

STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

FLOOR SUBSTITUTE
FOR

HOUSE BILL NO. 1804

By: Terrill and Sullivan of the
House

and

Williamson and Sykes of the
Senate

FLOOR SUBSTITUTE

An Act relating to immigration; requiring state agencies and political subdivisions to use reasonable efforts to verify the lawful presence in this state of persons applying for state or local public benefits; providing exceptions; providing penalty for certain acts; authorizing adoption of variations; creating the Registration of Immigration Assistance Act; providing short title; stating purpose and intent; defining terms; providing services that are allowed to be performed; providing persons and organizations exempt from the Registration of Immigration Assistance Act; excluding businesses from the Registration of Immigration Assistance Act if regulation is prohibited or preempted by federal law; requiring registration; requiring payment of fee; depositing fee in certain fund; providing for the posting of certain signs; requiring certain notice; prohibiting certain acts; providing penalties; providing for promulgation and adoption of certain rules; defining terms; prohibiting certain deductions; providing exclusions; requiring employers to obtain certain information before hiring an employee; providing penalty for failure to comply; requiring certain withholding for state income tax purposes; making employers liable for taxes under certain circumstances; making English the official language of the state; requiring the use of English

1 in all official state documents whenever practicable;
2 creating the Joint Task Force on Oklahoma Illegal
3 Immigration Issues; stating purpose; providing for
4 composition; providing for selection of a chair and
5 vice-chair; providing for meetings; providing for
6 vacancies; providing for a report; providing for
7 reimbursement; providing for staff; providing for
8 codification; providing for noncodification;
9 providing an effective date; and declaring an
10 emergency.

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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 71 of Title 56, unless there is
created a duplication in numbering, reads as follows:

A. Except as provided in subsection C of this section or if
exempted by federal law, on or after July 1, 2008, every agency or
political subdivision of this state shall use reasonable efforts to
verify the lawful presence in the United States of any natural
person eighteen (18) years of age or older who has applied for state
or local public benefits, as defined in 8 U.S.C., Section 1621, or
for federal public benefits, as defined in 8 U.S.C., Section 1611,
that are administered by an agency or a political subdivision of
this state. For purposes of this section, "reasonable efforts to
verify" means verification of a birth certificate, passport, visa,
document approved by the United States Citizenship and Immigration
Services, or citizenship papers, a copy of which shall be kept on

1 file. A valid birth certificate may include a record from a family
2 Bible.

3 B. This section shall be enforced without regard to race,
4 religion, gender, ethnicity, or national origin.

5 C. Verification of lawful presence under this section shall not
6 be required:

7 1. For any purpose for which lawful presence in the United
8 States is not required by law, ordinance, or regulation;

9 2. For assistance for health care items and services that are
10 necessary for the treatment of an emergency medical condition, as
11 defined in 42 U.S.C., Section 1396b(v)(3), of the person involved
12 and are not related to an organ transplant procedure;

13 3. For short-term, noncash, in-kind emergency disaster relief;

14 4. For public health assistance for immunizations with respect
15 to immunizable diseases and for testing and treatment of symptoms of
16 communicable diseases whether or not such symptoms are caused by a
17 communicable disease;

18 5. For programs, services, or assistance such as primary and
19 secondary education grades kindergarten through twelfth grade,
20 career technical education, homeless shelters, crisis pregnancy
21 centers, domestic violence and rape crisis shelters, any
22 organization affiliated with a church or faith-based organization,
23 food banks, soup kitchens, crisis counseling and intervention, and
24 short-term shelter specified by the United States Attorney General,

1 in the United States Attorney General's sole and unreviewable
2 discretion after consultation with appropriate federal agencies and
3 departments, which:

4 a. deliver in-kind services at the community level,
5 including through public or private nonprofit
6 agencies,

7 b. do not condition the provision of assistance, the
8 amount of assistance provided, or the cost of
9 assistance provided on the individual recipient's
10 income or resources, and

11 c. are necessary for the protection of life or safety;

12 6. For prenatal care, well-baby care, postabortive treatment,
13 or treatment of rape victims and victims of domestic violence; or

14 7. For treatment provided by the Department of Mental Health
15 and Substance Abuse Services.

16 D. Any person who knowingly and willfully makes a false,
17 fictitious, or fraudulent statement or representation in an
18 affidavit executed pursuant to subsection A of this section shall be
19 guilty of a felony.

20 E. Agencies or political subdivisions of this state may adopt
21 variations to the requirements of this section to improve efficiency
22 or reduce delay in the verification process or to provide for
23 adjudication of unique individual circumstances if the verification
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1 procedures in this section would impose unusual hardship on a legal
2 resident of this state.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3031 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 Sections 2 through 5 of this act shall be known and may be cited
7 as the "Registration of Immigration Assistance Act".

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3032 of Title 59, unless there
10 is created a duplication in numbering, reads as follows:

11 The purpose and intent of the Registration of Immigration
12 Assistance Act is to establish and enforce standards of ethics in
13 the profession of immigration assistance by private individuals who
14 are not licensed attorneys.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3033 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 As used in the Registration of Immigration Assistance Act:

19 1. "Compensation" means money, property, services, promise of
20 payment, or anything else of value;

21 2. "Employed by" means that a person is on the payroll of the
22 employer and the employer deducts from the employee's paycheck
23 social security and withholding taxes or that a person receives
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1 compensation from the employer on a commission basis or as an
2 independent contractor;

3 3. "Immigration assistance service" means any information or
4 action provided or offered to customers or prospective customers
5 related to immigration matters, excluding legal advice, recommending
6 a specific course of legal action or providing any other assistance
7 that requires legal analysis, legal judgment, or interpretation of
8 the law; or

9 4. "Immigration matter" means any proceeding, filing, or action
10 affecting the nonimmigrant, immigrant, or citizenship status of any
11 person that arises under:

12 a. immigration and naturalization law, executive order,
13 or presidential proclamation of the United States or
14 any foreign country, or

15 b. action of the United States Department of Labor, the
16 United States Department of State, the United States
17 Department of Homeland Security, or the United States
18 Department of Justice.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3034 of Title 59, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Any person who provides or offers to provide immigration
23 assistance services may perform the following services:
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1 1. Completing a government agency form, requested by the
2 customer and appropriate to the needs of the customer only if the
3 completion of that form does not involve a legal judgment for that
4 particular matter;

5 2. Transcribing responses to a government agency form which is
6 related to an immigration matter but not advising a customer as to
7 answers on those forms;

8 3. Translating information on forms to a customer and
9 translating the answers of the customer to questions posed on those
10 forms;

11 4. Securing for the customer supporting documents currently in
12 existence, such as birth and marriage certificates, which may be
13 needed to be submitted with government agency forms;

14 5. Translating documents from a foreign language into English;

15 6. Notarizing signatures on government agency forms, if the
16 person performing the service is a notary public commissioned in
17 this state and is lawfully present in the United States;

18 7. Making referrals, without fee, to attorneys who could
19 undertake legal representation for a person in an immigration
20 matter;

21 8. Preparing or arranging for the preparation of photographs
22 and fingerprints;

23 9. Arranging for the performance of medical testing and the
24 obtaining of reports of such test results; and

1 10. Conducting English language and civics courses.

2 B. The following are exempt from the Registration of
3 Immigration Assistance Act:

4 1. An attorney licensed to practice law in this state or an
5 attorney licensed to practice law in any other state or territory of
6 the United States or in any foreign country when acting with the
7 approval of a judge having lawful jurisdiction over the matter;

8 2. A legal intern, clerk, paralegal, or person in a similar
9 position employed by and under the direct supervision of a licensed
10 attorney meeting the requirements in paragraph 1 of this subsection
11 and rendering immigration assistance service in the course of
12 employment;

13 3. A not-for-profit organization recognized by the Board of
14 Immigration Appeals under 8 C.F.R., Section 292.2(a) and employees
15 of those organizations accredited under 8 C.F.R., Section 292.2(d);
16 and

17 4. Any organization employing or desiring to employ an alien or
18 nonimmigrant alien, if the organization, its employees, or its
19 agents provide advice or assistance in immigration matters to alien
20 or nonimmigrant alien employees or potential employees without
21 compensation from the individuals to whom such advice or assistance
22 is provided.

1 C. Nothing in the Registration of Immigration Assistance Act
2 shall regulate any business to the extent that regulation is
3 prohibited or preempted by federal law.

4 D. Any person performing services regulated by the Registration
5 of Immigration Assistance Act shall register with the Office of the
6 Secretary of State and as may be required by a local governing
7 authority. The person shall pay the Secretary of State a
8 registration fee of Fifteen Dollars (\$15.00). The fee shall be
9 deposited to the credit of the Revolving Fund for the Office of the
10 Secretary of State created pursuant to Section 276.1 of Title 62 of
11 the Oklahoma Statutes.

12 E. Any person who provides or offers immigration assistance
13 service and is not exempted under the Registration of Immigration
14 Assistance Act shall post signs at the place of business of the
15 person setting forth information in English and in every other
16 language in which the person provides or offers to provide
17 immigration assistance service. Each language shall be on a
18 separate sign. Signs shall be posted in a location where the signs
19 will be visible to customers. Each sign shall be at least twelve
20 (12) inches by seventeen (17) inches and shall contain the following
21 statement:

22 "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE
23 LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."
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1 F. Every person engaged in immigration assistance service who
2 is not an attorney who advertises immigration assistance service in
3 a language other than English, whether by radio, television, signs,
4 pamphlets, newspapers, or other written communication, with the
5 exception of a single desk plaque, shall include in the document,
6 advertisement, stationery, letterhead, business card, or other
7 comparable written material the following notice in English and the
8 language in which the written communication appears. This notice
9 shall be of a conspicuous size, if in writing, and shall state: "I
10 AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL
11 ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such advertisement is
12 by radio or television, the statement may be modified but must
13 include substantially the same message.

14 G. Any person who provides or offers immigration assistance
15 service and is not exempted under the Registration of Immigration
16 Assistance Act shall not, in any document, advertisement,
17 stationery, letterhead, business card, or other comparable written
18 material, literally translate from English into another language
19 terms or titles including, but not limited to, notary public,
20 notary, licensed, attorney, lawyer, or any other term that implies
21 the person is an attorney.

22 H. No person engaged in providing immigration services who is
23 not exempted under the Registration of Immigration Assistance Act
24 shall do any of the following:

1 1. Accept payment in exchange for providing legal advice or any
2 other assistance that requires legal analysis, legal judgment, or
3 interpretation of the law;

4 2. Refuse to return documents supplied by, prepared on behalf
5 of, or paid for by the customer upon the request of the customer.
6 These documents must be returned upon request even if there is a fee
7 dispute between the immigration assistant and the customer;

8 3. Represent or advertise, in connection with the provision of
9 assistance in immigration matters, other titles or credentials,
10 including but not limited to "notary public" or "immigration
11 consultant", that could cause a customer to believe that the person
12 possesses special professional skills or is authorized to provide
13 advice on an immigration matter; provided, that a certified notary
14 public may use the term "notary public" if the use is accompanied by
15 the statement that the person is not an attorney;

16 4. Provide legal advice, recommend a specific course of legal
17 action, or provide any other assistance that requires legal
18 analysis, legal judgment, or interpretation of the law; or

19 5. Make any misrepresentation or false statement, directly or
20 indirectly, to influence, persuade, or induce patronage.

21 I. Any person violating the provisions of the Registration of
22 Immigration Assistance Act shall be subject to a fine of up to One
23 Thousand Dollars (\$1,000.00) per violation. A fine charged pursuant
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1 to the Registration of Immigration Assistance Act shall not preempt
2 or preclude additional appropriate civil or criminal penalties.

3 J. Any person who violates any provision of the Registration of
4 Immigration Assistance Act shall be guilty of a misdemeanor for a
5 first offense and a felony for a second or subsequent offense
6 committed within five (5) years of a previous conviction for the
7 same offense.

8 K. The Secretary of State may promulgate and adopt rules for
9 registration pursuant to subsection D of this section.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 2385.2A of Title 68, unless
12 there is created a duplication in numbering, reads as follows:

13 A. As used in this section:

14 1. "Authorized employee" means any individual authorized for
15 employment in the United States as defined in paragraph (2) of
16 subsection (a) of 8 U.S.C., Section 1324a; and

17 2. "Labor services" means the physical performance of services
18 in this state.

19 B. On or after January 1, 2008, no wages or remuneration for
20 labor services to an individual of Six Hundred Dollars (\$600.00) or
21 more per annum may be claimed and allowed as a deductible business
22 expense for state income tax purposes by a taxpayer unless such
23 individual is an authorized employee. The provisions of this
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1 subsection shall apply whether or not an Internal Revenue Service
2 Form 1099 is issued in conjunction with the wages or remuneration.

3 C. This section shall not apply to any business domiciled in
4 this state which is exempt from compliance with federal employment
5 verification procedures under federal law which makes the employment
6 of unauthorized aliens unlawful.

7 D. This section shall not apply to any individual hired by the
8 taxpayer prior to January 1, 2008.

9 E. This section shall not apply to any taxpayer if the
10 individual being paid is not directly compensated or employed by the
11 taxpayer.

12 F. The Oklahoma Tax Commission is authorized to prescribe forms
13 and promulgate rules deemed necessary in order to administer and
14 effectuate this section.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 168.1 of Title 40, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Before hiring any employee, an employer must obtain proof of
19 citizenship or lawful presence in this country, a copy of which must
20 be kept on file by the employer. Proof of citizenship may be a
21 birth certificate, passport, visa, document approved by the United
22 States Citizenship and Immigration Services, or citizenship papers.
23 A valid birth certificate may include a record from a family Bible.
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1 B. Any employer who fails to comply with the provisions of this
2 section shall be fined Ten Thousand Dollars (\$10,000.00) for each
3 employee for whom the required information was not obtained.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2385.3A of Title 68, unless
6 there is created a duplication in numbering, reads as follows:

7 A. An employer shall be required to withhold state income tax
8 as provided in Section 2385.2 of Title 68 of the Oklahoma Statutes
9 from compensation paid to an individual which compensation is
10 reported on Form 1099 and with respect to which the individual has:

- 11 1. Failed to provide a taxpayer identification number;
- 12 2. Failed to provide a correct taxpayer identification number;

13 or

14 3. Provided an Internal-Revenue-Service-issued taxpayer
15 identification number issued for nonresident aliens.

16 B. Any employer who fails to comply with the withholding
17 requirements of this section shall be liable for the taxes required
18 to have been withheld unless the withholding agent is exempt from
19 federal withholding with respect to such individual pursuant to a
20 properly filed Internal Revenue Service Form 8233 and has provided a
21 copy of such form to the Oklahoma Tax Commission.

22 SECTION 9. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 401 of Title 25, unless there is
24 created a duplication in numbering, reads as follows:

1 English shall be the official language of the State of Oklahoma.
2 It shall be used on all official state documents whenever
3 practicable.

4 SECTION 10. NEW LAW A new section of law not to be
5 codified in the Oklahoma Statutes reads as follows:

6 A. There is hereby created the Joint Task Force on Oklahoma
7 Illegal Immigration Issues to develop a comprehensive approach to
8 funding solutions for illegal immigration affecting the state.

9 B. The issues to be addressed by the Task Force shall include,
10 but not be limited to, the following state, county and municipal
11 services as well as private sector business and industry:

- 12 1. Social assistance, medical and special needs services;
- 13 2. Public elementary and secondary education;
- 14 3. Higher education;
- 15 4. Public safety, law enforcement, corrections and homeland
16 security;
- 17 5. Taxation;
- 18 6. Effect of behavior of corporations both in this country and
19 outside this country on the question of illegal immigration;
- 20 7. Processes for verification of citizenship and residency;
- 21 8. Human trafficking; and
- 22 9. State and federal coordination.

23 C. The composition of the Task Force shall be as follows:
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1 1. Two members of the Oklahoma House of Representatives to be
2 appointed by the Speaker of the House of Representatives; provided,
3 one member shall be a member of the minority party;

4 2. Two members of the Oklahoma State Senate, one from each
5 political party, to be appointed by the Lieutenant Governor;

6 3. The Director of the Department of Human Services or a
7 designee;

8 4. The Commissioner of Public Safety or a designee;

9 5. The Director of the Department of Corrections or a designee;

10 6. The Attorney General or a designee;

11 7. The Superintendent of Public Instruction or a designee;

12 8. The Chancellor of the Oklahoma State Regents for Higher
13 Education or a designee;

14 9. Two county sheriffs to be appointed by the Governor from a
15 list submitted by the Oklahoma Sheriffs' Association;

16 10. The Chief of Police of cities with a population of three
17 hundred eighty-seven thousand (387,000) or more;

18 11. One owner or chief executive officer of an Oklahoma
19 business or industry employing more than fifty employees or a
20 designee, to be appointed by the Speaker of the House of
21 Representatives;

22 12. Five owners or chief executive officers of an Oklahoma
23 business or industry employing less than twenty employees or a
24 designee, to be appointed by the President Pro Tempore of the

1 Senate; provided, two of the businesses shall be Hispanic and one
2 shall be a construction company; and

3 13. Two persons who represent major Hispanic community
4 organizations, appointed by the Governor.

5 D. The chair shall be appointed by the Governor. The chair
6 shall convene the first meeting of the Task Force before September
7 1, 2007. Thereafter, the Task Force shall meet as often as
8 necessary. Any vacancies in the membership of the Task Force shall
9 be filled by the original appointing authority.

10 E. The Task Force shall submit a report consisting of suggested
11 legislation to the Speaker of the House of Representatives and the
12 President Pro Tempore of the Senate no later than December 28, 2007.

13 F. Members of the Task Force shall receive no compensation for
14 serving on the Task Force, but shall receive travel reimbursement as
15 follows:

16 1. Legislative members shall be reimbursed for their necessary
17 travel expenses incurred in the performance of their duties in
18 accordance with Section 456 of Title 74 of the Oklahoma Statutes;

19 2. Nonlegislative members shall be reimbursed by their
20 respective agencies for their necessary travel expenses incurred in
21 the performance of their duties in accordance with the State Travel
22 Reimbursement Act; and

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1 3. Members of the Task Force who are not otherwise officers or
2 employees of the state shall be reimbursed by the respective house
3 of the Legislature which was the appointing authority.

4 G. Administrative support for the Task Force shall be provided
5 by the staffs of the House of Representatives and the Senate.

6 SECTION 11. Sections 1 through 9 of this act shall become
7 effective November 1, 2007.

8 SECTION 12. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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