

SECTION 101.
ILLEGAL ALIENS; OFFENSES CONCERNING; PENALTIES; FORFEITURE.¹

IRLI Comment: Reproduces into state criminal law the elements of three federal “alien-smuggling” felonies that are enforced in the interior of the United States. Allows for adaptation of the federal penalty scheme to conform to existing state standards. The forfeiture provision is based on a state controlled substance law model, rather than federal examples, because police chiefs, prosecutors, and state judges are more familiar with this body of law. Rationale: U.S. Attorneys lack the resources to prosecute more than a small fraction of immigration felonies. Section 101 gives state prosecutors the flexibility to fill in this major law enforcement gap. Enactment as state criminal provisions also decisively forecloses the common argument that “illegal immigration is not a crime in our state.”

(A) It shall be unlawful for any person:

(1) To transport, move, or attempt to transport any alien into or within the State of ##### knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law, in furtherance of such violation of law;

(2) To conceal, harbor, or to shield from detection, or to attempt to conceal, harbor or to shield from detection, any alien in any place in the State of #####, including any building or means of transportation, knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law; or

(3) Encourage or induce an alien to enter or reside in the State of #####, knowing or in reckless disregard of the fact that such entry or residence is or will be in violation of law.

(4) Construction.—Nothing in this subsection shall be construed so as to impose criminal liability for the provision of any state or local public benefit described in United States Code Title 8, Subsection 1621(b).

(B) Penalties.—A person who violates subsection (A) commits, for each alien, other than a minor child of such person, in respect to whom such a violation occurs:

(1) A misdemeanor [of the first degree], punishable as provided in [state code §§], or

(2) In the case of a violation in which the offense was done for the purpose of commercial advantage or private financial gain, a felony [in the third degree] or,

(3) In the case of a violation, during and in relation to which the person causes serious bodily injury or places, any person in serious jeopardy of life, a felony [in the second degree].

¹ OK HB 1804 § 3, 8 USC 1324(a)(1)(A).

(C) For the purposes of obtaining a conviction under this section, it shall be a rebuttable presumption that verification by the agency of the federal government responsible for the determination of the immigration status of non-citizens present in the United States, that an alien has come to, entered, or remains in the United States in violation of law, has determined the alien's immigration status as a matter of law.

(D) Forfeiture.-- The following property is subject to forfeiture:

(1) Except as provided in subparagraphs (a) to (c), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport for commercial advantage or private financial gain, two or more illegal aliens in violation of subsection (A)(1).

(a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless there is probable cause to conclude that the owner or other person having charge and control of the conveyance is a consenting party or privy to a violation of this section.

(b) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(2) Except as provided in subparagraphs (a) to (c), any thing of value, including real property, that is furnished or used to harbor, for commercial advantage or private financial gain, two or more illegal aliens, an illegal alien, in violation of subsection (A)(2).

(a) Real property or commercial fixtures or equipment are not subject to forfeiture unless it appears that the owner or other person having charge and control of such property is a consenting party or privy to a violation of this subsection (A)(2).

(b) Property is not subject to forfeiture under this paragraph by reason of any act or omission established by the owner of that property to have been committed or omitted without the owner's knowledge or consent.

(c) A forfeiture of real property or commercial fixtures or equipment encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(3) Except as provided in subparagraph (a), any thing of value that is furnished or exchanged to encourage or induce two or more illegal aliens to reside in the state of ##### in violation of subsection (A)(3) including, but not limited to money, negotiable instruments, or securities.

(a) Property is not subject to forfeiture under this paragraph by reason of any act or omission established by the owner of that property to have been committed or omitted without the owner's knowledge or consent.

(E) Property that is subject to forfeiture under this section may be seized:

(1) Upon process issued by the [District Court] having jurisdiction over the property, or

(2) Without process under any of the following circumstances:

(a) Incident to a lawful arrest or pursuant to a search warrant.

(b) The property is the subject of a prior judgment in favor of this state or a political subdivision therein in an injunction or forfeiture proceeding.

(c) There is probable cause to believe that the use of the property in violation of subsection (A) resulted in serious bodily injury to any person, or placed any person in serious jeopardy of life.

(F) The [state] Department of Justice shall adopt rules pursuant to the ##### Administrative Procedure Act [code §§ xx] to (a) implement the provisions of this section, and (b) establish a procedure to distribute the proceeds from the sale of forfeited property to the law enforcement agency responsible for the forfeiture and, if the forfeiture proceeding was part of or resulted in a criminal prosecution, to the office of the district attorney which conducted such prosecution.