

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1804

By: Terrill

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6 AS INTRODUCED

7 An Act relating to illegal immigration; creating the
8 Oklahoma Taxpayer and Citizen Protection Act of 2007;
9 stating legislative purpose; making certain acts
10 unlawful; providing penalties; amending 21 O.S. 2001,
11 Section 1550.42, which relates to identification
12 documentation; requiring issuance of identification
13 documents to certain persons; providing exceptions;
14 stating period of validity; providing for renewal
15 under certain circumstances; providing presumption of
16 validity for renewal, duplication or reissuance of
17 driver license; requiring determination of
18 citizenship status for persons charged with certain
19 crime; requiring verification of persons determined
20 to be a foreign national; providing time limitation
21 for verification; requiring notification to certain
22 entities; deeming certain persons to be a flight
23 risk; requiring certain entity to prepare and issue
24 certain guidelines and procedures; defining terms;
requiring participation in certain pilot program;
prohibiting certain persons from entering into
contracts; providing an exception; providing for
cause of action under certain circumstances;
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 Secretary of State to monitor

1 certain program; requiring publication of annual
2 report and certain recommendations; requiring the
3 withholding of percentage of state income tax under
4 certain circumstances; providing for tax liability
5 for noncompliance; providing an exception; directing
6 Attorney General to negotiate terms of certain
7 memorandum; requiring certain signatures; prohibiting
8 certain actions by government entities; authorizing
9 private right of action under certain circumstances;
10 providing for noncodification; providing for
11 codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law 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 by public agencies within this state that
provide public benefits without verifying immigration status. The
State of Oklahoma further finds that 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, and that these
practices impede and obstruct the enforcement of federal immigration

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

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

13 A. It shall be unlawful for any person to transport, move, or
14 attempt to transport within the United States any alien knowing or
15 in reckless disregard of the fact that the alien has come to,
16 entered, or remained in the United States in violation of law, in
17 furtherance of the illegal presence of the alien in the United
18 States.

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

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

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

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

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

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

22 3. Federal, state and local government agencies for purposes
23 authorized or required by law or any legitimate purpose consistent
24 with the duties of such an agency, including but not limited to,

1 voter identification cards, ~~driver's~~ driver licenses, ~~nondriver's~~
2 nondriver identification cards, passports, birth certificates and
3 social security cards;

4 4. Any public school or state or private educational
5 institution, as defined by Sections 1-106, 21-101 or 3102 of Title
6 70 of the Oklahoma Statutes, to identify the bearer as an
7 administrator, faculty member, student or employee;

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

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

13 B. All identification documents as provided for in paragraph 3
14 or 4 of subsection A of this section shall be issued only to United
15 States citizens, legal permanent resident aliens, or holders of
16 valid unexpired nonimmigrant visas.

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

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

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

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

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

3 5. Approved deferred action status; or

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

6 Upon approval, the applicant may be issued an identification
7 document provided for in paragraph 3 or 4 of subsection A of this
8 section. Such identification document shall be valid only during
9 the period of time of the authorized stay of the applicant in the
10 United States or if there is no definite end to the period of
11 authorized stay, a period of one (1) year. Any identification
12 document issued pursuant to the provisions of this subsection shall
13 clearly indicate that it is temporary and shall state the date that
14 the identification document expires. Such identification document
15 may be renewed only upon presentation of valid documentary evidence
16 that the status by which the applicant qualified for the
17 identification document has been extended by the United States
18 Immigration and Naturalization Service or the Bureau of Citizenship
19 and Immigration Services of the United States Department of Homeland
20 Security.

21 D. Any driver license for which an application has been made
22 for renewal, duplication or reissuance shall be presumed to have
23 been issued in accordance with the provisions of subsection C of
24 this section, provided that, at the time the application is made,

1 the driver license has not expired, or been cancelled, suspended or
2 revoked. The requirements of subsection C of this section shall
3 apply, however, to a renewal, duplication or reissuance if the
4 Department of Public Safety is notified by a local, state or federal
5 government agency that the individual seeking such renewal,
6 duplication or reissuance is neither a citizen of the United States
7 nor legally in the United States.

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

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

17 B. If the prisoner is a foreign national, the keeper of the
18 jail or other officer shall make a reasonable effort to verify that
19 the prisoner has been lawfully admitted to the United States and if
20 lawfully admitted, that such lawful status has not expired. If
21 verification of lawful status can not be made from documents in the
22 possession of the prisoner, verification shall be made within forty-
23 eight hours through a query to the Law Enforcement Support Center of
24 the United States Department of Homeland Security or other office or

1 agency designated for that purpose by the United States Department
2 of Homeland Security. If the prisoner is determined not to be
3 lawfully admitted to the United States, the keeper of the jail or
4 other officer shall notify the United States Department of Homeland
5 Security.

6 C. For the purpose of determining the grant of or issuance of
7 bond, a person whose citizenship status has been verified pursuant
8 to subsection B of this section to be a foreign national who has not
9 been lawfully admitted to the United States, shall be deemed to be a
10 risk of flight.

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

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

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

18 1. "Basic Pilot Program" shall mean the electronic verification
19 of work authorization program of the Illegal Immigration Reform and
20 Immigration Responsibility Act of 1996, P.L 104-208, Division C,
21 Section 403(a); 8 U.S.C. 1324a, and operated by the United States
22 Department of Homeland Security or any equivalent federal work
23 authorization program operated by the United States Department of
24 Homeland Security or any other designated federal agency authorized

1 to verify the work authorization status of newly hired employees,
2 pursuant to the Immigration Reform and Control Act of 1986 (IRCA),
3 D.L. 99-603;

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

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

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

12 A. Every public employer shall register and participate in the
13 Basic Pilot Program to verify the work authorization status of all
14 new employees.

15 B. 1. No public employer shall enter into a contract for the
16 physical performance of services within this state unless the
17 contractor registers and participates in the Basic Pilot Program to
18 verify the work authorization status of all new employees.

19 2. No contractor or subcontractor who enters a contract with a
20 public employer shall enter into such a contract or subcontract in
21 connection with the physical performance of services within this
22 state unless the contractor or subcontractor registers and
23 participates in the Basic Pilot Program to verify information of all
24 new employees.

1 3. The discharge of any United States citizen or permanent
2 resident alien employee by an employer of this state, who, on the
3 date of the discharge employed an unauthorized alien, shall be an
4 unfair trade practice as defined in Section 752 of Title 15 of the
5 Oklahoma Statutes. The discharged employee shall have a private
6 cause of action for such unfair trade practice.

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

9 D. The Department of Labor shall prescribe forms and promulgate
10 rules and regulations deemed necessary in order to administer and
11 effectuate the provisions of this section and publish such rules and
12 regulations on the Department of Labor website.

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

16 A. Except as provided in subsection C of this section or where
17 exempted by federal law, every agency or a political subdivision of
18 this state shall verify the lawful presence in the United States of
19 any natural person fourteen (14) years of age or older who has
20 applied for state or local public benefits, as defined in 8 U.S.C.
21 Section 1621, or for federal public benefits, as defined in 8 U.S.C.
22 Section 1611, that is administered by an agency or a political
23 subdivision of this state.

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

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

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

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

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

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

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

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

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1 b. do not condition the provision of assistance, the
2 amount of assistance provided, or the cost of
3 assistance provided on the income or resources of the
4 individual recipient, and

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

7 6. For prenatal care.

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

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

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

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

1 F. Any person who knowingly and willfully makes a false,
2 fictitious, or fraudulent statement of representation in an
3 affidavit executed pursuant to subsection D of this section shall be
4 subject to criminal penalties applicable in this state for
5 fraudulently obtaining public assistance program benefits. If the
6 affidavit constitutes a false claim of U.S. citizenship under 18
7 U.S.C. Section 911 a complaint shall be filed by the agency
8 requiring the affidavit with the United States Attorney for the
9 Western District of Oklahoma.

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

17 H. It shall be unlawful for any agency or a political
18 subdivision of this state to provide any state, local, or federal
19 benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section
20 1611, in violation of the provisions of this section.

21 I. Each state agency or department which administers any
22 program of state or local public benefits shall provide an annual
23 report to the Office of the Secretary of State with respect to its
24 compliance with the provisions of this section. Any and all errors

1 shall be reported to the United States Department of Homeland
2 Security by the Secretary of State. The Secretary of State shall
3 monitor the Systematic Alien Verification of Entitlement program and
4 its verification application errors and significant delays and shall
5 provide an annual public report on such errors and significant
6 delays, and recommendations to ensure that the application of the
7 Systematic Alien Verification of Entitlement program is not
8 erroneously denying benefits to legal residents of Oklahoma.

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

12 A. The employer shall be required to withhold state income tax
13 at the rate of six percent (6%) of the amount of compensation paid
14 to an individual which compensation is required to be reported on
15 Form 1099 and with respect to which the individual has failed to
16 provide a valid Social Security Number, issued by the U.S. Social
17 Security Administration.

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

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

4 A. The Attorney General is authorized and directed to negotiate
5 the terms of a Memorandum of Understanding between the State of
6 Oklahoma and the United States Department of Justice or the United
7 States Department of Homeland Security concerning the enforcement of
8 federal immigration and custom laws, detention and removals, and
9 investigations in the State of Oklahoma.

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

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

20 D. Notwithstanding any other provision of law, no government
21 entity or official within the State of Oklahoma, may prohibit, or in
22 any way restrict, any government entity or official from sending to,
23 or receiving from, the United States Department of Homeland
24

1 Security, information regarding the citizenship or immigration
2 status, lawful or unlawful, of any individual.

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

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

9 2. Maintaining such information; or

10 3. Exchanging such information with any other federal, state,
11 or local government entity.

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

17 SECTION 11. This act shall become effective November 1, 2007.

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