

THE HOUSE OF REPRESENTATIVES
Monday, March 5, 2007

Committee Substitute for
House Bill No. 1804

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1804 - By: TERRILL AND SULLIVAN of the House and WILLIAMSON AND SYKES of the Senate.

An Act relating to illegal immigration; creating the Oklahoma Taxpayer and Citizen Protection Act of 2007; stating legislative purpose; making certain acts unlawful; providing penalties; amending 21 O.S. 2001, Section 1550.42, which relates to identification documentation; requiring issuance of identification documents to certain persons; providing exceptions; stating period of validity; providing for renewal under certain circumstances; providing presumption of validity for renewal, duplication or reissuance of driver license; requiring determination of citizenship status for persons charged with certain crime; requiring verification of persons determined to be a foreign national; providing time limitation for verification; requiring notification to certain entities; providing rebuttable presumption that certain persons are a flight risk; requiring certain entity to prepare and issue certain guidelines and procedures; defining terms; requiring participation in certain verification system; prohibiting certain persons from entering into contracts; providing an exception; providing for cause of action under certain circumstances; providing liability provisions for employing entities found to have violated certain prohibited act; providing exemption from liability; requiring certain agency to promulgate certain rules and regulations; requiring agencies and political subdivisions to verify lawful presence of persons applying for certain benefits; providing for nondiscriminatory treatment; excluding verification under certain circumstances; requiring execution of affidavit; requiring certain applicant to receive benefits through the Systematic Alien Verification of Entitlement Program; making certain actions subject to certain criminal penalties; authorizing adoption of variations to stated requirements; requiring certain entities to submit an annual compliance report; requiring certain entities to monitor certain program; requiring publication of annual report and certain recommendations; requiring certain entities to submit a report of errors to certain agency; requiring the withholding of percentage of state income tax under certain circumstances; providing for tax liability for

noncompliance; providing an exception; directing Attorney General to negotiate terms of certain memorandum; requiring certain signatures; prohibiting certain actions by government entities; authorizing private right of action under certain circumstances; providing that certain persons shall not be eligible for postsecondary education benefits or resident tuition; repealing Section 1, Chapter 210, O.S.L. 2003 (70 O.S. Supp. 2006, Section 3242), which relates to eligibility for enrollment and resident tuition; providing for codification; providing for noncodification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law not to be codified in the
2 Oklahoma Statutes reads as follows:

3 This act shall be known and may be cited as the “Oklahoma Taxpayer and Citizen
4 Protection Act of 2007”.

5 SECTION 2. NEW LAW A new section of law not to be codified in the
6 Oklahoma Statutes reads as follows:

7 The State of Oklahoma finds that illegal immigration is causing economic hardship
8 and lawlessness in this state and that illegal immigration is encouraged by public
9 agencies within this state that provide public benefits without verifying immigration
10 status. The State of Oklahoma further finds that illegal immigrants have been harbored
11 and sheltered in this state and encouraged to reside in this state through the issuance of
12 identification cards that are issued without verifying immigration status, and that these
13 practices impede and obstruct the enforcement of federal immigration law, undermine
14 the security of our borders, and impermissibly restrict the privileges and immunities of

1 the citizens of Oklahoma. Therefore, the people of the State of Oklahoma declare that it
2 is a compelling public interest of this state to discourage illegal immigration by requiring
3 all agencies within this state to fully cooperate with federal immigration authorities in
4 the enforcement of federal immigration laws. The State of Oklahoma also finds that
5 other measures are necessary to ensure the integrity of various governmental programs
6 and services.

7 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 446 of Title 21, unless there is created a duplication in numbering,
9 reads as follows:

10 A. It shall be unlawful for any person to transport, move, or attempt to transport in
11 the State of Oklahoma any alien knowing or in reckless disregard of the fact that the
12 alien has come to, entered, or remained in the United States in violation of law, in
13 furtherance of the illegal presence of the alien in the United States.

14 B. It shall be unlawful for any person to conceal, harbor, or shelter from detection
15 any alien in any place within the State of Oklahoma, including any building or means of
16 transportation, knowing or in reckless disregard of the fact that the alien has come to,
17 entered, or remained in the United States in violation of law.

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

1 SECTION 4. AMENDATORY 21 O.S. 2001, Section 1550.42, is amended to
2 read as follows:

3 Section 1550.42 A. The following entities may create, publish or otherwise
4 manufacture an identification document, identification card, or identification certificate
5 and may possess an engraved plate or other such devise for the printing of such
6 identification; provided, the name of the issuing entity shall be clearly printed upon the
7 face of the identification:

8 1. Businesses, companies, corporations, service organizations and federal, state and
9 local governmental agencies for employee identification which is designed to identify the
10 bearer as an employee;

11 2. Businesses, companies, corporations and service organizations for customer
12 identification which is designed to identify the bearer as a customer or member;

13 3. Federal, state and local government agencies for purposes authorized or required
14 by law or any legitimate purpose consistent with the duties of such an agency, including
15 but not limited to, voter identification cards, ~~driver's~~ driver licenses, ~~nondriver's~~
16 nondriver identification cards, passports, birth certificates and social security cards;

17 4. Any public school or state or private educational institution, as defined by
18 Sections 1-106, 21-101 or 3102 of Title 70 of the Oklahoma Statutes, to identify the
19 bearer as an administrator, faculty member, student or employee;

20 5. Any professional organization or labor union to identify the bearer as a member
21 of the professional organization or labor union; and

1 6. Businesses, companies or corporations which manufacture medical-alert
2 identification for the wearer thereof.

3 B. All identification documents as provided for in paragraph 3 or 4 of subsection A
4 of this section shall be issued only to United States citizens, nationals and legal
5 permanent resident aliens.

6 C. The provisions of subsection B of this section shall not apply when an applicant
7 presents, in person, valid documentary evidence of:

8 1. A valid, unexpired immigrant or nonimmigrant visa status for admission into the
9 United States;

10 2. A pending or approved application for asylum in the United States;

11 3. Admission into the United States in refugee status;

12 4. A pending or approved application for temporary protected status in the United
13 States;

14 5. Approved deferred action status; or

15 6. A pending application for adjustment of status to legal permanent residence
16 status or conditional resident status.

17 Upon approval, the applicant may be issued an identification document provided for in
18 paragraph 3 or 4 of subsection A of this section. Such identification document shall be
19 valid only during the period of time of the authorized stay of the applicant in the United
20 States or if there is no definite end to the period of authorized stay, a period of one (1)
21 year. Any identification document issued pursuant to the provisions of this subsection
22 shall clearly indicate that it is temporary and shall state the date that the identification

1 document expires. Such identification document may be renewed only upon presentation
2 of valid documentary evidence that the status by which the applicant qualified for the
3 identification document has been extended by the United States Immigration and
4 Naturalization Service or the Bureau of Citizenship and Immigration Services of the
5 United States Department of Homeland Security.

6 D. Any driver license for which an application has been made for renewal,
7 duplication or reissuance shall be presumed to have been issued in accordance with the
8 provisions of subsection C of this section, provided that, at the time the application is
9 made, the driver license has not expired, or been cancelled, suspended or revoked. The
10 requirements of subsection C of this section shall apply, however, to a renewal,
11 duplication or reissuance if the Department of Public Safety is notified by a local, state or
12 federal government agency of information in the possession of the agency indicating a
13 reasonable suspicion that the individual seeking such renewal, duplication or reissuance
14 is present in the United States in violation of law.

15 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 171.2 of Title 22, unless there is created a duplication in numbering,
17 reads as follows:

18 A. When a person charged with a felony or with driving under the influence
19 pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes is confined, for any
20 period, in the jail of the county, any municipality or a jail operated by a regional jail
21 authority, a reasonable effort shall be made to determine the citizenship status of the
22 person so confined.

1 B. If the prisoner is a foreign national, the keeper of the jail or other officer shall
2 make a reasonable effort to verify that the prisoner has been lawfully admitted to the
3 United States and if lawfully admitted, that such lawful status has not expired. If
4 verification of lawful status can not be made from documents in the possession of the
5 prisoner, verification shall be made within forty-eight hours through a query to the Law
6 Enforcement Support Center of the United States Department of Homeland Security or
7 other office or agency designated for that purpose by the United States Department of
8 Homeland Security. If the lawful immigration status of the prisoner cannot be verified,
9 the keeper of the jail or other officer shall notify the United States Department of
10 Homeland Security.

11 C. For the purpose of determining the grant of or issuance of bond, it shall be a
12 rebuttable presumption that a person whose citizenship status has been verified
13 pursuant to subsection B of this section to be a foreign national who has not been
14 lawfully admitted to the United States, is at risk of flight.

15 D. The Oklahoma Sheriffs' Association shall prepare and issue guidelines and
16 procedures used to comply with the provisions of this section.

17 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma
18 Statutes as Section 1312 of Title 25, unless there is created a duplication in numbering,
19 reads as follows:

20 As used in Sections 6 and 7 of this act, the term:

21 1. "Status Verification System" shall mean an electronic system operated by the
22 federal government, through which an authorized official of an agency of the State of

Oklahoma or of a political subdivision therein may make an inquiry, by exercise of authority delegated pursuant to Section 1373 of Title 8 of the United States Code, to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by Section 7 of this act. The Status Verification System shall be deemed to include the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L 104-208, Division C, Section 403(a); 8 U.S.C. 1324a, and operated by the United States Department of Homeland Security, known as the Basic Pilot Program, or any equivalent federal work authorization program designated by the United States Department of Homeland Security or any other federal agency authorized to verify the work authorization status of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603;

2. "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state;

3. "Subcontractor" includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier; and

4. "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1313 of Title 25, unless there is created a duplication in numbering, reads as follows:

1 A. Every public employer shall register and participate in the Status Verification
2 System to verify the work authorization status of all new employees.

3 B. 1. No public employer shall enter into a contract for the physical performance of
4 services within this state unless the contractor registers and participates in the Status
5 Verification System to verify the work authorization status of all new employees.

6 2. No contractor or subcontractor who enters a contract with a public employer
7 shall enter into such a contract or subcontract in connection with the physical
8 performance of services within this state unless the contractor or subcontractor registers
9 and participates in the Status Verification System to verify information of all new
10 employees.

11 3. The discharge of any United States citizen or permanent resident alien employee
12 by an employer of this state, who, on the date of the discharge employed an unauthorized
13 alien in this state, shall be considered an unfair employment practice. The discharged
14 employee shall have a private cause of action against the employing entity for the unfair
15 employment practice. The employing entity found to have violated this paragraph shall
16 be liable to the aggrieved employee for:

17 a. actual loss of compensation and benefits sustained by the employee,
18 plus liquidated damages in the amount of two percent (2%) for each
19 day after the date of discharge or in an amount equal to the actual loss
20 of compensation and benefits, whichever is smaller, from the date of
21 the discharge until either the date the employee has been offered
22 reemployment in writing at an equivalent or higher compensation

1 level, or the date the employee has commenced any new employment
2 at an equivalent rate of compensation, whichever occurs first, up to a
3 maximum period of one hundred eighty (180) days from the date of
4 discharge, plus reasonable interest from the date of discharge until the
5 date of payment of the liability, and

6 b. reasonable attorney fees and costs.

7 4. An employing entity which, on the date of the discharge in question, was
8 currently enrolled in and used the Basic Pilot Program or other electronic status
9 verification system, as referred to in Section 6 of this act, to verify the employment
10 authorization of its employees in Oklahoma shall be exempt from liability for suit under
11 this section.

12 C. The provisions of this section shall be enforced without regard to race or national
13 origin.

14 D. The Department of Labor shall prescribe forms and promulgate rules and
15 regulations deemed necessary in order to administer and effectuate the provisions of this
16 section and publish such rules and regulations on the Department of Labor web site.

17 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma
18 Statutes as Section 71 of Title 56, unless there is created a duplication in numbering,
19 reads as follows:

20 A. Except as provided in subsection C of this section or where exempted by federal
21 law, every agency or a political subdivision of this state shall verify the lawful presence
22 in the United States of any natural person fourteen (14) years of age or older who has

1 applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for
2 federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an
3 agency or a political subdivision of this state.

4 B. The provisions of this section shall be enforced without regard to race, religion,
5 gender, ethnicity, or national origin.

6 C. Verification of lawful presence under the provisions of this section shall not be
7 required:

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

10 2. For assistance for health care items and services that are necessary for the
11 treatment of an emergency medical condition, as defined in 42 U.S.C. Section
12 1396b(v)(3), of the alien involved 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 to diseases and for
15 testing and treatment of symptoms of communicable diseases whether or not such
16 symptoms are caused by a communicable disease; or

17 5. For programs, services, or assistance such as soup kitchens, crisis counseling and
18 intervention, and short-term shelter specified by the United States Attorney General, in
19 the sole and unreviewable discretion of the United States Attorney General after
20 consultation with appropriate federal agencies and departments, which:

21 a. deliver in-kind services at the community level, including through
22 public or private nonprofit agencies,

- 1 b. do not condition the provision of assistance, the amount of assistance
2 provided, or the cost of assistance provided on the income or resources
3 of the individual recipient, and
4 c. are necessary for the protection of life or safety.

5 D. Verification of lawful presence in the United States by the agency or political
6 subdivision required to make such verification shall require that the applicant execute
7 an affidavit under penalty of perjury that:

- 8 1. He or she is a United States citizen; or
9 2. He or she is a qualified alien under the federal Immigration and Nationality Act,
10 and is lawfully present in the United States.

11 The agency or political subdivision providing the state or local public benefits shall
12 provide notary public services at no cost to the applicant.

13 E. For any applicant who has executed the affidavit described in paragraph 2 of
14 subsection D of this section, eligibility for benefits shall be made through the Systematic
15 Alien Verification of Entitlement program operated by the United States Department of
16 Homeland Security or a successor program designated by the United States Department
17 of Homeland Security. Until such eligibility verification is made, the affidavit may be
18 presumed to be proof of lawful presence for the purposes of this section.

19 F. Any person who knowingly and willfully makes a false, fictitious, or fraudulent
20 statement of representation in an affidavit executed pursuant to subsection D of this
21 section shall be

1 subject to criminal penalties applicable in this state for fraudulently obtaining public
2 assistance program benefits. If the affidavit constitutes a false claim of U.S. citizenship
3 under 18 U.S.C. Section 911 a complaint shall be filed by the agency requiring the
4 affidavit with the United States Attorney for the applicable district based upon the venue
5 in which the affidavit was executed.

6 G. Agencies or political subdivisions of this state may adopt variations to the
7 requirements of the provisions of this section which demonstrably improve the efficiency
8 or reduce delay in the verification process, or to provide for adjudication of unique
9 individual circumstances where the verification procedures in this section would impose
10 unusual hardship on a legal resident of Oklahoma.

11 H. It shall be unlawful for any agency or a political subdivision of this state to
12 provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C.
13 Section 1611, in violation of the provisions of this section.

14 I. Each state agency or department which administers any program of state or local
15 public benefits shall provide an annual report to the Governor, the President Pro
16 Tempore of the Senate and the Speaker of the House of Representatives with respect to
17 its compliance with the provisions of this section. Each agency or department shall
18 monitor the Systematic Alien Verification of Entitlement program for verification
19 application errors and significant delays and shall provide an annual public report on
20 such errors and significant delays, and recommendations to ensure that the application
21 of the Systematic Alien Verification of Entitlement program is not erroneously denying

benefits to legal residents of Oklahoma. Errors shall also be reported to the United States Department of Homeland Security by each agency or department.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2385.32 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The employer shall be required to withhold state income tax at the rate of six percent (6%) of the amount of either wages which are subject to withholding tax pursuant to the Internal Revenue Code of 1986, as amended or the amount of compensation paid to an individual which compensation is required to be reported on Form 1099 and in both cases with respect to which the individual has failed to provide a valid Social Security Number, issued by the U.S. Social Security Administration.

B. Any employer who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such employer is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 or its equivalent, and has provided a copy of such form to the Oklahoma Tax Commission.

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

A. The Attorney General is authorized and directed to negotiate the terms of a Memorandum of Understanding between the State of Oklahoma and the United States Department of Justice or the United States Department of Homeland Security, as

1 provided by Section 1357(g) of Title 8 of the United States Code, concerning the
2 enforcement of federal immigration and custom laws, detention and removals, and
3 investigations in the State of Oklahoma.

4 B. The Memorandum of Understanding negotiated pursuant to subsection A of this
5 section shall be signed on behalf of this state by the Attorney General and the Governor
6 or as otherwise required by the appropriate federal agency.

7 C. No local government, whether acting through its governing body or by an
8 initiative, referendum, or any other process, shall enact any ordinance or policy that
9 limits or prohibits a law enforcement officer, local official, or local government employee
10 from communicating or cooperating with federal officials with regard to the immigration
11 status of any person within this state.

12 D. Notwithstanding any other provision of law, no government entity or official
13 within the State of Oklahoma, may prohibit, or in any way restrict, any government
14 entity or official from sending to, or receiving from, the United States Department of
15 Homeland Security, information regarding the citizenship or immigration status, lawful
16 or unlawful, of any individual.

17 E. Notwithstanding any other provision of law, no person or agency may prohibit,
18 or in any way restrict, a public employee from doing any of the following with respect to
19 information regarding the immigration status, lawful or unlawful, of any individual:

20 1. Sending such information to, or requesting or receiving such information from,
21 the U.S. Department of Homeland Security;

22 2. Maintaining such information; or

1 3. Exchanging such information with any other federal, state, or local government
2 entity.

3 F. The provisions of this section shall allow for a private right of action by any
4 natural or legal person lawfully domiciled in this state to file for a writ of mandamus to
5 compel any non-cooperating local state governmental agency to comply with such
6 reporting laws.

7 SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 3242.2 of Title 70, unless there is created a duplication in numbering,
9 reads as follows:

10 An individual who is not lawfully present in the United States shall not be eligible
11 on the basis of residence within the state for:

12 1. Any postsecondary education benefit including, but not limited to, scholarships
13 or financial aid; or

14 2. Resident tuition.

15 SECTION 12. REPEALER Section 1, Chapter 210, O.S.L. 2003 (70 O.S. Supp.
16 2006, Section 3242), is hereby repealed.

17 SECTION 13. This act shall become effective November 1, 2007.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
19 dated 03-01-07 - DO PASS, As Amended and Coauthored.