

**KEY FINDINGS:**

- Many sections of HB 1804 may either duplicate or mirror what is already in state or federal law or simply put into statute what is already occurring in practice in the state.
- The bill does not challenge the constitutionally-guaranteed right of all children to attend school and receive all educational services, regardless of legal status.
- While the bill requires verification of legal status for those applying for "public benefits", the established definition of public benefits in state and federal law is limited to certain well-defined government programs, which already are unavailable to unauthorized immigrants.
- Emergency medical, domestic violence, mental health, food assistance and other services aimed at protecting life and safety are also exempt from verification requirements in almost all circumstances.
- Many private sector employers may be subject to new employer verification requirements effective July 1, 2008;
- The bill allows a role for state and local law enforcement officials to assist in enforcing federal immigration laws in well-defined circumstances.

Community Action Project  
 4606 S. Garnett Road, Suite 100  
 Tulsa, OK 74146  
 www.okpolicy.org  
 918 382.3200  
 F/918 382.3213  
 publicpolicy@captc.org

# Issue Brief

Revised, August 20, 2007

## Interpreting HB 1804: A Guide to Understanding Oklahoma's New State Immigration Bill

By David Blatt, Director of Public Policy, Community Action Project

HB 1804 passed the Oklahoma Legislature during the 2007 legislative session. The bill, which is slated to take effect on November 1, 2007, represents a far-ranging attempt by Oklahoma to take on federal immigration functions in the areas of law enforcement and verification of eligibility for employment and public benefits.

This brief provides a detailed, informed overview of HB 1804 based on careful analysis of the legislation and federal immigration law. The brief sets out the main provisions of the bill and explores how these relate to current law and practice. It is designed to assist public and private stakeholders in the immigration issue understand how the bill applies to them and where to seek further guidance.

With the passage of HB 1804, Oklahoma joins a number of states, including Georgia and Colorado, that have responded to the ongoing failure of federal immigration reform efforts by asserting broader authority over immigration matters. However, given the federal government's exclusive constitutional power to regulate immigration and the broad array of federal laws and court rulings already in effect in this area, the impact of state laws like HB 1804 inevitably raises a clutter of legal and practical questions that are not easily disentangled.

The ultimate impact of HB 1804 will depend, first, on whether the legislation withstands anticipated legal challenges to its constitutionality and takes effect in November. If the bill does take effect, its impact will depend on how it is interpreted and implemented by a wide range of public agencies and private entities. Among those potentially affected by the new law are state and local government agencies, city and

county law enforcement departments, community non-profit organizations, private businesses, religious congregations, advocacy groups, citizens and residents. These entities are now working to understand what the bill does and does not do, and how it will affect their work, their rights, and their families. This guide is intended to assist in this process.

For additional resources and information on HB 1804 and immigration policy, please visit CAP's website:

[www.okpolicy.org](http://www.okpolicy.org)

**CONTENTS**

SUMMARY: MAJOR PROVISIONS AND CONCERNS.....	2
SECS. 1+2: TITLE AND FINDINGS.....	3
SEC. 3: HARBORING AND TRANSPORTING....	3
SEC. 4: IDENTIFICATION CARDS.....	4
SEC. 5: FELONY CHARGES.....	4
SEC. 6, 7 + 9: EMPLOYMENT.....	5
SEC. 8: PUBLIC BENEFITS.....	6
SEC. 10: LAW ENFORCEMENT.....	8
SEC. 10: REPORTING OF INFORMATION.....	8
SECS. 11 + 13: HIGHER EDUCATION.....	9
ACCESS TO PUBLIC BENEFITS.....	10

**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.

**SUMMARY AND HI-LITES OF HB 1804  
MAJOR PROVISIONS AND CONCERNS**

SECTION	PROVISIONS	CONCERNS
3	Makes it a state felony offence to transport, conceal, harbor or shelter an alien knowingly and in reckless disregard of the alien’s illegal status; specifies exemptions for providers of certain services	Creates uncertainty and fear of arrest and criminal charges among Good Samaritans and those who may deal with undocumented immigrants as part of their regular business.
4	Restricts the issuing of official identification cards to US citizens, nationals and legal permanent residents; allows for exceptions for driver’s licenses and school identification cards under specified circumstances	School ID language creates fear that schools may seek to verify legal status of children and their families, which may lead parents to keep their children (including U.S. citizens) from attending school.
5	Requires jails to verify legal status of persons detained on felony and DUI charges	No standard for jails to determine citizenship status and legal presence; creates fear that law enforcement will go beyond the requirements of the bill in inquiring about the legal status of suspected illegal immigrants. No funding to assist local authorities with detention costs.
7	Requires public employers and those contracting with public employers to use an electronic employment authorization system to verify work eligibility; puts private employers who do not utilize electronic verification system at risk of a discriminatory practices complaint	Existing employment verification systems can be inaccurate and cumbersome, especially for legal immigrants; verification system may be unable to handle increased demands in a timely fashion; undocumented workers using fake documents will still slip through the cracks; federal immigration law pre-empts the regulation of employment and hiring of unauthorized workers.
8	Requires public agencies to verify lawful presence of applicants (over age 14) for “public benefits”, as defined in federal law; specifies exemptions for providers of certain services	Language simply duplicates existing federal law requiring states to determine legal status for public benefits and excluding unauthorized immigrants; creates uncertainty and confusion among providers and recipients about eligibility for services exempted from definition of public benefits; potentially expensive requirement for U.S. citizens to sign notarized affidavits attesting to their citizenship.
10	Requires state Attorney General to negotiate a Memorandum of Understanding with federal government that would allow state and local law enforcement officials to assume certain federal immigration enforcement powers under specified circumstances	Creates fear that state and local law enforcement will serve as agents of the immigration police, which can lead immigrants, legal and non-legal to avoid law enforcement whenever possible.
13	Prevents undocumented students from receiving scholarships and financial assistance; allows Regents for Higher Education to preserve policy giving undocumented students access to in-state tuition	Makes it harder for Oklahoma graduates to pursue higher education, to the detriment of themselves and their communities.

**The analysis proceeds with a section-by-section summary of HB 1804**  
**The language of the text is in SMALL CAPS to the left annotated by our commentary in italics to the right**

**Sections 1 and 2: Title and Findings**

THE BILL IS TITLED “THE OKLAHOMA TAX-PAYER AND CITIZEN PROTECTION ACT OF 2007” (SEC. 1) AND PROVIDES A STATEMENT OF FINDINGS ABOUT ILLEGAL IMMIGRATION IN OKLAHOMA (SEC. 2).

*This language is not codified as part of Oklahoma law.*

**Section 3: Harboring and Transporting an Alien**

THE BILL MAKES IT A STATE FELONY OFFENCE FOR ANY PERSON TO TRANSPORT, CONCEAL, HARBOR OR SHELTER FROM DETECTION ANY ALIEN “KNOWING OR IN RECKLESS DISREGARD OF THE FACT THAT THE ALIEN HAS ENTERED OR REMAINED IN THE UNITED STATE IN VIOLATION OF LAW”. THE PENALTY FOR THIS CRIME WOULD BE NO LESS THAN ONE YEAR IN PRISON AND/OR A FINE OF NO LESS THAN \$1,000.

*The transporting and sheltering felony language of HB 1804 mirrors language that is already in federal law. There is no clear way to know how this new state provision might be applied and interpreted by state law enforcement officers, prosecutors and judges. However, federal jurisprudence has held that an individual must know that the alien is in the United States illegally and must act in furtherance of the alien’s violation of the law to be guilty of the crime of transporting or sheltering an illegal alien<sup>1</sup>. This suggests that the law would not apply to those who have normal contact with persons who may happen be in the country illegally but who are not actively and intentionally furthering the alien’s illegal presence.*

EXEMPTIONS ARE SPECIFIED FOR THOSE PROVIDING PUBLIC BENEFITS AS SPELLED OUT IN 8 U.S.C., SECTION 1621 (B) OF FEDERAL STATUTES.

*A broad range of services and programs appear to be specifically exempted from the possible scope of harboring and transporting based on the federal law pertaining to public benefits cited in this section. Under a notice of final order issued by the federal Department of Justice, the following forms of assistance are determined to be necessary for the protection of life or safety, so long as they are delivered as in-kind services and are open to all without regard to income and resources:*

- (a) Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;*
- (b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;*
- (c) Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;*
- (d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;*
- (e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;*
- (f) Activities designed to protect the life or safety of workers, children and youths, or community residents; and*
- (g) Any other programs, services, or assistance necessary for the protection of life or safety.<sup>2</sup>*

*The State Department of Education has confirmed that it does not believe the provision to apply to school bus drivers transporting schoolchildren.<sup>3</sup>*

**Section 4: Identification Cards**

THE BILL RESTRICTS THE ISSUING OF PRIMARY IDENTIFICATION DOCUMENTS – VOTER IDENTIFICATION CARDS, DRIVER LICENSES, NON-DRIVER IDENTIFICATION CARDS, PASSPORTS, BIRTH CERTIFICATE AND SOCIAL SECURITY CARDS – TO U.S. CITIZENS, NATIONALS AND LEGAL PERMANENT RESIDENTS. TEMPORARY IDENTIFICATION CARDS CAN BE ISSUED TO THOSE WHO ARE NOT CITIZENS OR LEGAL PERMANENT RESIDENTS, SUCH AS FOREIGN STUDENTS OR TEMPORARY WORKERS, UPON EVIDENCE OF VALID, UNEXPIRED IMMIGRANT OR VISA STATUS, SO LONG AS THE DOCUMENT CLEARLY INDICATES THE EXPIRATION DATE OF THE IDENTIFICATION DOCUMENT. IN THE CASE OF DRIVER’S LICENSES, THE BILL DECLARES THAT ANYONE WITH A CURRENT DRIVER’S LICENSE CAN HAVE THEIR LICENSE RENEWED WITHOUT FURTHER VERIFICATION, UNLESS THE DEPARTMENT OF PUBLIC SAFETY IS NOTIFIED OF A “REASONABLE SUSPICION” THAT THE INDIVIDUAL SEEKING RENEWAL IS IN VIOLATION OF US IMMIGRATION LAW.

THIS SECTION ALSO REQUIRES THAT IDENTIFICATION CARDS ISSUED BY PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS TO STUDENTS, STAFF, TEACHERS, ETC. MUST CLEARLY INDICATE THAT THE DOCUMENT IS VALID ONLY FOR USE ON THE CAMPUS OF THAT EDUCATIONAL INSTITUTION.

*Since 2003, the Department of Public Safety has verified the legal status of those applying for drivers licenses. In the case of temporary residents, DPS already issues licenses valid only for the length of the alien’s legal stay in the country. To be in conformity with HB 1804, the Department intends only to ensure henceforth that drivers licenses issued to those with temporary immigration status will be marked as “Temporary”.*

*It is unclear how Oklahoma has authority to regulate the issuing of federal identification documents such as passports and social security cards.*

*The State Department of Education intends to issue notice to all school districts that all school identification cards must include language that conforms to HB 1804. Schools would continue to issue common ID cards to everyone without any regard to legal status. It is unclear whether the law applies only to newly-issued cards or whether schools must replace cards that have previously been issued.*

**Section 5: Persons Charged with Felonies**

THE BILL REQUIRES ANY COUNTY, MUNICIPAL OR REGIONAL JAIL AUTHORITY TO MAKE A “REASONABLE EFFORT” TO DETERMINE THE CITIZENSHIP STATUS OF ANY PERSON CHARGED WITH A FELONY OR DUI AND DETAINED FOR ANY LENGTH OF TIME BY THE JAIL. IF THE PRISONER IS A FOREIGN NATIONAL, THE JAIL SHALL MAKE A “REASONABLE EFFORT” TO DETERMINE IF THE PRISONER IS IN THE COUNTRY LEGALLY, BASED ON DOCUMENTS IN THE PRISONER’S POSSESSION OR AN INQUIRY TO THE DEPARTMENT OF HOMELAND SECURITY MADE WITHIN 48 HOURS OF DETENTION. IF LAWFUL IMMIGRATION STATUS CANNOT BE VERIFIED, THE JAIL SHALL NOTIFY THE DEPARTMENT OF HOMELAND SECURITY. FOR BOND PURPOSES, A PERSON WHO HAS BEEN VERIFIED AS A “FOREIGN NATIONAL WHO HAS NOT BEEN LAWFULLY ADMITTED TO THE UNITED STATES” IS DEEMED A FLIGHT RISK.

*It is unclear to what extent the bill’s verification procedures for individuals charged with felonies and DUIs differ from current procedures. Checking immigration status while detained is already standard procedure and permitted under federal law. However, practices vary between local jurisdictions and individual cases.*

*The bill does not establish a standard for jail officials to determine citizenship status and lawful presence. However, the Department of Public Safety has asserted that an Oklahoma driver’s license should be considered sufficient proof of lawful presence.<sup>4</sup> If an inquiry is made to the Department of Homeland Security on a prisoner’s immigration status, the bill does not specify a length of time in which it must wait for a response before following normal bail procedures. This creates the possibility of confusion and the application of different standards in different jurisdictions.*

*The requirements of Sec. 5 apply only to jail authorities and only to those detained on felony charges and DUIs. The Tulsa City Council has attempted to go further by adopting a resolution calling on the police to verify lawful status of those arrested on full-custody misdemeanors.<sup>5</sup>*

## Sections 6,7,9: Employment

THE BILL AIMS TO EXPAND EMPLOYER PARTICIPATION IN THE BASIC PILOT PROGRAM, OR A SIMILAR ELECTRONIC STATUS VERIFICATION SYSTEM, TO DETERMINE EMPLOYMENT AUTHORIZATION STATUS. SEC. 6 IDENTIFIES THE STATUS VERIFICATION SYSTEMS THAT WOULD QUALIFY TO DETERMINE EMPLOYMENT AUTHORIZATION UNDER THE LAW. SEC.7 SETS OUT THREE SETS OF PROCEDURES REGARDING EMPLOYMENT VERIFICATION:

1. EVERY **PUBLIC EMPLOYER** MUST UTILIZE A STATUS VERIFICATION SYSTEM TO VERIFY THE EMPLOYMENT AUTHORIZATION OF ITS NEW EMPLOYEES AS OF NOVEMBER 1, 2007. PUBLIC EMPLOYER INCLUDES EVERY DEPARTMENT, AGENCY OR “INSTRUMENTALITY” OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

2. EVERY **ENTITY CONTRACTING WITH A PUBLIC EMPLOYER** MUST UTILIZE A STATUS VERIFICATION SYSTEM TO VERIFY THE EMPLOYMENT AUTHORIZATION OF ITS NEW EMPLOYEES AS OF JULY 1, 2008;

3. **PRIVATE EMPLOYERS** MAY UTILIZE A STATUS VERIFICATION SYSTEM. IF THEY DO NOT UTILIZE A STATUS VERIFICATION SYSTEM, THEY CAN BE FOUND TO HAVE COMMITTED A “DISCRIMINATORY PRACTICE”, IF THEY ARE FOUND TO HAVE DISCHARGED A US CITIZEN OR PERMANENT RESIDENT ALIEN WHILE SIMULTANEOUSLY KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN HIRED AFTER JULY 1, 2008 WHO IS WORKING IN OKLAHOMA IN A SIMILAR JOB. ANY EMPLOYER PARTICIPATING IN A STATUS VERIFICATION SYSTEM IS PROTECTED FROM LIABILITY UNDER THIS PROVISION.

SEC. 9 RELATES TO INDIVIDUAL INDEPENDENT CONTRACTORS. IT STATES THAT CONTRACTING ENTITIES MUST WITHHOLD STATE INCOME TAX AT THE TOP MARGINAL RATE IN INSTANCES WHERE INDIVIDUAL INDEPENDENT CONTRACTORS FAIL TO PROVIDE DOCUMENTATION OF THEIR EMPLOYMENT AUTHORIZATION. ANY CONTRACTING ENTITY THAT FAILS TO WITHHOLD TAXES IN THESE CIRCUMSTANCES WILL BE LIABLE FOR THE TAXES THAT SHOULD HAVE BEEN WITHHELD

*Most public and private employers subject to the law are expected to participate in the Basic Pilot Program (now formally referred to as the Employment Eligibility Verification program). The Basic Pilot Program is an automated Internet-based verification system that checks the employment authorization of newly hired employees against several federal databases, including the Social Security Administration and Department of Homeland Security.<sup>6</sup>*

*The verification requirements of Sect. 7 apply to new employees only. Federal law prohibits using the Basic Pilot Program for existing employees. The law similarly exempts existing contracts from its employment verification provisions.*

*It is unclear how state and local governments will verify that every public agency and every contracting entity they conduct business with is participating in a status verification system. The state Office of Personnel Management is working on developing standardized procedures for state agencies to electronically verify new hires. Presumably the Department of Central Services and equivalent agencies for every political subdivision will need to issue rules to verify participation in the status verification system for all new state contracts entered into after July 1, 2008. The law is silent about any enforcement mechanism or penalty for agencies that fail to comply with the employment verification requirement or for contractors found to be in violation of the law.*

*Private employers that do not participate in a status verification system could potentially be charged with engaging in “discriminatory practices” . The bill does not provide employers with an exemption for workers terminated for cause. Although the bill does not spell out procedures or penalties for discriminatory practice violations, these matters would apparently be determined by the Oklahoma Human Rights Commission (OHRC), a state agency that has the statutory responsibility to execute federal civil rights policies in Oklahoma.<sup>7</sup> HB 1804 does not add responsibilities for investigating or litigating cases related to unauthorized alien workers to the statutory mandate of the OHRC, or provide any appropriations to the agency for added duties and workload.*

*It is unclear whether the Basic Pilot Program is fit to handle the increased volume of verification requests that would follow from Oklahoma’s adoption of HB 1804. According to the USCIS (United State Customs and Immigration Services) website, “if significantly more employers than anticipated choose to participate in the Basic Pilot Program, USCIS may have to limit the number of participants”.<sup>8</sup> A recent report from the federal GAO indicates that expanded use of the Basic Pilot Program would require hundreds of millions of dollars in additional costs for program management, compliance activities and staff.<sup>9</sup>*

## Section 8: Public Benefits

THE BILL REQUIRES EVERY STATE AGENCY OR POLITICAL SUBDIVISION OF THE STATE TO VERIFY THE LAWFUL PRESENCE IN THE UNITED STATE OF ANYONE OVER AGE 14 WHO HAS APPLIED FOR A FEDERAL, STATE, LOCAL OR PUBLIC BENEFIT AS DEFINED UNDER FEDERAL LAW (8 U.S.C. SECTION 1611 AND 1621). THE BILL EXPLICITLY EXEMPTS SERVICES AND ASSISTANCE OF AN EMERGENCY NATURE FROM THE REQUIREMENT TO VERIFY LEGAL STATUS. THESE INCLUDE: EMERGENCY MEDICAL CARE, EMERGENCY DISASTER RELIEF, IMMUNIZATIONS, TESTING AND TREATMENT FOR COMMUNICABLE DISEASES, AND SERVICES NECESSARY FOR THE PROTECTION OF LIFE OR SAFETY (SUCH AS SOUP KITCHENS, CRISIS COUNSELING AND INTERVENTION AND SHORT-TERM SHELTER), AS DETERMINED BY THE UNITED STATES ATTORNEY GENERAL.

*The federal Welfare Reform Act, passed in 1996, already bars unauthorized immigrants from receiving public benefits and requires that agencies establish legal presence for recipients of public benefits. The key questions are (1) “what is a public benefit?”, and (2) “who must verify eligibility?”.*

### *(1) What is a Public Benefit?*

*Federal agencies have identified some 30+ programs as public benefits (see box, p. 7). Unless a federally-funded program has been positively identified in federal regulations as a public benefit, it is not a public benefit, and would appear not to be subject to the verification requirements under HB 1804. The federal definition of “public benefit” applies to any program wholly or partially funded with federal resources.<sup>10</sup> Services that are wholly funded by state or local government may be “state or local benefits” under state law. HB 1804 does not identify any authority or process for state agencies to develop a definition of public benefit.*

*In its notice implementing the federal law requiring verification of legal status for public benefits, HHS explicitly exempted certain kinds of programs and services as being outside the scope of the law’s definition of public benefits:*

- *Non-postsecondary education programs, such as Head Start and elementary and secondary education;*
- *Benefits that are generally targeted to communities or specified sectors of the population, such as a disability or disease, gender, or general age group, such as youth or elderly. This provision exempts such programs as Maternal and Child Health programs, the Ryan White CARE Act, the Older Americans Act and Community Health Centers, among others.<sup>11</sup>*

*The Department of Agriculture issued guidance exempting all of its food and nutrition programs other than the Food Stamps program (including school meal programs and the WIC nutrition program) from the definition of federal means-tested public benefit.<sup>12</sup>*

*The United States Supreme Court in the landmark case Plyler v. Doe guaranteed the right of all children to attend school and participate in all school activities, regardless of the child or parent’s legal status.<sup>12</sup> The Oklahoma State Department of Education has affirmed that it will continue to serve all children without any regard to legal status.<sup>13</sup>*

*The Oklahoma Department of Human Services has indicated that it already verifies legal status for public benefits in accordance with federal law and does not anticipate having to modify eligibility procedures for any of its programs.<sup>14</sup>*

*The Department of Justice issued a final notice of order in 2001 determining the kinds of services necessary for the protection of life and safety.<sup>15</sup> All the services encompassed by the Department’s notice are explicitly exempted from any verification requirements under HB 1804, so long as they deliver in-kind services and are open to all without regard to income and resources. These are:*

- (a) Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;*
- (b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;*
- (c) Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;*
- (d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;*

**Section 8, Continued**

- (e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;
- (f) Activities designed to protect the life or safety of workers, children and youths, or community residents; and
- (g) Any other programs, services, or assistance necessary for the protection of life or safety.

The Attorney General also stated: “I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that I am not making specifications of such programs, services, or assistance”.

(2) Who Must Determine Eligibility?

Nothing in state or federal law imposes verification requirements on any non-public entity. HB 1804 requires “every agency or a political subdivision of the state” to verify eligibility for public benefits and is silent regarding private entities. The federal Welfare Reform Act explicitly provides that nonprofit charitable organizations are not required to verify the immigration status of applicants for federal, state or local public benefits.<sup>16</sup>

Oklahoma state agencies, such as the Department of Human Services, already verify eligibility for immigrants through SAVE. The bill’s only new provision is the requirement of an affidavit for those claiming to be U.S. citizens. A false claim to U.S. citizenship makes a person inadmissible and removable from the United States. The verification requirement applies only to public agencies.

Under the 2006 Deficit Reduction Act passed by Congress, states must take additional steps to verify citizenship and identify of most Medicaid recipients. The new federal Medicaid citizenship requirements, which took effect in Oklahoma beginning on July 1, 2007, are more stringent than the requirements for other public benefits under HB 1804.<sup>17</sup> They apply only to the Medicaid program and only to U.S. citizens, as qualified immigrants have already satisfied the verification requirements.

UNDER HB 1804, STATE AND LOCAL GOVERNMENT AGENCIES ARE REQUIRED TO VERIFY LEGAL PRESENCE BY HAVING THE APPLICANT EXECUTE AN AFFIDAVIT, IN THE PRESENCE OF A NOTARY, AFFIRMING THAT HE OR SHE IS: (A) A UNITED STATES CITIZEN, OR (B) A QUALIFIED ALIEN AND LAWFULLY PRESENT. THE BILL MAKES IT A STATE CRIME TO ISSUE A FALSE STATEMENT UNDER THIS AFFIDAVIT. FOR ANYONE WHO HAS EXECUTED AN AFFIDAVIT AS A QUALIFIED ALIEN, ELIGIBILITY MUST BE DETERMINED UNDER THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM OR AN EQUIVALENT GOVERNMENT PROGRAM.

**A Limited Number of Federal Programs Have Been Designated as “Public Benefits”**

The following programs have been defined as *public benefits* and must therefore establish the legal status of those applying to receive services [all programs are Department of Health and Human Services, except as otherwise noted] (sources: 63 Fed. Reg. 41658 (Aug. 4, 1998); 63 Fed. Reg.36635 (July 7, 1998); *Popular Government*, vol. 65, no. 1, Fall 1999, 22–29 and 35–37)

- |  |   |
|--|---|
| Adoption Assistance  | Medicare  |
| Administration on Developmental Disabilities (ADD)—State Developmental Disabilities Council (direct services only) | Medicaid (except assistance for an emergency medical condition) |
| ADD—Special Projects (direct services only)  | Mental Health Clinical Training Grants                          |
| ADD—University Affiliated Programs (clinical disability assessment services only)                                  | Native Hawaiian Loan Program                                    |
| Adult Programs/Payment to Territories  | Refugee Cash Assistance   |
| Agency for Health Care Policy and Research Dissertation Grants   | Refugee Medical Assistance                                      |
| Child Care and Development Fund  | Refugee Preventive Health Services Program                      |
| Clinical Training Grant for Faculty Development in Alcohol and Drug Abuse  | Refugee Social Services Formula Program                         |
| Disaster Unemployment Assistance [FEMA]  | Refugee Social Services Discretionary Program                   |
| Federal Assistance to Individuals and Households (IHP) [FEMA]  | Refugee Targeted Assistance Formula Program                     |
| Food Stamp program [Department of Agriculture]   | Refugee Targeted Assistance Discretionary Program               |
| Foster Care  | Refugee Unaccompanied Minors Program                            |
| Health Profession Education and Training Assistance  | Refugee Voluntary Agency Matching Grant Program                 |
| Independent Living Program   | Repatriation Program  |
| Job Opportunities for Low Income Individuals (JOLI)  | Residential Energy Assistance Challenge Option (REACH)          |
| Low Income Home Energy Assistance Program (LIHEAP)   | Social Services Block Grant (SSBG)                              |
|  | SSI [Social Security Administration]                            |
|  | State Child Health Insurance Program (CHIP)                     |
|  | Temporary Assistance for Needy Families (TANF)                  |

**Section 10: Law Enforcement**

THE BILL INSTRUCTS THE STATE ATTORNEY GENERAL (AG) TO NEGOTIATE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE US DEPARTMENT OF JUSTICE OR US DEPARTMENT OF HOMELAND SECURITY CONCERNING ENFORCEMENT OF FEDERAL IMMIGRATION AND CUSTOM LAWS.

*Under federal law (8 U.S.C., Sec. 1357 (g)), any state or local government already may negotiate a MOU to allow state or local officials to perform the functions of an immigration official in relation to the “investigation, apprehension or detention of aliens in the United States”. The federal statute set out strict and explicit conditions and processes for delegating immigration enforcement authority (investigation, apprehension or detention of aliens) to specifically designated local law enforcement officials. These conditions include:*

- Negotiation of 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 governments assume all expenses for carrying out the functions under the agreement.*

*In the absence of an MOU, state and local law enforcement officials lack the authority to enforce or arrest for civil immigration violations and may not detain an individual for the sole or primary purpose of determining their immigration status. Local law enforcement may make arrests only based on reasonable suspicion that the person has violated criminal provisions of federal immigration law. Current law regarding when state and local law enforcement officials may lawfully inquire about the legal status of individuals they encounter is unclear.*

*The bill does not set a deadline for the state AG to negotiate the MOU or identify the terms of the MOU. The bill does not specify whether the MOU shall apply to state law enforcement agencies only or also encompass local law enforcement.*

*The Tulsa County Sheriff’s Office has completed an MOU with the federal government that will allow its trained officers to place detainers on suspected illegal immigrants.<sup>19</sup> No other Oklahoma municipal or county law enforcement department has attempted to negotiate for enhanced immigration powers.*

**Section 10: Reporting of Information**

THE BILL FORBIDS ANY GOVERNMENT ENTITY FROM PROHIBITING ANY GOVERNMENT OFFICIAL FROM REQUESTING, SENDING, OR MAINTAINING ANY INFORMATION REGARDING THE IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL, OR EXCHANGING SUCH INFORMATION WITH ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY. THE BILL GRANTS A PRIVATE RIGHT OF ACTION TO ANY STATE RESIDENT TO “FILE FOR A WRIT OF MANDAMUS TO COMPEL ANY NONCOOPERATING LOCAL OR STATE GOVERNMENT AGENCY TO COMPLY WITH SUCH REPORTING LAWS”.

*Existing federal law already specifically allows any state or local public official to communicate with the federal Attorney General about the immigration status of any individual and to cooperate in the identification, apprehension, detention or removal of any illegal alien (8 USC, Sec. 137.G.10). Federal and state privacy and civil rights laws may limit the broad-based flow of information regarding immigration status set out in HB 1804.*

**Sections 11,13: Higher Education**

THESE SECTIONS ADDRESS THE LAW PASSED BY THE OKLAHOMA LEGISLATURE IN 2003 THAT MAKES CERTAIN UNDOCUMENTED STUDENTS ELIGIBLE FOR IN-STATE TUITION AND FINANCIAL SUPPORT. UNDER HB 1804, FOR STUDENTS ALREADY ATTENDING A POSTSECONDARY EDUCATION INSTITUTION DURING THE 2006-07 SCHOOL YEAR, ELIGIBILITY FOR IN-STATE TUITION, SCHOLARSHIPS AND FINANCIAL AID REMAINS INTACT. BEGINNING IN 2007-08, THE REGENTS MAY ADOPT A POLICY THAT WILL ALLOW A STUDENT TO QUALIFY FOR IN-STATE TUITION IF:

1. THEY GRADUATED FROM AN OKLAHOMA HIGH SCHOOL AND ATTENDED CLASSES FOR AT LEAST TWO YEARS [A GED IS NO LONGER ACCEPTABLE]; AND
- 2A. HAVE AN APPLICATION FILED WITH USCIS TO LEGALIZE THEIR IMMIGRATION STATUS, OR
- 2B. FILE AN AFFIDAVIT STATING THEIR INTENT TO INITIATE THE PROCESS TO LEGALIZE THEIR IMMIGRATION STUDENT AT SOME LATER DATE - WITHIN ONE YEAR AFTER THE DATA THE USCIS PROVIDES A FORMAL PROCESS TO PERMIT CHILDREN OF PARENTS WITHOUT LAWFUL IMMIGRATION STATUS TO APPLY FOR LAWFUL STATUS WITHOUT RISK OF DEPORTATION.

STUDENTS WHO HAVE A PENDING APPLICATION OR PETITION (2A) ARE *ELIGIBLE* FOR SCHOLARSHIPS AND FINANCIAL AID; STUDENTS WHO HAVE ONLY FILED AN AFFIDAVIT DECLARING THEIR INTENT TO APPLY AT SOME FUTURE DATE (2B) ARE *INELIGIBLE*.

*The Regents for Higher Education are expected to consider this fall whether to implement a policy to continue eligibility for in-state tuition in conformity with the law.*

*Another measure enacted in 2007, SB 820, makes eligibility for the Oklahoma Higher Access Learning Program (OHLAP) program contingent on the student being legally present in the United States. The bill applies to those who first enroll in OHLAP after the 2006-07 school year. The institution for higher learning will have responsibility for verifying legal status of OHLAP recipients at the time of admission.*

**Section 12: False Documents**

SUBJECT TO THE AVAILABILITY OF FUNDS, THE DEPARTMENT OF PUBLIC SAFETY IS INSTRUCTED TO ESTABLISH A FRAUDULENT DOCUMENTS IDENTIFICATION UNIT TO INVESTIGATE AND APPREHEND THOSE INVOLVED IN THE SALE OR DISTRIBUTION OF FRAUDULENT IDENTIFICATION DOCUMENTS.

*No funding was appropriated by the Legislature for this purpose. The Commissioner of Public Safety has expressed his eagerness to create such a program in order to address the full range of problems associated with fraudulent documents, in particular identity theft.*

## Immigrant Access to Public Benefits: Current Policies

In 1998, the U. S. Department of Health and Human Services (HHS) issued rules clarifying the restrictions placed on immigrant access to public benefits enacted as a part of the welfare and immigration reform laws of 1996. This directive included 31 HHS programs, among them: Medicaid, State Children's Health Insurance Program (SCHIP), Medicare, and Temporary Aid to Needy Families (TANF).

In these rules, HHS divided immigrants into two categories: those "qualified" and those "not qualified" for federal programs.

In general, "qualified" immigrants are:

- legal permanent residents (those with "green cards");
- refugees and persons granted asylum;
- Entrants from Cuba and Haiti;
- Certain battered spouses or children;
- Victims of trafficking and their dependents

Most other immigrants are considered "not qualified"—but there are exceptions.

### ACCESS TO PUBLIC BENEFITS BY QUALIFIED IMMIGRANTS

**Qualified immigrants** may access the following public benefits if they meet eligibility requirements and if they have a Social Security number:

- Medicaid (emergency)
- Social Security
- Medicare Part A "premium free" hospitalization
- HUD public housing or Section 8 programs
- Title XX Block Grants

All qualified immigrant children under age 18 are eligible for food stamps.

**Qualified immigrants** may access the following social programs if they entered the United States before August 22, 1996 or after five years as qualified immigrants, if they meet eligibility requirements and have a Social Security number:

- Medicaid (full scope)
- State Children's Health Insurance Programs (S-CHIP)
- Temporary Assistance

- for Needy Families (TANF)
- Food stamps
  - SSI

**EXCEPTIONS:** Those immigrants who entered the United States after August 22, 1996 may be considered "qualified" if they meet one of the following criteria:

- refugees granted asylum status
- victims of violence or trafficking
- immigrants granted a withholding or deportation for at least one year
- Immigrants from Cuba, Haiti, and some Asian regions
- those currently serving in active military duty and/or veterans
- those who have been considered "qualified" for at least five years.

Those who do not meet the criteria as "qualified" immigrants are "unqualified" and are not eligible for most federal public benefits.

Source: National Immigration Law Center, March 2005

### ENDNOTES

<sup>1</sup> See American Jurisprudence, 2nd ( AmJur 2d)

<sup>2</sup> 66 Fed. Reg. 3613-6 (Jan. 16, 2001)

<sup>3</sup> "Agency says ruling shields immigrants from new state law", Oklahoman, June 16, 2007

<sup>4</sup> "Driver's license will prove legal status", Tulsa World, June 3, 2007

<sup>5</sup> "Accurate immigrant count sought", Tulsa World, May 31, 2007

<sup>6</sup> The Basic Pilot Program matches a new employee's name, Social Security number and date of birth against the Social Security Administration and Department of Homeland Security databases. If these matches are unsuccessful, the employer will receive "tentative non-confirmation notices", which a worker may contest. For information on the program and assessments of its limitations, see the studies published by the National Immigration Law Center at <http://www.nilc.org/immsemplymnt/ircaempverif/index.htm> and GAO studies [GAO-06-895](#) and [GAO-07-924](#).

<sup>7</sup> Oklahoma Statutes, Title 25, Sec. 1101

<sup>8</sup> USCIS, "Systematic Alien Verification for Entitlements (SAVE) Program" at <http://www.uscis.gov/>

<sup>9</sup> GAO, "Challenges Exist in Implementing a Mandatory Electronic Verification System", June 7, 2007 at <http://www.gao.gov/new.items/d07924t.pdf>

<sup>10</sup> 63 Fed. Reg. 41657-41661 (August 4, 1998)

<sup>11</sup> Ibid

<sup>12</sup> 63 Fed. Reg., 36653-4 (July 7, 1998)

<sup>12</sup> *Plyler v. Doe*, 457 U.S. 202 (1982). In the case, the [Supreme Court of the United States](#) struck down a Texas statute denying funding for education to children who were [illegal immigrants](#).

<sup>13</sup> "Agency says ruling shields immigrants from new state law", Oklahoman, June 16, 2007

<sup>14</sup> Comments by Department of Human Services at meeting of Governor's Advisory Council for Latin American and Hispanic Affairs, Oklahoma City, June 15, 2007.

<sup>15</sup> 66 Fed. Reg. 3613-3616, (Jan. 16, 2001)

<sup>16</sup> 8 USC, S. 1642

<sup>17</sup> For information on the new Medicaid citizenship and identity requirements, see <http://www.ohca.state.ok.us/individuals.aspx?id=3067>

<sup>18</sup> Information on SAVE is available through the USCIS website at: <http://www.uscis.gov>

<sup>19</sup> "Sheriff's office near immigration role", Tulsa World, July 16, 2007

### ACKNOWLEDGMENTS

The author wishes to thank Claire Turmelle, Elizabeth McCormick, Tanya Broder and Julie Summers for their assistance with this brief.

#### For information about immigrants' legal rights:

##### ACLU Immigrant Rights Project

<http://www.aclu.org/immigrants/index.html>

##### National Immigration Law Center

<http://www.nilc.org/ce/index.htm#know-rights>

##### MALDEF (Mexican-American Leal Education and Defense and Education Fund)

<http://www.maldef.org/>

*Community Action Project (CAP) is a Tulsa-based comprehensive anti-poverty agency whose mission is to help individuals and families in need achieve self-sufficiency. CAP's public policy department aims to promote policies that will benefit low- and moderate-income Oklahomans through research, education and advocacy. Visit us on the web: [www.okpolicy.org](http://www.okpolicy.org).*