as defined  
10 in paragraph (5) of Section 1-210 of this title is performed. In  
11 determining whether or not an employing unit for which service other  
12 than agricultural labor is also performed is an employer under  
13 paragraph 1, 7, 8 or 11 of this section, the wages earned or the  
14 employment of an employee performing service in agricultural labor  
15 shall not be taken into account;

16           11. Any employing unit for which domestic service in employment  
17 as defined in paragraph (6) of Section 1-210 of this title is  
18 performed. In determining whether or not an employing unit for  
19 which service other than domestic service is also performed is an  
20 employer under paragraph 1, 7, 8 or 10 of this section, the wages  
21 earned or the employment of an employee performing domestic service  
22 shall not be taken into account;

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1 12. Any employing unit which is not an employer by reason of  
2 any other provisions of the Employment Security Act of 1980 shall  
3 nevertheless be an "employer" if either:

4 a. within the calendar year or preceding calendar year,  
5 service is or was performed, with respect to which the  
6 employing unit is liable for any federal tax against  
7 which credit may be taken by the employing unit for  
8 contributions required to be paid by it into a state  
9 unemployment fund, or

10 b. the employing unit is required to be an "employer" as  
11 a condition for approval of the Employment Security  
12 Act of 1980 for full tax credit to be allowed against  
13 the tax imposed by the Federal Unemployment Tax Act,  
14 26 U.S.C., Section 3301 et seq.; ~~or~~

15 13. If two or more employers share common ownership,  
16 management, or control, the Commission may combine their merit  
17 rating accounts, including their actual contribution and benefit  
18 experience, annual payrolls, and contribution rates into one  
19 account; or

20 14. Employers shall be prohibited from hiring aliens who do not  
21 have valid state-issued identification, driver license, alien visa  
22 permit, green card, or other acceptable form of identification,  
23 issued by either a state or federal agency.  
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1 SECTION 2. AMENDATORY 47 O.S. 2001, Section 6-112, as  
2 amended by Section 8, Chapter 326, O.S.L. 2007 (47 O.S. Supp. 2010,  
3 Section 6-112), is amended to read as follows:

4 Section 6-112. A. Every licensee shall have his or her driver  
5 license in his or her immediate possession at all times when  
6 operating a motor vehicle and shall display the same upon demand of  
7 a peace officer. Any person violating this subsection shall, upon  
8 conviction, be guilty of a misdemeanor and shall be punished as  
9 provided for in Section 17-101 of this title.

10 B. All persons shall carry, or have in their immediate  
11 possession at all times their driver license, state or federally  
12 issued identification, passport, or alien identification documents,  
13 and shall display same whenever requested to do so in the same  
14 manner as all Oklahoma citizens.

15 C. Any person charged with violating this section who produces  
16 in court, on or before the court date, a driver license issued to  
17 him or her and valid at the time of his or her arrest shall be  
18 entitled to dismissal of such charge without payment of court costs  
19 and fine.

20 SECTION 3. AMENDATORY Section 2, Chapter 455, O.S.L.  
21 2009 (57 O.S. Supp. 2010, Section 530.4), is amended to read as  
22 follows:

23 Section 530.4 A. Notwithstanding any law to the contrary, the  
24 Director of the Department of Corrections ~~may~~ shall release a

1 prisoner to the custody and control of the United States Immigration  
2 and Customs Enforcement, ~~provided the Department has received an~~  
3 ~~order of deportation for the prisoner from the United States~~  
4 ~~Citizenship and Immigration Services,~~ when the prisoner has served  
5 at least one-third (1/3) of the total amount of incarceration  
6 imposed by the court, and the prisoner has not been convicted of an  
7 offense as provided in Section 13.1 of Title 21 of the Oklahoma  
8 Statutes. The Director shall consider all sentences being served  
9 when calculating the total amount of incarceration, but shall not  
10 consider the suspended portion of any sentence.

11 B. If a prisoner released pursuant to this section returns  
12 illegally to the United States, upon notice from any federal or  
13 state law enforcement agency that the prisoner is incarcerated, the  
14 Director shall revoke the release of the prisoner and the prisoner  
15 shall serve the remainder of the incarceration originally imposed by  
16 the court. The prisoner shall not thereafter be eligible for parole  
17 on any sentence affected by the release provided above.

18 SECTION 4. AMENDATORY 60 O.S. 2001, Section 121, is  
19 amended to read as follows:

20 Section 121. A. No alien or any person who is not a citizen of  
21 the United States shall acquire title to or own land in the State of  
22 Oklahoma, except as hereinafter provided, but he shall have and  
23 enjoy in the State of Oklahoma such rights as to personal property  
24 as are, or shall be accorded a citizen of the United States under

1 the laws of the nation to which such alien belongs, or by the  
2 treaties of such nation with the United States, except as the same  
3 may be affected by the provisions of this act or the Constitution of  
4 this state.

5 B. No alien or any person who is not a citizen of the United  
6 States shall be allowed to rent, lease, or purchase, either real  
7 estate or personal property such as vehicles, construction  
8 equipment, farming equipment, or any other items of personal  
9 property usually accorded citizens of the United States.

10 SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-311, is  
11 amended to read as follows:

12 Section 1-311. A. A ~~certificate~~ record of live birth for each  
13 live birth which occurs in this state shall be filed with the local  
14 registrar of the district in which the birth occurs, within seven  
15 (7) days after the birth; provided, that when a birth occurs on a  
16 moving conveyance, a record of live birth ~~certificate~~ shall be filed  
17 in the district in which the child was first removed from the  
18 conveyance.

19 B. When a birth occurs in an institution, the person in charge  
20 of the institution or a designated representative shall obtain the  
21 personal data, prepare the ~~certificate~~ record of live birth, secure  
22 the signatures required by the ~~certificate~~ record of live birth and  
23 file the ~~certificate~~ record of live birth with the local registrar.  
24 The physician in attendance shall certify to the facts of birth and

1 provide the medical information required by the ~~certificate~~ record  
2 of live birth within five (5) days after the birth.

3 C. When a birth occurs outside an institution, the ~~certificate~~  
4 record of live birth shall be prepared and filed by one of the  
5 following in the indicated order of priority:

6 1. The physician in attendance at or immediately after the  
7 birth;

8 2. Any other person in attendance at or immediately after the  
9 birth; or

10 3. The father, the mother, or, in the absence or inability of  
11 the father or mother, the person in charge of the premises where the  
12 birth occurred and present at the birth.

13 D. 1. If the mother was married at the time of conception and  
14 birth, the name of the husband shall be entered on the ~~certificate~~  
15 record of live birth as the father of the child unless paternity has  
16 been determined otherwise by a court of competent jurisdiction or a  
17 husband's denial of paternity form has been filed along with an  
18 affidavit acknowledging paternity, in which case the name of the  
19 father as determined by the court or affidavit acknowledging  
20 paternity shall be entered.

21 2. If the mother was not married at the time of conception and  
22 birth, the name of the father shall be entered on the ~~certificate~~  
23 record of live birth of birth only if:

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- 1 a. a determination of paternity has been made by an  
2 administrative action through the Department of Human  
3 Services or a court of competent jurisdiction, in  
4 which case the name of the father shall be entered, or  
5 b. the mother and father have signed an affidavit  
6 acknowledging paternity pursuant to Section 1-311.3 of  
7 this title, or substantially similar affidavit from  
8 another state and filed it with the State Registrar of  
9 Vital Statistics.

10 E. Either of the parents of the child shall sign the  
11 ~~certificate~~ record of live birth to attest to the accuracy of the  
12 personal data entered thereon, in time to permit its filing within  
13 the seven (7) days prescribed in this section.

14 F. The record of live birth shall be forwarded to the State  
15 Department of Health, Division of Vital Records, to be recorded and  
16 forwarded to the United States Department of Health and Human  
17 Services for issuance of a registered birth certificate by that  
18 federal agency.

19 SECTION 6. AMENDATORY 70 O.S. 2001, Section 1-113, as  
20 last amended by Section 154, Chapter 234, O.S.L. 2009 (70 O.S. Supp.  
21 2010, Section 1-113), is amended to read as follows:

22 Section 1-113. A. When used in this section, the residence of  
23 any child for school purposes shall be:  
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1           1. The school district in which the parents, guardian, or  
2 person having legal custody holds legal residence.

3           Each school district board of education shall adopt a policy  
4 establishing the requirements for student residency for that  
5 district which provides for residence as described in this  
6 paragraph. Within the discretion of each school district's board of  
7 education, the policy may but is not required to allow for  
8 establishment of residency by affidavit when an adult, whether a  
9 relative or not, who does not fall within one of the categories  
10 listed above, who holds legal residence in the school district, and  
11 who has assumed permanent care and custody of the child files an  
12 affidavit with the school district attesting that they have assumed  
13 custody and the reasons for assuming custody. Any policy allowing  
14 the establishment of residency by affidavit shall require the adult  
15 who provides the affidavit to affirm in such affidavit that the  
16 custody arrangement is permanent and that the adult contributes the  
17 major degree of support to the child. If the school district policy  
18 allows establishment of residency by affidavit, any person who  
19 willfully makes a statement in the affidavit which the person knows  
20 to be false shall, upon conviction, be guilty of a misdemeanor  
21 punishable by imprisonment in the county jail for not more than one  
22 (1) year or a fine of not more than Five Hundred Dollars (\$500.00)  
23 or both such fine and imprisonment. Each school district shall  
24

1 include in its policy on residency any documentation necessary for  
2 the administration of the policy; or

3 2. The foster home, as defined in Section 1-1-105 of Title 10A  
4 of the Oklahoma Statutes, except a therapeutic foster home or a  
5 specialized foster home where a child is in voluntary placement as  
6 defined in subsection D E of this section, in which the child has  
7 been placed:

8 a. by the person or agency having legal custody of the  
9 child pursuant to a court order, or

10 b. by a state agency having legal custody of the child  
11 pursuant to the provisions of Title 10A of the  
12 Oklahoma Statutes; or

13 3. Any orphanage or eleemosynary child care facility having  
14 full-time care and custody; or

15 4. Any eleemosynary child care facility in which a child is  
16 placed by a parent or guardian for full-time residential care;  
17 provided, the provision of this paragraph shall apply only to  
18 children who attend a district school by joint agreement of the  
19 school district and facility and who are not placed in the facility  
20 through a state contract. For purposes of this paragraph,  
21 "eleemosynary child care facility" means a facility:

22 a. where child care and services are provided, and

23 b. which is funded predominantly by benevolent or  
24 charitable funds and is exempt from taxation pursuant

1 to the provisions of Section 501(c) (3) of the Internal  
2 Revenue Code, 26 U.S.C., Section 501(c) (3); or

3 5. Any state-operated institution in which a child has been  
4 placed by a parent or guardian or by a state agency having legal  
5 custody of the child pursuant to the provisions of Title 10A or  
6 Section 3-101 of Title 43A of the Oklahoma Statutes for care and  
7 treatment due to a physical or mental condition of the child; or

8 6. The district in which a child who is entirely self-  
9 supporting resides and attends school; or

10 7. A state-licensed or operated emergency shelter.

11 B. No school district shall bear the cost of educating children  
12 who are not residents of this state; provided, a school district may  
13 furnish educational services pursuant to contract as elsewhere  
14 provided by law. A school district may furnish educational services  
15 pursuant to a contract to children who do not reside in the United  
16 States of America; provided, the children shall not be counted in  
17 the average daily membership of the school district.

18 C. No school district shall admit persons who are not citizens  
19 of the United States, or the children of persons who are not  
20 citizens of the United States into the Oklahoma education system at  
21 any level.

22 D. For the purpose of ensuring that a child placed in a  
23 therapeutic foster care home, as defined in Section 1-1-105 of Title  
24 10A of the Oklahoma Statutes, receives an appropriate education, no

1 receiving school district shall be required to enroll such a child  
2 if the enrollment would cause the proportion of students in  
3 therapeutic foster care homes as compared to the average daily  
4 membership of the receiving district for the preceding school year  
5 to exceed two percent (2%). Children served by Head Start may not  
6 be counted for the purpose of this paragraph unless the child is on  
7 an individualized education program provided by the school district.  
8 Any school district may enroll such students who are outside the  
9 student's resident district in therapeutic foster care home  
10 placements which exceed this limit if the school determines it  
11 possesses the ability to provide such child an appropriate  
12 education.

13 ~~D.~~ E. When a child does not meet the criteria for residency  
14 provided in subsection A of this section and is placed in any of the  
15 following entities which is out of the child's home and not in the  
16 school district in which the child legally resides: a residential  
17 facility; a treatment program or center, including the facility  
18 operated pursuant to Section 485.1 of Title 63 of the Oklahoma  
19 Statutes; a therapeutic foster home as defined in Section 1-1-105 of  
20 Title 10A of the Oklahoma Statutes; or, a specialized foster home,  
21 which is a specialized foster home or an agency-contracted home  
22 under the supervision of and certified as meeting the standards set  
23 by the Department of Human Services and is funded through the  
24 Department of Human Services Home and Community-Based Waiver

1 Services Program, the entity shall, if the child contends he or she  
2 resides in a school district other than the district where the  
3 entity is located, within seven (7) days of admittance, notify the  
4 school district in which the entity is located of the admittance.

5 Upon provision of educational services to such children pursuant  
6 to the provisions of subsection ~~F~~ G of this section, the receiving  
7 school district shall receive the State Aid as defined in subsection  
8 C of Section 18-110 of this title for those students.

9 Access to the due process procedure guaranteed to children with  
10 disabilities shall be available to resolve disagreements about the  
11 appropriateness of placements of children with disabilities.

12 ~~E~~ F. The governing body of any state institution for children  
13 operated pursuant to the provisions of Title 10A of the Oklahoma  
14 Statutes or Section 3-101 of Title 43A of the Oklahoma Statutes and  
15 the board of education of the school district in which the  
16 institution is located or any other school district in the state  
17 willing to provide necessary educational services may enter into a  
18 contract whereby the district will maintain a school for the  
19 children of the institution, in which event the residence of such  
20 children for school purposes will be considered as being in the  
21 district maintaining the school. The governing body of the state  
22 institutions specified in this subsection shall pay the costs for  
23 educating students placed in the state institution less any amount  
24 of funds received for such students by the school district

1 contracting with the state institution to provide necessary  
2 educational services.

3 ~~F.~~ G. 1. The school district in which an entity as described  
4 in subsection ~~D~~ E of this section exists to serve children in out-  
5 of-home placements shall, upon request of the individual or agency  
6 operating the entity, provide the educational services to which the  
7 children in the entity are entitled subject to the limitations  
8 provided in subsection ~~E~~ D of this section. No person operating  
9 such an entity may contract for the provision of educational  
10 services with any school district other than the school district in  
11 which the entity is located unless the school district in which the  
12 entity is located agrees in writing to allow another school district  
13 to provide the educational services or unless the person operating  
14 the entity contracts with another school district for the provision  
15 of educational services to be provided through remote Internet-based  
16 courses. No person operating such an entity may contract for the  
17 provision of educational services with more than one school  
18 district.

19 2. Prior to location in a school district, the individual or  
20 agency operating an entity described in subsection ~~D~~ E of this  
21 section which requires provision of educational services from the  
22 school district shall notify the local board of education of its  
23 anticipated educational needs. No school district shall be required  
24 to provide educational services for students in the entity until at

1 least sixty (60) calendar days have elapsed from the time in which  
2 the local board of education was initially notified of the need  
3 unless the school district so agrees to provide the educational  
4 services sooner. The provisions of this paragraph shall not apply  
5 to therapeutic or specialized foster homes.

6 3. Educational services provided shall meet or exceed state  
7 accreditation standards. No school district shall be responsible  
8 for any expenses for students in an entity described in subsection D  
9 of this section which are not directly related to the provision of  
10 educational services. A school district shall not be obligated for  
11 expenses of those students in an entity in the current school year  
12 for whom educational services are requested after the district's  
13 first nine (9) weeks of the current school year if educational  
14 services are requested for twelve or more students than were served  
15 in the first nine (9) weeks, unless the school district chooses to  
16 provide educational services for the current school year. Contracts  
17 and agreements for provision of educational services may allow for  
18 the use of public and private sources of support which are available  
19 to share the costs of educational services and of therapies,  
20 treatments, or support services. Otherwise valid obligations to  
21 provide or pay for such services, such as Medicaid, shall remain in  
22 effect for children who are eligible for the services from sources  
23 other than the school district.

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1           4. Upon the request of any residential facility which has  
2 contracted with the Office of Juvenile Affairs to provide either a  
3 regimented juvenile training program or a high-impact wilderness  
4 camp to a minimum of forty students who have been adjudicated, a  
5 school district may contract for the facility to provide the  
6 educational services to those students. Under such a contract, the  
7 facility shall operate in accordance with all applicable laws,  
8 including compliance with Section 18-114.7 of this title. Such  
9 contract shall include the State Aid generated by the students, less  
10 a fee for administrative services which may be retained by the  
11 school district, not to exceed ten percent (10%) of the total on an  
12 annual basis. The school district shall exercise supervision over  
13 the educational program in the facility and bear all responsibility  
14 for required educational reporting. The school district shall  
15 maintain access to all educational records for students in the  
16 facility, and shall provide for the appropriate academic credit and  
17 diplomas. The school district shall be indemnified against any  
18 actions or penalties on the part of the facility which result in  
19 adversity for the school district.

20           ~~G.~~ H. Any question as to the place of residence of any child  
21 for school purposes shall be decided pursuant to procedures utilized  
22 by the State Department of Education.

23           ~~H.~~ I. The receiving district shall notify the district of  
24 residence immediately upon finding that the student requires special

1 education and related services and the district of residence shall  
2 participate in planning the student's Individualized Education  
3 Program (IEP) and in subsequent reviews of the program in accordance  
4 with the Individuals with Disabilities Education Act (IDEA).

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

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7 53-1-5336 LRB 12/21/10

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