

2007 Bill Text OK H.B. 1804

THE STATE OF OKLAHOMA
BILL TEXT



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2007 **OK H.B. 1804**

OKLAHOMA FIRST SESSION OF THE 51ST LEGISLATIVE SESSION

HOUSE BILL 1804

STATE OF OKLAHOMA
1ST SESSION OF THE 51ST LEGISLATURE (2007)
HOUSE BILL 1804
BY: TERRILL
AS INTRODUCED

BILL TRACKING REPORT: 2007 Bill Tracking **OK H.B. 1804**

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VERSION: Introduced

VERSION-DATE: February 5, 2007

SYNOPSIS: 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; deeming certain persons to be a flight risk; requiring certain entity to prepare and issue 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 certain program; requiring publication of annual report and certain recommendations; 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 for noncodification; providing for codification; and providing an effective date.

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

[D> Text within these symbols is deleted <D]

TEXT: 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 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 within the United States 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, 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. 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> A. <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 devise 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, [D> driver's <D] [A> DRIVER <A] licenses, [D> nondriver's <D] [A> NONDRIVER <A] 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.

[A> 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, LEGAL PERMANENT RESIDENT ALIENS, OR HOLDERS OF VALID UNEXPIRED NONIMMIGRANT VISAS. <A]

[A> C. THE PROVISIONS OF SUBSECTION B OF THIS SECTION SHALL NOT APPLY WHEN AN APPLICANT PRESENTS, IN PERSON, VALID DOCUMENTARY EVIDENCE OF: <A]

[A> 1. A VALID, UNEXPIRED IMMIGRANT OR NONIMMIGRANT VISA STATUS FOR ADMISSION INTO THE UNITED STATES; <A]

[A> 2. A PENDING OR APPROVED APPLICATION FOR ASYLUM IN THE UNITED STATES; <A]

[A> 3. ADMISSION INTO THE UNITED STATES IN REFUGEE STATUS; <A]

[A> 4. A PENDING OR APPROVED APPLICATION FOR TEMPORARY PROTECTED STATUS IN THE UNITED STATES; <A]

[A> 5. APPROVED DEFERRED ACTION STATUS; OR <A]

[A> 6. A PENDING APPLICATION FOR ADJUSTMENT OF STATUS TO LEGAL PERMANENT RESIDENCE STATUS OR CONDITIONAL RESIDENT STATUS. <A]

[A> 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 IMMIGRATION AND NATURALIZATION SERVICE OR THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY. <A]

[A> D. ANY DRIVER LICENSE 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 THAT THE INDIVIDUAL SEEKING SUCH RENEWAL, DUPLICATION OR REISSUANCE IS NEITHER A CITIZEN OF THE UNITED STATES NOR LEGALLY IN THE UNITED STATES. <A]

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 can not be made from documents in the possession of the prisoner, verification shall be made within forty-eight 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 prisoner is determined not to be lawfully admitted to the United States, 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, 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, shall be deemed to be a risk of flight.

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

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, the term:

1. "Basic Pilot Program" shall mean 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. 1324 a, and operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security or any other designated 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; and

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

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 and participate in the Basic Pilot Program to verify the work authorization status of all new employees.

B. 1. 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 Basic Pilot Program to verify the work authorization status of all new employees.

2. No contractor or subcontractor who enters 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 Basic Pilot Program to verify information of all new employees.

3. The discharge of any United States citizen or permanent resident alien employee by an employer of this state, who, on the date of the discharge employed an

unauthorized alien, shall be an unfair trade practice as defined in Section 752 of Title 15 of the Oklahoma Statutes. The discharged employee shall have a private cause of action for such unfair trade practice.

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

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

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 1396 b(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;

or

6. For prenatal care.

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.

E. For any applicant who has executed the affidavit described in paragraph 2 of subsection D of this section, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement program operated by the United States Department of Homeland Security or a successor 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 for the Western District of Oklahoma.

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 Office of the Secretary of State with respect to its compliance with the provisions of this section. Any and all errors shall be reported to the United States Department of Homeland Security by the Secretary of State. The Secretary of State shall monitor the Systematic Alien Verification of Entitlement program and its verification application 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 Entitlement program is not erroneously denying

benefits to legal residents of Oklahoma.

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 compensation paid to an individual which compensation is required to be reported on Form 1099 and 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 20 J 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 concerning the enforcement of federal immigration and custom 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 U.S. 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 non-cooperating local state governmental agency to comply with such reporting laws.

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

SPONSOR:

Terrill

LOAD-DATE: February 6, 2007