

1 STATE OF OKLAHOMA

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

3 SENATE BILL 908

By: Shortey

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5  
6 AS INTRODUCED

7 An Act relating to immigration; making the smuggling  
8 of human beings unlawful; providing penalties;  
9 defining terms; requiring certain persons to complete  
10 or carry alien registration documents; providing  
11 guidelines for enforcement; prohibiting certain  
12 sentencing options; directing payment of jail costs;  
13 providing exception; providing for the admissibility  
14 of certain records; providing penalty; amending 21  
15 O.S. 2001, Section 1738, as last amended by Section  
16 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp. 2010,  
17 Section 1738), which relates to seizure and  
18 forfeiture proceedings; authorizing seizure and  
19 forfeiture of property under certain circumstances;  
20 amending 22 O.S. 2001, Section 196, which relates to  
21 arrests by officers without a warrant; adding  
22 circumstance that provides for an arrest; prohibiting  
23 limitations or restrictions when enforcing federal  
24 immigration laws; directing law enforcement to  
determine immigration status on stops, detentions and  
arrests; directing verification of immigration status  
through the federal government; providing presumption  
of lawful presence when providing certain documents;  
directing law enforcement to notify certain federal  
agencies of unlawfully present persons; providing for  
the transportation of persons to federal facilities;  
providing guidelines for determining immigration  
status; authorizing certain person to file certain  
action; directing payment of civil penalty for  
certain violation; providing for the collection and  
deposit of civil penalties; providing for the award  
of court costs and attorney fees; providing  
indemnification for law enforcement officers;  
prohibiting employers from knowingly and  
intentionally employing unauthorized aliens;  
providing procedures for submitting complaints to the

1 Attorney General or district attorney; directing the  
2 Attorney General and district attorney to notify  
3 federal authorities for legitimate complaints;  
4 stating jurisdiction for actions in violation of  
5 statute; providing penalties for employers; directing  
6 Attorney General to maintain copies of certain court  
7 orders; directing courts to consider determinations  
8 made by the federal government; providing rebuttable  
9 presumption and affirmative defenses for employers  
10 under certain circumstances; allowing claim of  
11 entrapment to be used as an affirmative defense;  
12 prohibiting certain provisions from being construed  
13 in certain manner; directing employers to verify  
14 employment eligibility of employees through certain  
15 program; requiring use of program by employers prior  
16 to receiving economic development incentives;  
17 directing repayment of monies for noncompliance;  
18 defining terms; directing Attorney General to request  
19 and make available a list of employers who use  
20 certain program; authorizing agencies to share  
21 information relating to the immigration status of  
22 individuals for certain purposes; providing for  
23 codification; and providing an effective date.

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

SECTION 1. 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

1 in the custody of the Department of Corrections for not less than  
2 one (1) year, or by a fine of not less than One Thousand Dollars  
3 (\$1,000.00), or by both such fine and imprisonment.

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

9 D. For the purposes of this section:

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

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

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

20 2. "Smuggling of human beings" means the transportation,  
21 procurement of transportation or use of property or real property by  
22 a person or an entity that knows or has reason to know that the  
23 person or persons transported or to be transported are not United  
24 States citizens, permanent resident aliens or persons otherwise

1 lawfully in this state or have attempted to enter, entered or  
2 remained in the United States in violation of law.

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1550.44 of Title 21, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. In addition to any violation of federal law, a person is  
7 guilty of willful failure to complete or carry an alien registration  
8 document if the person is in violation of Title 8 of the United  
9 States Code, Section 1304(e) or 1306(a).

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

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

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

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

23 D. A person who is sentenced pursuant to the provisions of this  
24 section is not eligible for suspension of sentence, probation,

1 pardon, commutation of sentence, or release from confinement on any  
2 basis.

3 E. In addition to any other penalty prescribed by law, the  
4 court shall order the person to pay jail costs.

5 F. The provisions of this section shall not apply to a person  
6 who maintains authorization from the federal government to remain in  
7 the United States.

8 G. Any record that relates to the immigration status of a  
9 person is admissible in any court without further foundation or  
10 testimony from a custodian of records if the record is certified as  
11 authentic by the government agency that is responsible for  
12 maintaining the record.

13 H. Any person who violates the provisions of this section  
14 shall, upon conviction, be guilty of a misdemeanor punishable by a  
15 fine of not less than One Hundred Dollars (\$100.00) and not more  
16 than thirty (30) days in jail.

17 SECTION 3. 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 Section 1 of this act.

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

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

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

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

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

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

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

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

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

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

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

22 K. If the amount due to such person is less than the value of  
23 the property, or if no bona fide claim is established, the property  
24 may be forfeited to the state and may be sold pursuant to judgment

1 of the court, as on sale upon execution, and as provided in Section  
2 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise  
3 provided for by law and for property bearing a counterfeit mark  
4 which shall be destroyed.

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

21 M. The petitioner, or the law enforcement agency holding  
22 property pursuant to the Trademark Anti-Counterfeiting Act, shall  
23 not be held civilly liable for having custody of the seized property  
24

1 or proceeding with a forfeiture action as provided for in this  
2 section.

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

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

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

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

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

17 4. The balance to a revolving fund in the office of the county  
18 treasurer of the county wherein the property was seized, to be  
19 distributed as follows: one-third (1/3) to the investigating law  
20 enforcement agency; one-third (1/3) of said fund to be used and  
21 maintained as a revolving fund by the district attorney for the  
22 victim-witness fund, a reward fund or the evidence fund; and one-  
23 third (1/3) to go to the jail maintenance fund, with a yearly  
24 accounting to the board of county commissioners in whose county the

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

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

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

23 R. No vehicle, airplane, or vessel used by a person as a common  
24 carrier in the transaction of business as a common carrier shall be

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

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

17 SECTION 4. AMENDATORY 22 O.S. 2001, Section 196, is  
18 amended to read as follows:

19 Section 196. A peace officer may, without a warrant, arrest a  
20 person:

21 1. For a public offense, committed or attempted in the  
22 officer's presence;

23 2. When the person arrested has committed a felony, although  
24 not in the officer's presence;

1           3. When a felony has in fact been committed, and the officer  
2 has reasonable cause to believe the person arrested to have  
3 committed it;

4           4. On a charge, made upon reasonable cause, of the commission  
5 of a felony by the party arrested;

6           5. When the officer has probable cause to believe that the  
7 party was driving or in actual physical control of a motor vehicle  
8 involved in an accident upon the public highways, streets or  
9 turnpikes and was under the influence of alcohol or intoxicating  
10 liquor or who was under the influence of any substance included in  
11 the Uniform Controlled Dangerous Substances Act, ~~Sections 2-101 et~~  
12 ~~seq. of Title 63 of the Oklahoma Statutes;~~

13           6. Anywhere, including a place of residence of the person, if  
14 the peace officer has probable cause to believe the person within  
15 the preceding seventy-two (72) hours has committed an act of  
16 domestic abuse as defined by Section 60.1 of this title, although  
17 the assault did not take place in the presence of the peace officer.  
18 A peace officer may not arrest a person pursuant to this section  
19 without first observing a recent physical injury to, or an  
20 impairment of the physical condition of, the alleged victim;

21           7. When a peace officer, in accordance with the provisions of  
22 Section 60.9 of this title, is acting on a violation of a protective  
23 order offense; ~~or~~

1 8. When the officer has probable cause to believe that the  
2 person has threatened another person as defined in subsection B of  
3 Section ~~14~~ 1378 of ~~this act~~ Title 21 of the Oklahoma Statutes; or

4 9. When the officer has probable cause to believe that the  
5 person to be arrested has committed any criminal offense that makes  
6 the person subject to removal from the United States.

7 SECTION 5. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 210 of Title 22, unless there is  
9 created a duplication in numbering, reads as follows:

10 A. No official or agency of this state or a county, city or  
11 other political subdivision of this state may limit or restrict the  
12 enforcement of federal immigration laws to less than the full extent  
13 permitted by federal law.

14 B. For any lawful stop, detention or arrest made by a law  
15 enforcement official or a law enforcement agency of this state or a  
16 law enforcement official or a law enforcement agency of a county,  
17 city or other political subdivision of this state in the enforcement  
18 of any other law or ordinance of a county, city or other political  
19 subdivision in this state where reasonable suspicion exists that the  
20 person is an alien and is unlawfully present in the United States, a  
21 reasonable attempt shall be made, when practicable, to determine the  
22 immigration status of the person, except if the determination may  
23 hinder or obstruct an investigation. Any person who is arrested  
24 shall have the immigration status of the person determined before

1 the person is released. The immigration status of the person shall  
2 be verified with the federal government pursuant to Title 8 of the  
3 United States Code, Section 1373(c). A law enforcement official or  
4 agency of this state or a county, city or other political  
5 subdivision of this state may not consider race, color or national  
6 origin in implementing the requirements of this section except to  
7 the extent permitted by the United States or Oklahoma Constitution.  
8 A person is presumed to not be an alien who is unlawfully present in  
9 the United States if the person provides to the law enforcement  
10 officer or agency any of the following:

- 11 1. A valid Oklahoma driver license;
- 12 2. A valid Oklahoma identification card;
- 13 3. A valid tribal enrollment card or other form of tribal  
14 identification; or
- 15 4. If the entity requires proof of legal presence in the United  
16 States before issuance, any valid United States federal, state or  
17 local government issued identification.

18 C. If an alien who is unlawfully present in the United States  
19 is convicted of a violation of state or local law, on discharge from  
20 imprisonment or on the assessment of any monetary obligation that is  
21 imposed, the United States Immigration and Customs Enforcement or  
22 the United States Customs and Border Protection shall be immediately  
23 notified.

24

1 D. Notwithstanding any other law, a law enforcement agency may  
2 securely transport an alien who the agency has received verification  
3 is unlawfully present in the United States and who is in the custody  
4 of the agency, to a federal facility in this state or to any other  
5 point of transfer into federal custody that is outside the  
6 jurisdiction of the law enforcement agency. A law enforcement  
7 agency shall obtain judicial authorization before securely  
8 transporting an alien who is unlawfully present in the United States  
9 to a point of transfer that is outside of this state.

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

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

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

17 F. The provisions of this section do not implement, authorize  
18 or establish and shall not be construed to implement, authorize or  
19 establish the REAL ID Act of 2005, including the use of a radio  
20 frequency identification chip.

21 G. A person who is a legal resident of this state may bring an  
22 action in the district court to challenge any official or agency of  
23 this state or a county, city or other political subdivision of this  
24 state that adopts or implements a policy that limits or restricts

1 the enforcement of federal immigration laws, including Title 8 of  
2 the United States Code, Sections 1373 and 1644, to less than the  
3 full extent permitted by federal law. If there is a judicial  
4 finding that an entity has violated the provisions of this section,  
5 the court shall order that the entity pay a civil penalty of not  
6 less than Five Hundred Dollars (\$500.00) and not more than Five  
7 Thousand Dollars (\$5,000.00) for each day that the policy has  
8 remained in effect after the filing of an action pursuant to this  
9 subsection.

10 H. A court shall collect the civil penalty prescribed in  
11 subsection G of this section and remit the civil penalty to the  
12 State Treasurer for deposit in the General Revenue Fund.

13 I. The court may award court costs and reasonable attorney fees  
14 to any person or any official or agency of this state or a county,  
15 city or other political subdivision of this state that prevails by  
16 an adjudication on the merits in a proceeding brought pursuant to  
17 this section.

18 J. Except in relation to matters in which the law enforcement  
19 officer is adjudged to have acted in bad faith, a law enforcement  
20 officer is indemnified by the agency of the law enforcement officer  
21 against reasonable costs and expenses, including attorney fees,  
22 incurred by the officer in connection with any action, suit or  
23 proceeding brought pursuant to this section in which the officer may  
24

1 be a defendant by reason of the officer being or having been a  
2 member of the law enforcement agency.

3 K. This section shall be implemented in a manner consistent  
4 with federal laws regulating immigration, protecting the civil  
5 rights of all persons and respecting the privileges and immunities  
6 of United States citizens.

7 SECTION 6. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 201 of Title 40, unless there is  
9 created a duplication in numbering, reads as follows:

10 A. An employer shall not knowingly employ an unauthorized  
11 alien. If, in the case when an employer uses a contract,  
12 subcontract or other independent contractor agreement to obtain the  
13 labor of an alien in this state, the employer knowingly contracts  
14 with an unauthorized alien or with a person who employs or contracts  
15 with an unauthorized alien to perform the labor, the employer  
16 violates this subsection.

17 B. The Attorney General shall prescribe a complaint form for a  
18 person to allege a violation of subsection A of this section. The  
19 complainant shall not be required to list the social security number  
20 of the complainant on the complaint form or to have the complaint  
21 form notarized. On receipt of a complaint on a prescribed complaint  
22 form that an employer allegedly knowingly employs an unauthorized  
23 alien, the Attorney General or district attorney shall investigate  
24 whether the employer has violated subsection A of this section. If

1 a complaint is received but is not submitted on a prescribed  
2 complaint form, the Attorney General or district attorney may  
3 investigate whether the employer has violated subsection A of this  
4 section. This subsection shall not be construed to prohibit the  
5 filing of anonymous complaints that are not submitted on a  
6 prescribed complaint form. The Attorney General or district  
7 attorney shall not investigate complaints that are based solely on  
8 race, color or national origin. A complaint that is submitted to a  
9 district attorney shall be submitted to the district attorney in the  
10 county in which the alleged unauthorized alien is or was employed by  
11 the employer. The county sheriff or any other local law enforcement  
12 agency may assist in investigating a complaint. When investigating  
13 a complaint, the Attorney General or district attorney shall verify  
14 the work authorization of the alleged unauthorized alien with the  
15 federal government pursuant to Title 8 of the United States Code,  
16 Section 1373(c). A state, county or local official shall not  
17 attempt to independently make a final determination on whether an  
18 alien is authorized to work in the United States. The immigration  
19 status or work authorization status of an alien shall be verified  
20 with the federal government pursuant to Title 8 of the United States  
21 Code, Section 1373(c). A person who knowingly files a false and  
22 frivolous complaint under this subsection is guilty of a  
23 misdemeanor.

24

1 C. If, after an investigation, the Attorney General or district  
2 attorney determines that the complaint is not false and frivolous:

3 1. The Attorney General or district attorney shall notify the  
4 United States Immigration and Customs Enforcement of the  
5 unauthorized alien;

6 2. The Attorney General or district attorney shall notify the  
7 local law enforcement agency of the unauthorized alien; and

8 3. The Attorney General shall notify the appropriate district  
9 attorney to bring an action pursuant to subsection D of this section  
10 if the complaint was originally filed with the Attorney General.

11 D. An action for a violation of subsection A of this section  
12 shall be brought against the employer by the district attorney in  
13 the county where the unauthorized alien employee is or was employed  
14 by the employer. The district attorney shall not bring an action  
15 against any employer for any violation of subsection A of this  
16 section that occurs before January 1, 2012. A second violation of  
17 this section shall be based only on an unauthorized alien who is or  
18 was employed by the employer after an action has been brought for a  
19 violation of subsection A of this section or subsection A of Section  
20 7 of this act.

21 E. For any action in district court under this section, the  
22 court shall expedite the action, including assigning the hearing at  
23 the earliest practicable date.

24 F. On a finding of a violation of subsection A of this section:

1           1. For a first violation, as described in paragraph 3 of this  
2 subsection, the court:

3           a. shall order the employer to terminate the employment  
4 of all unauthorized aliens,

5           b. shall order the employer to be subject to a three-year  
6 probationary period for the business location where  
7 the unauthorized alien performed work. During the  
8 probationary period, the employer shall file quarterly  
9 reports with the district attorney of each new  
10 employee who is hired by the employer at the business  
11 location where the unauthorized alien performed work,

12          c. shall order the employer to file a signed sworn  
13 affidavit with the district attorney within three (3)  
14 business days after the order is issued. The  
15 affidavit shall state that the employer has terminated  
16 the employment of all unauthorized aliens in this  
17 state and that the employer will not intentionally or  
18 knowingly employ an unauthorized alien in this state.  
19 The court shall order the appropriate agencies to  
20 suspend all licenses subject to this subparagraph that  
21 are held by the employer if the employer fails to file  
22 a signed sworn affidavit with the district attorney  
23 within three (3) business days after the order is  
24 issued. All licenses that are suspended under this

1           subparagraph shall remain suspended until the employer  
2           files a signed sworn affidavit with the district  
3           attorney. Notwithstanding any other law, on filing of  
4           the affidavit the suspended licenses shall be  
5           reinstated immediately by the appropriate agencies.  
6           For the purposes of this subparagraph, the licenses  
7           that are subject to suspension under this subparagraph  
8           are all licenses that are held by the employer  
9           specific to the business location where the  
10          unauthorized alien performed work. If the employer  
11          does not hold a license specific to the business  
12          location where the unauthorized alien performed work,  
13          but a license is necessary to operate the business of  
14          the employer in general, the licenses that are subject  
15          to suspension under this subparagraph are all licenses  
16          that are held by the employer at the primary place of  
17          business of the employer. On receipt of the order of  
18          the court and notwithstanding any other law, the  
19          appropriate agencies shall suspend the licenses  
20          according to the order of the court. The court shall  
21          send a copy of the court order to the Attorney General  
22          and the Attorney General shall maintain the copy  
23          pursuant to subsection G of this section, or  
24

1           d.    may order the appropriate agencies to suspend all  
2                licenses described in subparagraph c of this paragraph  
3                that are held by the employer for not to exceed ten  
4                (10) business days. The court shall base its decision  
5                to suspend the licenses under this subparagraph on any  
6                evidence or information submitted to it during the  
7                action for a violation of this section, and shall  
8                consider the following factors, if relevant:

- 9                (1) the number of unauthorized aliens employed by the  
10                employer,  
11                (2) any prior misconduct by the employer,  
12                (3) the degree of harm resulting from the violation,  
13                (4) whether the employer made good faith efforts to  
14                comply with any applicable requirements,  
15                (5) the duration of the violation,  
16                (6) the role of the directors, officers or principals  
17                of the employer in the violation, and  
18                (7) any other factors the court deems appropriate.

19           2. For a second violation, as described in paragraph 3 of this  
20 subsection, the court shall order the appropriate agencies to  
21 permanently revoke all licenses that are held by the employer  
22 specific to the business location where the unauthorized alien  
23 performed work. If the employer does not hold a license specific to  
24 the business location where the unauthorized alien performed work,

1 but a license is necessary to operate the business of the employer  
2 in general, the court shall order the appropriate agencies to  
3 permanently revoke all licenses that are held by the employer at the  
4 primary place of business of the employer. On receipt of the order  
5 and notwithstanding any other law, the appropriate agencies shall  
6 immediately revoke the licenses.

7 3. The violation shall be considered:

- 8 a. a first violation by an employer at a business  
9 location if the violation did not occur during a  
10 probationary period ordered by the court under this  
11 subsection or subsection F of Section 7 of this act  
12 for that business location of the employer, or
- 13 b. a second violation by an employer at a business  
14 location if the violation occurred during a  
15 probationary period ordered by the court under this  
16 subsection or subsection F of Section 7 of this act  
17 for that business location of the employer.

18 G. The Attorney General shall maintain copies of court orders  
19 that are received pursuant to subsection F of this section and shall  
20 maintain a database of the employers and business locations that  
21 have a first violation of subsection A of this section and make the  
22 court orders available on the website of the Attorney General.

23 H. On determining whether an employee is an unauthorized alien,  
24 the court shall consider only the determination of the federal

1 government pursuant to Title 8 of the United States Code, Section  
2 1373(c). The determination of the federal government creates a  
3 rebuttable presumption of the lawful status of the employee. The  
4 court may take judicial notice of the determination of the federal  
5 government and may request the federal government to provide  
6 automated or testimonial verification pursuant to Title 8 of the  
7 United States Code, Section 1373(c).

8 I. For the purposes of this section, proof of verifying the  
9 employment authorization of an employee through the e-verify program  
10 creates a rebuttable presumption that an employer did not knowingly  
11 employ an unauthorized alien.

12 J. For the purposes of this section, an employer that  
13 establishes that it has complied in good faith with the requirements  
14 of Title 8 of the United States Code, Section 1324a(b) establishes  
15 an affirmative defense that the employer did not knowingly employ an  
16 unauthorized alien. An employer is considered to have complied with  
17 the requirements of Title 8 of the United States Code, Section  
18 1324a(b), notwithstanding an isolated, sporadic or accidental  
19 technical or procedural failure to meet the requirements, if there  
20 is a good faith attempt to comply with the requirements.

21 K. It is an affirmative defense to a violation of subsection A  
22 of this section that the employer was entrapped. To claim  
23 entrapment, the employer must admit by the testimony of the employer  
24 or other evidence the substantial elements of the violation. An

1 employer who asserts an entrapment defense has the burden of proving  
2 the following by a preponderance of the evidence:

3 1. The idea of committing the violation started with law  
4 enforcement officers or their agents rather than with the employer;

5 2. The law enforcement officers or their agents urged and  
6 induced the employer to commit the violation; and

7 3. The employer was not predisposed to commit the violation  
8 before the law enforcement officers or their agents urged and  
9 induced the employer to commit the violation.

10 L. An employer does not establish entrapment if the employer  
11 was predisposed to violate subsection A of this section and the law  
12 enforcement officers or their agents merely provided the employer  
13 with an opportunity to commit the violation. It is not entrapment  
14 for law enforcement officers or their agents merely to use a ruse or  
15 to conceal their identity. The conduct of law enforcement officers  
16 and their agents may be considered in determining if an employer has  
17 proven entrapment.

18 SECTION 7. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 201.1 of Title 40, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. An employer shall not intentionally employ an unauthorized  
22 alien. If, in the case when an employer uses a contract,  
23 subcontract or other independent contractor agreement to obtain the  
24 labor of an alien in this state, the employer intentionally

1 contracts with an unauthorized alien or with a person who employs or  
2 contracts with an unauthorized alien to perform the labor, the  
3 employer violates this subsection.

4 B. The Attorney General shall prescribe a complaint form for a  
5 person to allege a violation of subsection A of this section. The  
6 complainant shall not be required to list the social security number  
7 of the complainant on the complaint form or to have the complaint  
8 form notarized. On receipt of a complaint on a prescribed complaint  
9 form that an employer allegedly intentionally employs an  
10 unauthorized alien, the Attorney General or district attorney shall  
11 investigate whether the employer has violated subsection A of this  
12 section. If a complaint is received but is not submitted on a  
13 prescribed complaint form, the Attorney General or district attorney  
14 may investigate whether the employer has violated subsection A of  
15 this section. This subsection shall not be construed to prohibit  
16 the filing of anonymous complaints that are not submitted on a  
17 prescribed complaint form. The Attorney General or district  
18 attorney shall not investigate complaints that are based solely on  
19 race, color or national origin. A complaint that is submitted to a  
20 district attorney shall be submitted to the district attorney in the  
21 county in which the alleged unauthorized alien is or was employed by  
22 the employer. The county sheriff or any other local law enforcement  
23 agency may assist in investigating a complaint. When investigating  
24 a complaint, the Attorney General or district attorney shall verify

1 the work authorization of the alleged unauthorized alien with the  
2 federal government pursuant to Title 8 of the United States Code,  
3 Section 1373(c). A state, county or local official shall not  
4 attempt to independently make a final determination on whether an  
5 alien is authorized to work in the United States. The immigration  
6 status or work authorization status of an alien shall be verified  
7 with the federal government pursuant to Title 8 of the United States  
8 Code, Section 1373(c). A person who knowingly files a false and  
9 frivolous complaint under this subsection is guilty of a  
10 misdemeanor.

11 C. If, after an investigation, the Attorney General or district  
12 attorney determines that the complaint is not false and frivolous:

13 1. The Attorney General or district attorney shall notify the  
14 United States Immigration and Customs Enforcement of the  
15 unauthorized alien;

16 2. The Attorney General or district attorney shall notify the  
17 local law enforcement agency of the unauthorized alien; and

18 3. The Attorney General shall notify the appropriate district  
19 attorney to bring an action pursuant to subsection D of this section  
20 if the complaint was originally filed with the Attorney General.

21 D. An action for a violation of subsection A of this section  
22 shall be brought against the employer by the district attorney in  
23 the county where the unauthorized alien employee is or was employed  
24 by the employer. The district attorney shall not bring an action

1 against any employer for any violation of subsection A of this  
2 section that occurs before January 1, 2012. A second violation of  
3 this section shall be based only on an unauthorized alien who is or  
4 was employed by the employer after an action has been brought for a  
5 violation of subsection A of this section or subsection A of Section  
6 6 of this act.

7 E. For any action in district court under this section, the  
8 court shall expedite the action, including assigning the hearing at  
9 the earliest practicable date.

10 F. On a finding of a violation of subsection A of this section:

11 1. For a first violation, as described in paragraph 3 of this  
12 subsection, the court shall:

13 a. order the employer to terminate the employment of all  
14 unauthorized aliens,

15 b. order the employer to be subject to a five-year  
16 probationary period for the business location where  
17 the unauthorized alien performed work. During the  
18 probationary period the employer shall file quarterly  
19 reports with the district attorney of each new  
20 employee who is hired by the employer at the business  
21 location where the unauthorized alien performed work,

22 c. order the appropriate agencies to suspend all licenses  
23 described in subparagraph d of this paragraph that are  
24 held by the employer for a minimum of ten (10) days.

1 The court shall base its decision on the length of the  
2 suspension under this subparagraph on any evidence or  
3 information submitted to it during the action for a  
4 violation of this subsection and shall consider the  
5 following factors, if relevant:

- 6 (1) the number of unauthorized aliens employed by the  
7 employer,
- 8 (2) any prior misconduct by the employer,
- 9 (3) the degree of harm resulting from the violation,
- 10 (4) whether the employer made good faith efforts to  
11 comply with any applicable requirements,
- 12 (5) the duration of the violation,
- 13 (6) the role of the directors, officers or principals  
14 of the employer in the violation, and
- 15 (7) any other factors the court deems appropriate,

16 d. order the employer to file a signed sworn affidavit  
17 with the district attorney. The affidavit shall state  
18 that the employer has terminated the employment of all  
19 unauthorized aliens in this state and that the  
20 employer will not intentionally or knowingly employ an  
21 unauthorized alien in this state. The court shall  
22 order the appropriate agencies to suspend all licenses  
23 subject to this subparagraph that are held by the  
24 employer if the employer fails to file a signed sworn

1 affidavit with the district attorney within three (3)  
2 business days after the order is issued. All licenses  
3 that are suspended under this subparagraph for failing  
4 to file a signed sworn affidavit shall remain  
5 suspended until the employer files a signed sworn  
6 affidavit with the district attorney. For the  
7 purposes of this subparagraph, the licenses that are  
8 subject to suspension under this subparagraph are all  
9 licenses that are held by the employer specific to the  
10 business location where the unauthorized alien  
11 performed work. If the employer does not hold a  
12 license specific to the business location where the  
13 unauthorized alien performed work, but a license is  
14 necessary to operate the business of the employer in  
15 general, the licenses that are subject to suspension  
16 under this subparagraph are all licenses that are held  
17 by the employer at the primary place of business of  
18 the employer. On receipt of the order of the court  
19 and notwithstanding any other law, the appropriate  
20 agencies shall suspend the licenses according to the  
21 order of the court. The court shall send a copy of  
22 the order of the court to the Attorney General and the  
23 Attorney General shall maintain the copy pursuant to  
24 subsection G of this section.

1           2. For a second violation, as described in paragraph 3 of this  
2 subsection, the court shall order the appropriate agencies to  
3 permanently revoke all licenses that are held by the employer  
4 specific to the business location where the unauthorized alien  
5 performed work. If the employer does not hold a license specific to  
6 the business location where the unauthorized alien performed work,  
7 but a license is necessary to operate the business of the employer  
8 in general, the court shall order the appropriate agencies to  
9 permanently revoke all licenses that are held by the employer at the  
10 primary place of business of the employer. On receipt of the order  
11 and notwithstanding any other law, the appropriate agencies shall  
12 immediately revoke the licenses.

13           3. The violation shall be considered:

- 14           a. a first violation by an employer at a business  
15                location if the violation did not occur during a  
16                probationary period ordered by the court under this  
17                subsection or subsection F of Section 6 of this act  
18                for that business location of the employer, and
- 19           b. a second violation by an employer at a business  
20                location if the violation occurred during a  
21                probationary period ordered by the court under this  
22                subsection or subsection F of Section 6 of this act  
23                for that business location of the employer.

24

1 G. The Attorney General shall maintain copies of court orders  
2 that are received pursuant to subsection F of this section and shall  
3 maintain a database of the employers and business locations that  
4 have a first violation of subsection A of this section and make the  
5 court orders available on the website of the Attorney General.

6 H. On determining whether an employee is an unauthorized alien,  
7 the court shall consider only the determination of the federal  
8 government pursuant to Title 8 of the United States Code, Section  
9 1373(c). The determination of the federal government creates a  
10 rebuttable presumption of the employee's lawful status. The court  
11 may take judicial notice of the determination of the federal  
12 government and may request the federal government to provide  
13 automated or testimonial verification pursuant to Title 8 of the  
14 United States Code, Section 1373(c).

15 I. For the purposes of this section, proof of verifying the  
16 employment authorization of an employee through the e-verify program  
17 creates a rebuttable presumption that an employer did not  
18 intentionally employ an unauthorized alien.

19 J. For the purposes of this section, an employer that  
20 establishes that it has complied in good faith with the requirements  
21 of Title 8 of the United States Code, Section 1324a(b) establishes  
22 an affirmative defense that the employer did not intentionally  
23 employ an unauthorized alien. An employer is considered to have  
24 complied with the requirements of Title 8 of the United States Code,

1 Section 1324a(b), notwithstanding an isolated, sporadic or  
2 accidental technical or procedural failure to meet the requirements,  
3 if there is a good faith attempt to comply with the requirements.

4 K. It is an affirmative defense to a violation of subsection A  
5 of this section that the employer was entrapped. To claim  
6 entrapment, the employer must admit by the testimony of the employer  
7 or other evidence the substantial elements of the violation. An  
8 employer who asserts an entrapment defense has the burden of proving  
9 the following by a preponderance of the evidence:

10 1. The idea of committing the violation started with law  
11 enforcement officers or their agents rather than with the employer;

12 2. The law enforcement officers or their agents urged and  
13 induced the employer to commit the violation; and

14 3. The employer was not predisposed to commit the violation  
15 before the law enforcement officers or their agents urged and  
16 induced the employer to commit the violation.

17 L. An employer does not establish entrapment if the employer  
18 was predisposed to violate subsection A of this section and the law  
19 enforcement officers or their agents merely provided the employer  
20 with an opportunity to commit the violation. It is not entrapment  
21 for law enforcement officers or their agents merely to use a ruse or  
22 to conceal their identity. The conduct of law enforcement officers  
23 and their agents may be considered in determining if an employer has  
24 proven entrapment.

1 SECTION 8. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 201.2 of Title 40, unless there  
3 is created a duplication in numbering, reads as follows:

4 The provisions of Sections 6 and 7 of this act shall not be  
5 construed to require an employer to take any action that the  
6 employer believes in good faith would violate federal or state law.

7 SECTION 9. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 201.3 of Title 40, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. Beginning January 1, 2012, every employer, after hiring an  
11 employee, shall verify the employment eligibility of the employee  
12 through the e-verify program, as provided for in Section 1312 of  
13 Title 25 of the Oklahoma Statutes, and shall keep a record of the  
14 verification for the duration of the employment of the employee or  
15 at least three (3) years, whichever is longer.

16 B. In addition to any other requirement for an employer to  
17 receive an economic development incentive from a government entity,  
18 the employer shall register with and participate in the e-verify  
19 program. Before receiving the economic development incentive, the  
20 employer shall provide proof to the government entity that the  
21 employer is registered with and is participating in the e-verify  
22 program. If the government entity determines that the employer is  
23 not complying with this subsection, the government entity shall  
24 notify the employer by certified mail of the determination of

1 noncompliance by the government entity and the right of the employer  
2 to appeal the determination. On a final determination of  
3 noncompliance, the employer shall repay all monies received as an  
4 economic development incentive to the government entity within  
5 thirty (30) days of the final determination. For the purposes of  
6 this subsection:

7 1. "Economic development incentive" means any grant, loan or  
8 performance-based incentive from any government entity that is  
9 awarded after January 1, 2012; and

10 2. "Government entity" means this state and any political  
11 subdivision of this state that receives and uses tax revenues.

12 C. Every three (3) months the Attorney General shall request  
13 from the United States Department of Homeland Security a list of  
14 employers from this state that are registered with the e-verify  
15 program. On receipt of the list of employers, the Attorney General  
16 shall make the list available on the website of the Attorney  
17 General.

18 SECTION 10. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 3120 of Title 74, unless there  
20 is created a duplication in numbering, reads as follows:

21 Except as provided in federal law, officials or agencies of this  
22 state and counties, cities and other political subdivisions of this  
23 state may not be prohibited or in any way be restricted from  
24 sending, receiving or maintaining information relating to the

1 immigration status, lawful or unlawful, of any individual or  
2 exchanging that information with any other federal, state or local  
3 governmental entity for the following official purposes:

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

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

11 3. If the person is an alien, determining whether the person is  
12 in compliance with the federal registration laws prescribed by Title  
13 II, Chapter 7 of the Federal Immigration and Nationality Act; or

14 4. Pursuant to the provisions of Title 8 of the United States  
15 Code, Section 1373 and Title 8 of the United States Code, Section  
16 1644.

17 SECTION 11. This act shall become effective January 1, 2012.

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