



**HB 1804:
Overview and Questions
Family and Children's Services,
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Overview of HB 1804

- HB 1804 was introduced and passed during the 2007 Oklahoma Legislative session.
- The bill passed both Chambers by large margins (85-13; 41-6) and was signed by Governor Henry on May 8th.
- The bill has an effective date of November 1, 2007 (although one employment section has a later implementation date).

Overview of HB 1804

- The bill was hailed by supporters and touted by the media as the “toughest illegal immigration bill in the nation”.
- Wide-ranging legislation affecting how public and private entities determine the legal status of those within their purview.
- “It’s all about identification and verification”
 - HB 1804 does not modify anyone’s immigration status or employment authorization.
- By establishing state mechanisms for enforcing federal law and creating new state definitions of federal immigration terms, HB 1804 raises myriad constitutional issues.

Overview of HB 1804

“State leaders should closely monitor the impact of (the law) in the months and years to come to ensure that it doesn't have any unintended consequences.”

-Gov. Brad Henry



Overview of HB 1804

Major Subject Areas

- Public benefits
- Identification cards
- Employment
- Law Enforcement
- Higher Education
- Miscellaneous

Public Benefits

- HB 1804 (Section 8) requires every state or local agency to verify the lawful presence in the United States of any applicant aged 14 or older for a “public benefit” - federal, state or local - that is administered by a state or local agency.
- “It shall be unlawful for any agency or a political subdivision of the state to provide any state, local, or federal benefit... in violation of the provisions of this section”
 - No penalties are specified
- WHAT IS A PUBLIC BENEFIT?

The bill does not provide a state definition of a public benefit (or empower any state entity to create a definition)

Instead it: defers to definitions of “public benefits” in federal law (8 U.S.C. 1611 and 1621) that:

- 1) defines the qualities of a “public benefit”
- 2) provides explicit exemptions for services necessary to preserving life and safety.

Public Benefits

1) Definitions of public benefits in federal law

- Regulatory clarification issued by Department of Health and Human Services (DHHS, 1998 Federal Register);
- Generally, a narrow definition of what is a public benefit:
 - 31 DHHS federal programs identified as “public benefits”, including TANF, Food Stamps, Medicare, Medicaid, Child Care subsidies, foster care;
 - Excluded are programs in non-post-secondary education (including Head Start) and programs targeting a specific physical condition (disability or disease), age group (children, seniors), or gender;
 - Excluded are any program operated by nonprofit charitable organizations.

Public Benefits

2) Exemptions for emergencies/life and safety

- HB 1804 mirrors federal law in spelling out programs and services exempt from verification requirements
- The law was given regulatory clarification by Department of Justice (2001 Federal Register)
- Exemptions include:
 - Emergency medical care;
 - Emergency disaster relief;
 - Immunizations and communicable diseases;
 - Crisis counseling and intervention services;
 - Child protection, adult protective services, domestic violence;
 - Treatment of mental illness or substance abuse;
 - Short-term housing for homeless, victims of domestic violence, runaway youth, etc.
 - Soup kitchens, community food banks, senior nutrition programs, etc.
 - Medical and public health services necessary to protect life and safety;
 - Activities to protect life and safety of workers, children and youth, or community residents;
 - Any other programs, service or assistance necessary for the protection of life and safety;
 - Police, fire, ambulance, transportation and other regular, widely available services

Public Benefits

- Since HB 1804 defers to federal law on eligibility for federal, state and local benefits, and
- Since federal law has been in effect for over 10 years, and
- Since public and private entities in Oklahoma have been subject to the law requiring verification for public benefits =
- **THERE MAY ULTIMATELY BE LITTLE OR NO CHANGE AS A RESULT OF HB 1804 IN THIS AREA**

Public Benefits

- For public benefits that require verification, state and local agencies must require that all applicants sign a notarized affidavit testifying that they are:
 - (1) a U.S. Citizen, or
 - (2) a qualified alien lawfully present in the U.S.If you are a citizen, nothing else is required;
For non-citizens, the agency administering the program must verify legal status through the federal SAVE (Systematic Alien Verification for Entitlements) Program.
 - SAVE is already in place and operational

Public Benefits

- Some questions:
 - Will anyone issue guidance or clarification on the definition of “public benefit” under HB 1804? Who gets to decide? How will these decisions be communicated?
 - Will programs and services funded entirely with state and local money be subject to federal definitions of public benefit?
 - Who would enforce compliance with these requirements?
 - Would these requirements be affected by passage of federal immigration reform?

Identification Cards

- Section 4 of HB 1804 restricts the issuing of certain identification documents to citizens, nationals and legal permanent residents.
- Specific language referring to:
 1. Drivers licenses and non-driver identification cards:
 - Temporary cards can be issued to one who is not a citizen or legal permanent legal resident as long as the applicant shows proof of valid immigration status and the card clearly indicates the expiration date of the card;
 - For temporary residents with a current drivers license in good standing, DPS may automatically renew the license unless notified by authorities of a “reasonable suspicion” that the individual is in the country illegally.

Identification Cards

- Specific language referring to:
 2. School identification cards
 - Schools may issue the same identification document to all students without regard to legal status so long as the identification clearly and conspicuously states that it is only valid for use on the campus or facility of that educational institutional

Identification Cards

- Some questions:
 - How and when will schools be informed of the need to issue new identification cards that comply with the law?

Employment

- The bill differentiates three categories of employers subject to different requirements (Section 6 + 7):
 1. All public employers must participate in the Basic Pilot Program (or an equivalent Status Verification System) to verify the employment authorization of all new hires by November 1, 2007;
 2. All private entities entering into a new contract or subcontract with a public employer must participate in the Basic Pilot Program (or an equivalent Status Verification System) to verify the employment authorization of all new hires by July 1, 2008

Employment

3. The bill does not attempt to compel other private employers to participate in the Basic Pilot Program. But, it says that:
 - You may be subject to a “discriminatory practice” complaint filed with the Oklahoma Human Rights Commission:
 - If you do not participate in the Basic Pilot Program (or equivalent Status Verification System); and
 - You terminate a US citizen or permanent resident alien while at the same time knowingly employing an unauthorized alien in a similar job anywhere in Oklahoma;

The bill also includes language (Section 9) requiring the withholding of income tax by a contracting entity if individual independent contractors do not document their employment authorization

Employment

- Some questions:
 - How will the requirement that all contracting entities participate in the Basic Pilot Program by 7/1/08 be put into place ? Who will oversee compliance?
 - Will the Basic Pilot Program be able to handle the surge in activity from Oklahoma employers? If not, what happens?
 - How will problems with the Basic Pilot Program be handled?
 - Does the OK Human Rights Commission have the resources and authority to pursue discriminatory practice lawsuits involving undocumented immigrants?
 - How would the language of HB 1804 be affected by passage of federal immigration reform?

Law Enforcement

- Three sections of the law relate to law enforcement:
 1. Section 3 makes it a felony offence to transport, conceal, harbor or shelter from detention an alien “knowing or in reckless disregard” of the person’s illegal status;
 2. Section 5 requires jail authorities to attempt to determine the citizenship status of anyone charged with a felony offence or DUI;
 3. Section 10 requires the state Attorney General to negotiate a Memorandum of Understanding with the federal government concerning enforcement of federal immigration and customs laws.

Law Enforcement

1. Section 3 makes it a felony offence to transport, conceal, harbor or shelter from detention an alien “knowing or in reckless disregard” of the person’s illegal presence
 - Imposes punishment of up to 1 year in prison and a \$1,000 fine
 - The bill exempts the provision of state or local public benefits or regulated health services provided by a private charity

Law Enforcement

2. Section 5 requires jail authorities to attempt to verify the citizenship status of anyone charged with a felony offence or DUI
 - The requirement applies to anyone confined for any length of time by a municipal, county or regional jail;
 - In cases of foreign nationals whose lawful presence cannot be verified based on documents in the prisoner's possession, the jail official will have 48 hours to make an inquiry to federal officials and to notify the Department of Homeland Security;
 - For bond purposes, anyone determined to be unlawfully present is deemed a flight risk

Law Enforcement

3. Section 10 requires the state Attorney General to negotiate a Memorandum of Understanding with the federal government concerning enforcement of federal immigration and customs laws.
 - Federal law set out explicit conditions and processes for delegating immigration enforcement authority (investigation, apprehension or detention of aliens) to designated local law enforcement officials. These conditions include:
 - A written agreement (MOU) between the federal AG and the state or local subdivision;
 - Written certification that any designated officer has received training and is knowledgeable in the enforcement of federal immigration laws;
 - Written specification of the power and duties of each individual agent or officer granted immigration authority;
 - State and local government assumes all expenses
 - The law provides no requirement for any local police force to apply for immigration enforcement duties for any of its officers.

Law Enforcement

SOME QUESTIONS

- Will any entity provide guidance on what constitutes the elements of the harboring and transporting offence?
- Will there be a statewide standard of what establishes lawful presence for those arrested on felony charges?
- What will the state MOU say? What powers will it confer and what protections will it include?
- Will any law enforcement agency be required to participate in a MOU?
- How will additional costs associated with enforcing federal immigration laws be funded?

Higher Education

- Under compromise language, eligibility for in-state tuition may be preserved for students already attending college and for incoming students if:
 1. They graduated from an Oklahoma high school and attended classes for at least two years [GED no longer acceptable], and
 - 2a. Have a pending application or petition or application filed with the USCIS to legalize their immigration status, or
 - 2b. File an affidavit stating their intent to fill an application to legalize their immigration status at some later date - within one year after the date the USCIS provides a formal process to permit children or parents without lawful immigration status to apply for lawful status without risk of deportation.
 - Students eligible for in-state tuition under 2b are no longer eligible for scholarships or financial aid

Higher Education

- Some questions -
 - Will the State Regents exercise the option to maintain the in-state tuition program? How and when will they do so?
 - How will the State Regents treat incoming students who have been accepted for scholarships and financial assistance for the upcoming school year?
 - Are there conflicts and discrepancies between HB 1804 and the new OHLAP eligibility bill (SB 820)?
 - How would Oklahoma's in-state tuition program be affected if federal immigration reform passes?

Miscellaneous

- The bill directs the Department of Public Safety to establish a Fraudulent Documents Unit to investigate and apprehend those involved in distributing false identification documents (Section 12), subject to the availability of funds. The Legislature, this year, appropriated no funds for this purpose.

Miscellaneous

- The bill (Sec. 10) includes extensive language prohibiting government entities from taking any action that would prohibit or restrict any public official from sharing information or communicating in any way with any other government entity about the immigration status of any individual.
 - This language mirrors existing language in federal law.

DISCLAIMER

- **This document is intended for general informational purposes as a service to interested persons, companies and organizations to promote awareness of recent changes in Oklahoma law. It is not intended to convey or constitute legal advice or to provide a substitute for obtaining legal advice from a qualified attorney. It should not be used to resolve legal questions or specific situations. You should not act upon any of the information in this document without seeking qualified legal advice on your specific matter.**