

ENROLLED HOUSE
BILL NO. 1804

By: Terrill, Sullivan, Key,
Duncan, Banz, Coody,
Cooksey, Dank, Derby,
Faught, Hickman, Inman,
Johnson (Rob), Kern,
Liebmann, Martin (Scott),
Martin (Steve), McCullough,
McDaniel (Randy), Murphey,
Peterson (Ron), Proctor,
Sears, Tibbs, Worthen,
Johnson (Dennis), Peterson
(Pam), Reynolds and
McMullen of the House

and

Williamson, Sykes, Corn,
Ivester, Adelson, Brogdon,
Jolley, Johnson (Mike),
Reynolds, Aldridge,
Bingman, Brown, Crain, Ford
and Wilcoxson 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; preserving provision of certain benefits and services; 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 exception for certain document; 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; defining terms; requiring participation in certain verification system; prohibiting certain persons from entering into contracts after certain dates; providing exception; establishing certain discriminatory practice; providing exception; limiting certain cause of action; 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 be verified through the Systematic Alien Verification for 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 certain withholding of state income tax under certain circumstances; providing for tax liability for noncompliance; preventing certain misinterpretation; 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; requiring that certain persons be ineligible for postsecondary education benefits or resident tuition; providing exception for persons enrolled during or before certain school year; establishing a Fraudulent Documents Identification Unit within the Department of Public Safety subject to availability of funding; stating purpose; stating duties; providing for employment of sufficient employees; amending Section 1, Chapter 210, O.S.L. 2003 (70 O.S. Supp. 2006, Section 3242), which relates to eligibility for enrollment and resident tuition; requiring graduation from certain school; requiring certain period of residence while attending certain school; requiring satisfaction of certain admission standards; requiring presentation of certain documentation or filing of certain affidavit;

requiring presentation of certain documents after filing of certain affidavit; requiring maintenance of documentation in certain records; providing qualification for meeting certain criteria; prohibiting certain additional conditions for persons enrolled during or before certain school year; 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 not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma Taxpayer and Citizen Protection Act of 2007".

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

The State of Oklahoma finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The State of Oklahoma further finds that when illegal immigrants have been harbored and sheltered in this state and encouraged to reside in this state through the issuance of identification cards that are issued without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Oklahoma. Therefore, the people of the State of Oklahoma declare that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The State of Oklahoma also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

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

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

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

C. Nothing in this section shall be construed so as to prohibit or restrict the provision of any state or local public benefit described in 8 U.S.C., Section 1621(b), or regulated public health services provided by a private charity using private funds.

D. Any person violating the provisions of subsections A or B of this section shall, upon conviction, be guilty of a felony punishable by imprisonment 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.

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

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

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

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

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

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

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

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

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

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

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

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

3. Admission into the United States in refugee status;

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

5. Approved deferred action status; or

6. A pending application for adjustment of status to legal permanent residence status or conditional resident status. Upon approval, the applicant may be issued an identification document provided for in paragraph 3 or 4 of subsection A of this section. Such identification document shall be valid only during

the period of time of the authorized stay of the applicant in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year. Any identification document issued pursuant to the provisions of this subsection shall clearly indicate that it is temporary and shall state the date that the identification document expires. Such identification document may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

D. The provisions of subsection B of this section shall not apply to an identification document described in paragraph 4 of subsection A of this section that is only valid for use on the campus or facility of that educational institution and includes a statement of such restricted validity clearly and conspicuously printed upon the face of the identification document.

E. Any driver license issued to a person who is not a United States citizen, national or legal permanent resident alien for which an application has been made for renewal, duplication or reissuance shall be presumed to have been issued in accordance with the provisions of subsection C of this section; provided that, at the time the application is made, the driver license has not expired, or been cancelled, suspended or revoked. The requirements of subsection C of this section shall apply, however, to a renewal, duplication or reissuance if the Department of Public Safety is notified by a local, state or federal government agency of information in the possession of the agency indicating a reasonable suspicion that the individual seeking such renewal, duplication or reissuance is present in the United States in violation of law. The provisions of this subsection shall not apply to United States citizens, nationals or legal permanent resident aliens.

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

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

B. If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and, if lawfully admitted, that such lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the lawful immigration status of the prisoner cannot be verified, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

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

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

As used in Sections 6 and 7 of this act:

1. "Status Verification System" means an electronic system operated by the 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:

- a. 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., Section 1324a, and operated by the United States Department of Homeland Security, known as the Basic Pilot Program,

- b. any equivalent federal program designated by the United States Department of Homeland Security or any other federal agency authorized to verify the work eligibility status of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603,
- c. any other independent, third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in this paragraph, or
- d. the Social Security Number Verification Service, or such similar online verification process implemented by the United States Social Security Administration;

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

3. "Subcontractor" means 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:

A. Every public employer shall register with and utilize a Status Verification System as described in subparagraphs a or b of paragraph 1 of Section 6 of this act to verify the federal employment authorization status of all new employees.

B. 1. After July 1, 2008, no public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of all new employees.

2. After July 1, 2008, no contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or

subcontractor registers and participates in the Status Verification System to verify information of all new employees.

3. The provisions of this subsection shall not apply to any contracts entered into prior to the effective date of this section even though such contracts may involve the physical performance of services within this state after July 1, 2008.

C. 1. It shall be a discriminatory practice for an employing entity to discharge an employee working in Oklahoma who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Oklahoma in a job category that requires equal skill, effort, and responsibility, and which is performed under similar working conditions, as defined by 29 U.S.C., Section 206(d)(1), as the job category held by the discharged employee.

2. An employing entity which, on the date of the discharge in question, was currently enrolled in and used a Status Verification System to verify the employment eligibility of its employees in Oklahoma hired after July 1, 2008, shall be exempt from liability, investigation, or suit arising from any action under this section.

3. No cause of action for a violation of this subsection shall arise anywhere in Oklahoma law but from the provisions of this subsection.

SECTION 8. 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 where exempted by federal law, every agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person fourteen (14) 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 is administered by an agency or a political subdivision of this state.

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

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

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

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

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

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

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

- a. deliver in-kind services at the community level, including through public or private nonprofit agencies,
- b. do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient, and
- c. are necessary for the protection of life or safety.

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

1. He or she is a United States citizen; or

2. He or she is a qualified alien under the federal Immigration and Nationality Act and is lawfully present in the United States.

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

E. For any applicant who has executed the affidavit described in paragraph 2 of subsection D of this section, eligibility for benefits shall be verified through the Systematic Alien Verification for Entitlements (SAVE) Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

F. Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection D of this section shall be subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits. If the affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C., Section 911, a complaint shall be filed by the agency requiring the affidavit with the United States Attorney General for the applicable district based upon the venue in which the affidavit was executed.

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

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

I. Each state agency or department which administers any program of state or local public benefits shall provide an annual report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives with respect to its compliance with the provisions of this section. Each agency or department shall monitor the Systematic Alien Verification for Entitlements Program for application verification errors and

significant delays and shall provide an annual public report on such errors and significant delays and recommendations to ensure that the application of the Systematic Alien Verification of Entitlements 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. If an individual independent contractor, contracting for the physical performance of services in this state, fails to provide to the contracting entity documentation to verify the independent contractor's employment authorization, pursuant to the prohibition against the use of unauthorized alien labor through contract set forth in 8 U.S.C., Section 1324a(a)(4), the contracting entity shall be required to withhold state income tax at the top marginal income tax rate as provided in Section 2355 of Title 68 of the Oklahoma Statutes as applied to compensation paid to such individual for the performance of such services within this state which exceeds the minimum amount of compensation the contracting entity is required to report as income on United States Internal Revenue Service Form 1099.

B. Any contracting entity who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such contracting entity is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 or its equivalent.

C. Nothing in this section is intended to create, or should be construed as creating, an employer-employee relationship between a contracting entity and an individual independent contractor.

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 provided by Section 1357(g) of Title 8 of the United States Code, concerning the

enforcement of federal immigration and customs laws, detention and removals, and investigations in the State of Oklahoma.

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

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

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

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

1. Sending such information to, or requesting or receiving such information from, the United States Department of Homeland Security;
2. Maintaining such information; or
3. Exchanging such information with any other federal, state, or local government entity.

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

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

A. Except as otherwise provided in Section 3242 of Title 70 of the Oklahoma Statutes, an individual who is not lawfully present in the United States shall not be eligible on the basis of residence within the state for:

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

2. Resident tuition.

B. The provisions of subsection A of this section shall not apply to a student enrolled in a degree program at a postsecondary educational institution within The Oklahoma State System of Higher Education during the 2006-2007 school year or any prior year who received a resident tuition benefit pursuant to Section 3242 of Title 70 of the Oklahoma Statutes at that institution.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 151.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

Subject to the availability of funding, the Department of Public Safety shall establish a Fraudulent Documents Identification (FDI) Unit for the primary purpose of investigating and apprehending persons or entities that participate in the sale or distribution of fraudulent documents used for identification purposes. The unit shall additionally specialize in fraudulent identification documents created and prepared for persons who are unlawfully residing within the State of Oklahoma. The Department shall employ sufficient employees to investigate and implement an FDI Unit.

SECTION 13. AMENDATORY Section 1, Chapter 210, O.S.L. 2003 (70 O.S. Supp. 2006, Section 3242), is amended to read as follows:

Section 3242. A. The Oklahoma State Regents for Higher Education ~~shall~~ may adopt a policy which allows a student to enroll in an institution within The Oklahoma State System of Higher Education and allows a student to be eligible for resident tuition if the student:

1. Graduated from a public or private high school in this state ~~or successfully completed the General Educational Development test in this state;~~ and

2. Resided in this state with a parent or legal guardian while attending classes at a public or private high school in this state for at least two (2) years prior to:

a. ~~graduation from high school, or~~

b. ~~successful completion of the General Educational Development test.~~

B. To be eligible for the provisions of subsection A of this section, an eligible student shall:

1. Satisfy admission standards as determined by the Oklahoma State Regents for Higher Education for the appropriate type of institution and have secured admission to, and enrolled in, an institution within The Oklahoma State System of Higher Education; and

2. If the student is without lawful immigration status cannot present to the institution valid documentation of United States nationality or an immigration status permitting study at a postsecondary institution:

a. ~~file an affidavit with the institution stating that the student has filed an~~ provide to the institution a copy of a true and correct application or has a petition pending filed with the Bureau of United States Citizenship and Immigration Services to legalize the student's immigration status, or

b. file an affidavit with the institution stating that the student will file an application to legalize his or her immigration status at the earliest opportunity the student is eligible to do so. ~~High school counselors shall inform immigrant students that they should apply for legal status as soon as possible to enhance their opportunity for higher education in Oklahoma, but in no case later than:~~

(1) one (1) year after the date on which the student enrolls for study at the institution, or

(2) if there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of

deportation, one (1) year after the date the United States Citizenship and Immigration Services provide such a formal process, and

c. if the student files an affidavit pursuant to subparagraph b of this paragraph, present to the institution a copy of a true and correct application or petition filed with the United States Citizenship and Immigration Services no later than:

(1) one (1) year after the date on which the student enrolls for study at the institution, or

(2) if there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States Citizenship and Immigration Services provide such a formal process, which copy shall be maintained in the institution's records for that student.

C. Any student who ~~meets~~ completes the required criteria prescribed in ~~subsections~~ subsection A and B of this section, paragraph 1 of subsection B of this section, and subparagraph a of paragraph 2 of subsection B of this section shall not be disqualified on the basis of the student's immigration status from any scholarships or financial aid provided by this state.

D. The provisions of this section shall not impose any additional conditions to maintain resident tuition status at a postsecondary educational institution within The Oklahoma State System of Higher Education on a student who was enrolled in a degree program and first received such resident tuition status at that institution during the 2006-2007 school year or any prior year.

SECTION 14. This act shall become effective November 1, 2007.

Passed the House of Representatives the 1st day of May, 2007.

Presiding Officer of the House
of Representatives

Passed the Senate the 16th day of April, 2007.

Presiding Officer of the Senate