STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 523 By: Shortey

AS INTRODUCED

An Act relating to immigration; making the smuggling of human beings unlawful; providing penalties; defining terms; providing guidelines for enforcement; providing for the admissibility of certain records; providing penalty; amending 21 O.S. 2011, Section 1738, which relates to seizure and forfeiture proceedings; authorizing seizure and forfeiture of property under certain circumstances; amending 22 O.S. 2011, Section 196, as amended by Section 1, Chapter 200, O.S.L. 2014 (22 O.S. Supp. 2014, Section 196) which relates to arrests by officers without a warrant; adding circumstance that provides for an arrest; prohibiting limitations or restrictions when enforcing federal 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 Attorney General; directing the Attorney General to notify federal authorities for legitimate complaints; stating jurisdiction for actions in violation of

statute; providing penalties for employers; directing employers to verify employment eligibility of employees through certain program; requiring use of program by employers prior to receiving economic development incentives; directing repayment of monies for noncompliance; defining terms; directing Attorney General to request and make available a list of employers who use certain program; authorizing agencies to share information relating to the immigration status of individuals for certain purposes; providing for codification; providing for noncodification; and providing an effective date.

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

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

D. For the purposes of this section:

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

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

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

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

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

A state or local governmental agency of this state, or any representative of the agency, may not:

1. Limit, or by any means restrict by ordinance, regulation, policy, practice or in any other manner, the authority of any law

enforcement agency or officer, or any state or local governmental agency to assist the federal government in the enforcement of any federal law or regulation governing immigration; or

2. Limit, or by any means restrict by ordinance, regulation, policy, practice, or in any other manner, the authority of any law enforcement agency to investigate or enforce any violation of the federal misdemeanor offenses of willful failure to register as an alien or willful failure to personally possess an alien registration document as required by 8 U.S.C. 1304(e) or 1306(a).

SECTION 3. AMENDATORY 21 O.S. 2011, Section 1738, is amended to read as follows:

Section 1738 A. 1. Any commissioned peace officer of this state is authorized to seize any equipment, vehicle, airplane, vessel or any other conveyance that is used in the commission of any armed robbery offense defined in Section 801 of this title, used to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of this title, used in violation of the Trademark Anti-Counterfeiting Act, used in the attempt or commission of any act of burglary in the first or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, used in the commission of any

arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of this title, used in any manner to facilitate or participate in the commission of any human trafficking offense in violation of Section 748 of this title, or used by any defendant when such vehicle or other conveyance is used in any manner by a prostitute, pimp or panderer to facilitate or participate in the commission of any prostitution offense in violation of Sections 1028, 1029 or 1030 of this title; provided, however, that the vehicle or conveyance of a customer or anyone merely procuring the services of a prostitute shall not be included.

2. No conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the unlawful use of the conveyance in violation of this section.

3. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner, the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Any vehicle, airplane, vessel, or parts of a vehicle whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of ~~said~~ the property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined; and

14. All conveyances, including aircraft, vehicles or vessels, used in any manner or part to commit any violation of the provisions set forth in Section 446 of this title or Section 1 of this act.

C. Property described in subsection A or B of this section may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, the property shall be returned to the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the investigating law enforcement agency; one-third (1/3) of ~~said~~ the fund to be used and maintained as a revolving fund by the district attorney to be used to defray any lawful expenses of the office of the district attorney; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in

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

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

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

such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

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

SECTION 4. AMENDATORY 22 O.S. 2011, Section 196, as amended by Section 1, Chapter 200, O.S.L. 2014 (22 O.S. Supp. 2014, Section 196), is amended to read as follows:

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

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

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

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

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

5. When the officer has probable cause to believe that the party was driving or in actual physical control of a motor vehicle

involved in an accident within this state, whether upon public roads, highways, streets, turnpikes, other public places, or upon any private road, street, alley or lane which provides access to one or more single- or multi-family dwellings and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act;

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

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

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

9. When the officer has probable cause to believe that the person is an alien who:

a. is subject to:

(1) a removal order issued by an immigration court, or

(2) a detainer or notice of action issued by the United States Department of Homeland Security,

b. has been indicted for or convicted in any state of one or more aggravated felonies as defined in 8 U.S.C. 1101(a)(43), or

c. has willfully failed to register with the federal government under 8 U.S.C. 1301 et seq.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A governmental body may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A law enforcement agency that has custody of an individual who has been verified by federal immigration authorities as an alien unlawfully present in the United States shall request the United States Department of Homeland Security to issue a detainer authorizing transfer of the alien into federal custody.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A law enforcement agency of this state may securely transport an alien in the law enforcement agency's custody who has been verified by federal immigration authorities as unlawfully present in the United States to:

1. A federal facility located in this state; or

2. Any other point of transfer into federal custody that is outside this state, if the receiving federal agency agrees to the transfer of the alien.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

An individual whose immigration status is being verified by federal immigration authorities pursuant to Section 6 of this act is not presumed to be an alien who is unlawfully present in the United States if the individual provides one or more of the following to the law enforcement officer:

1. A valid Oklahoma driver license;

2. A valid Oklahoma identification card;

3. A valid tribal enrollment card or other form of identification issued by a federally recognized Indian tribe that bears a photographic image of the holder;

4. A valid Oklahoma permit for carrying a concealed weapon issued pursuant to the Oklahoma Self-Defense Act; or

5. Any valid identification document issued by a federal, state, or local government, if:

a. the document bears a photographic image of the individual, and

b. the issuing entity requires proof of legal presence in the United States as a condition for issuance.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If any person who is a legal resident of this state believes that a law enforcement agency or any governmental body has adopted or implemented a policy or practice that limits or restricts the enforcement of federal immigration laws in violation of this act, that person may bring an action in the appropriate court for declaratory and injunctive relief against the law enforcement agency or governmental body.

B. If a court finds that a governmental body knowingly or intentionally violated Section 2 of this act or a law enforcement agency knowingly or intentionally failed to comply with Section 6 of this act, the court shall enjoin the law enforcement agency or political subdivision from engaging in or encouraging policies,

practices or acts that limit or restrict the enforcement of federal immigration laws in violation of this act.

C. The court may award costs and reasonable attorney fees to any plaintiff who prevails in an action under this act.

D. If a law enforcement officer is a party to an action under this act, the law enforcement agency with whom the law enforcement officer is employed shall indemnify the law enforcement officer for all reasonable costs and expenses, including attorney fees, incurred by the law enforcement officer in connection with the action unless the law enforcement officer is found to have acted in bad faith.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the E-Verify program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the E-Verify program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the determination of noncompliance by the government entity and the right of the employer to appeal the determination. On a final determination of

noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty (30) days of the final determination. For the purposes of this subsection:

1. "Economic development incentive" means any grant, loan or performance-based incentive from any government entity that is awarded after January 1, 2014; and

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

B. Every three (3) months the Attorney General shall request from the United States Department of Homeland Security a list of employers in this state that are registered with the E-Verify program. On receipt of the list of employers, the Attorney General shall make the list available on the website of the Attorney General.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 209 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "commence day labor employment" means the physical act of beginning any employment in which no employment agreement has been executed specifying that the term of the employment is to be more than three (3) working days.

B. As used in this section, "peace officer" has the meaning set forth in Section 648 of Title 21 of the Oklahoma Statutes.

C. An individual who is at least eighteen (18) years of age shall not commence day labor employment in this state unless the individual has completed the individual attestation of employment authorization required under 8 U.S.C. 1324a(b)(2).

D. If a peace officer or any other entity authorized to enforce the employment laws of this state has probable cause that an individual has violated this section, the peace officer or entity shall submit a complaint in the form prescribed under 8 CFR 274a.9, as amended, to the United States Immigration and Customs Enforcement office that has jurisdiction over the residence of the individual who is allegedly in violation of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1176 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "consular identification" means an identification, other than a passport, issued by the government of a foreign state for the purpose of providing consular services in the United States to a national of the foreign state.

B. As used in this chapter, "individual taxpayer identification number" means a tax processing number issued by the United States Internal Revenue Service for the purpose of facilitating federal tax reporting by individuals who are not eligible to obtain a federal Social Security number.

C. 1. This section does not apply to a law enforcement officer who is presented with a consular identification during the investigation of a crime.

2. Except as otherwise provided under federal law or to document the foreign nationality of a cardholder, a person who knowingly or intentionally offers in writing, accepts or records a consular identification for any public purpose shall be guilty of a misdemeanor.

D. Except as otherwise provided under law, a person who knowingly or intentionally offers in writing, accepts or records an individual taxpayer identification number as a valid form of identification for any public or private purpose, other than for reporting, payment or other processing of federal or state personal taxation for which a Social Security number would otherwise be required of a United States citizen, shall be guilty of a misdemeanor.

SECTION 13. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

B. The terms of this act regarding immigration shall be construed to have the meanings given to them under federal immigration law.

C. The requirements of this act shall be enforced without regard to race, religion, gender, ethnicity or national origin.

D. This act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

SECTION 14. This act shall become effective January 1, 2016.

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