

OVERVIEW OF 2011 IMMIGRATION LEGISLATION

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There were over two-dozen immigration bills introduced during the 2011 Legislative session. House Speaker Kris Steele and Senate President Pro Tem Brian Bingman also created a special Joint Immigration Reform Committee, tasked with developing a comprehensive immigration reform package.

Proponents of immigration legislation have called for consequences for those who break the law by living in Oklahoma without documented residency status and argue that federal inaction on immigration makes it incumbent on states to address the issue.

Opponents of this session's bills believe that immigration is a federal policy issue that can only be regulated by the U.S. government, not intermediated by fifty different states. Critics also express concern that efforts to expand state and local enforcement of immigration laws create a strong risk of racially profiling minorities, regardless of their immigration status, and could adversely burden Oklahoma employers and harm the state's economy.

As of April 6th, four immigration bills have cleared preliminary legislative hurdles and are still active:

➤ **HB 1446**, co-authored by the chairs of the Immigration Reform Committee (Rep. Faught/Sen. Justice), is an omnibus bill that legislative leadership has identified as "a starting point for the discussion" on immigration. The bill's main provisions would:

- Subject those engaged in "smuggling of human beings" to a criminal felony charge and potential property seizure. The bill provides a broad definition of 'human smuggling' that includes routine commercial transactions that are distinct from transporting or smuggling human beings, such as banking, selling a car, providing a weapon, arranging travel or leasing property;
- Make it unlawful to stop your vehicle to pick up and transport workers-for-hire or to enter a stopped vehicle as a worker-for-hire if the motor vehicle blocks or impedes the normal movement of traffic;
- Make it unlawful for an unauthorized alien to apply for, solicit, or perform work in the state;

- Narrow the enforcement authority of existing statutes on harboring and transporting aliens by allowing immigration status to be determined only by a federal immigration official or a law enforcement officer who is authorized by the federal government to verify or ascertain immigration status;
- Repeal the provision in current law that allows undocumented students who graduated from an Oklahoma high school to receive in-state college tuition (also in SB 683).

A detailed analysis of HB 1446 follows this summary page. HB 1446 passed the House (Y: 85/N: 7) and the Senate (Y: 37/N: 8) with its title stricken and moves to conference committee. The bill has been assigned by the House to the Conference Committee on Public Safety, Judiciary and Military Affairs.

SPECIAL JOINT IMMIGRATION REFORM COMMITTEE

Rep. George Faught, co-chair	R-Muskogee
Sen. Ron Justice, co-chair	R-Chickasha
Sen. Roger Ballenger	D-Okmulgee
Sen. Dan Newberry	R-Sand Springs
Rep. Charles Ortega	R-Altus
Rep. Pam Peterson	R-Tulsa
Rep. Ben Sherrer	D-Pryor
Sen. Ralph Shortey	R-OKC
Scott Pruitt	R-Attorney General

➤ **SB 908** (Sen.Shortey/Rep. Terrill) would vastly expand the current scope and capacity of law enforcement to stop, arrest, detain, and transfer people suspected to be unlawfully residing in the United States. It passed the Senate (Vote Y: 29 N: 15) and has been referred to House Rules Committee.

➤ **SB 905**, the 'Oklahoma Official English Language Implementation Act' creates an affirmative obligation of strict compliance for state agencies and employees to use only English at all times, except when specifically required by a federal or state law to do otherwise. It passed the Senate (Vote Y:42 N:3) and has been assigned to House Rules Committee.

➤ **SB 683** repeals current law that has allowed some undocumented students to be eligible for resident tuition status. This language is also included in HB 1446. SB 683 passed the Senate (Vote Y:32 N: 13).

2011 Immigration Legislation Overview

Transporting & Harboring Aliens (Sections 1 & 4)

HB 1446 Provision

Amends O.S. Title 21, Section 446, which declares it unlawful for any person to transport or harbor from detection any alien in furtherance of their illegal presence in the U.S, by adding:

- + *Law enforcement may not consider race, color or national origin in the enforcement of this section.*
- + *A federal immigration official or a law enforcement officer who is authorized by the federal government to verify or ascertain immigration status may determine immigration status.*

Allows for the forfeiture of all conveyances used in any manner or part to commit any violation of this section. (Amends O.S. Title 21, Section 1738)

“Smuggling of Human Beings” (Sections 2 & 4)

HB 1446 Provision

Makes it a felony punishable by at least one year in prison or by a fine of at least \$1,000 to intentionally engage in the smuggling of human beings for profit or commercial purpose.

- + *Defines “Smuggling of human beings” as the transportation, procurement of transportation or use of property by a person or an entity that knows or has reason to know that the person transported is not a lawful U.S. resident.*
- + *Procurement of transportation means providing any service or property that facilitates transportation including travel arrangement or money transmission services, providing a weapon, providing a vehicle, and selling, leasing, renting or otherwise making available property.*

Allows for the forfeiture of all conveyances used in any manner or part to commit any violation of this section. (Amends O.S. Title 21, Section 1738)

In the enforcement of this section, a law enforcement officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any traffic law of this state.

POTENTIAL IMPACT

THE BILL NARROWS THE ENFORCEMENT AUTHORITY OF THE EXISTING STATUTE:

- ⇒ ONLY FEDERAL IMMIGRATION OFFICIALS AND LOCAL LAW ENFORCEMENT UNITS COMPLETING 287G AGREEMENTS COULD DETERMINE IMMIGRATION STATUS AND ENFORCE THE STATUTE.¹
- ⇒ ONLY THE TULSA COUNTY SHERIFF’S OFFICE IS AUTHORIZED TO ASCERTAIN IMMIGRATION STATUS IN OKLAHOMA.²

THE BILL CREATES A NEW PENALTY BY ALLOWING FOR THE SEIZURE OF CONVEYANCES (AIRCRAFT, VEHICLES OR VESSELS) OF PERSONS IMPLICATED IN TRANSPORTING ALIENS, HARBORING ALIENS, OR MAINTAINING DOCUMENTATION ON ALIENS. THE PENALTY UNDER CURRENT LAW IS IMPRISONMENT FOR NOT LESS THAN A YEAR, OR \$1,000 FINE, OR BOTH.

POTENTIAL IMPACT

UNDER THE GUISE OF ‘HUMAN SMUGGLING’, THIS SECTION OF THE BILL SUBJECTS A WIDE VARIETY OF COMMERCIAL ACTIVITIES TO FELONY CRIMINAL PENALTIES IF THEY TRANSACT WITH SOMEONE THEY KNOW OR HAVE REASON TO KNOW IS AN UNAUTHORIZED ALIEN:

TRAVEL SERVICES & PROVIDING A VEHICLE: TRAVEL AND TICKET AGENTS, TAXIES, CARPOOLS, PUBLIC TRANSPORTATION, RENTAL CAR COMPANIES, CAR DEALERSHIPS;

MONEY TRANSMISSION SERVICES: BANKS, CREDIT UNIONS, PAY DAY LENDERS, PAWN SHOPS, ATMS, CHECK-CASHERS, CASINOS;

PROVIDING A WEAPON: GUN SELLERS, GUN SHOWS, PAWN SHOPS, SHOOTING RANGES;

SELLING, LEASING, RENTING PROPERTY: HOTELS, PROPERTY MANAGEMENT COMPANIES, APARTMENT COMPLEXES, LANDLORDS, REAL ESTATE AGENTS, CAMPGROUNDS, TRUCK STOPS, PARKING LOTS, PUBLIC AND PRIVATE TRANSIT CENTERS;

THERE IS NO SPECIFIC EXEMPTION FOR PROVIDERS OF PUBLIC BENEFITS, EMERGENCY SERVICES, OR LEGAL SERVICES; MEANING ATTORNEYS, PRIESTS, AND EMTs WHO PROVIDE TRANSPORT OR TRANSACT WITH UNAUTHORIZED ALIENS ARE POTENTIALLY SUBJECT TO A FELONY CHARGE.

A FEDERAL COURT HAS BLOCKED IMPLEMENTATION OF SIMILAR LANGUAGE IN ARIZONA SB 1070 GRANTING LAW ENFORCEMENT AUTHORITY TO STOP A PERSON OPERATING A MOTOR VEHICLE UNDER SUSPICION THAT THEY ARE IN THE COUNTRY UNLAWFULLY.³

THIS PROVISION IS LIKELY TO FACE LEGAL CHALLENGES BECAUSE IT DEPARTS DRAMATICALLY FROM THE FEDERAL DEFINITION OF ‘HUMAN SMUGGLING’, A TERM USED FOR ILLEGALLY TRANSPORTING A PERSON ACROSS AN INTERNATIONAL BORDER.⁴ THE FEDERAL DEFINITION DOES NOT PENALIZE THE MOVEMENT OF UNDOCUMENTED IMMIGRANTS WITHIN U.S. BORDERS WHEN NOT IN FURTHERANCE OF SMUGGLING.

HB 1446 Provision

POTENTIAL IMPACT

Day Labor (Sections 3 & 4)

Makes it a misdemeanor punishable by imprisonment in the country jail for not more than one (1) year, or by a fine of Five Hundred Dollars (\$500.00) or both for:

- + *An occupant of a motor vehicle stopped on a street to attempt to hire or hire and pick up passengers for work at a different location (if the motor vehicle blocks or impedes the normal movement of traffic.)*
- + *A person to enter a motor vehicle that is stopped on a street in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location (if the motor vehicle blocks or impedes the normal movement of traffic.)*
- + *An unauthorized alien to apply for, solicit, or perform work in the state.*

A federal immigration official or a law enforcement officer who is authorized by the federal government to verify or ascertain immigration status may determine immigration status.

Allows for the forfeiture of all conveyances used in any manner or part to commit any violation of this section. (Amends O.S. Title 21, Section 1738).

LOCAL GOVERNMENTS HAVE AN INTEREST IN THE SAFETY AND CONVENIENCE OF PUBLIC ROADWAYS AND REGULATION OF SUCH AREAS IS TRADITIONALLY THE PURVIEW OF LOCAL GOVERNMENT,⁵ HOWEVER:

- ⇒ THE SUPREME COURT AND OTHER FEDERAL COURTS HAVE RULED THAT ATTEMPTS TO REGULATE SOLICITATION ON OR NEAR ROADWAY TRAFFIC MUST BE ‘CONTENT-NEUTRAL’, I.E. THEY CANNOT RESTRICT ONE TYPE OF SOLICITATION (E.G., FOR WORK) BUT ALLOW ANOTHER TYPE OF SOLICITATION (E.G., CHARITABLE DONATIONS).⁶
- ⇒ FEDERAL DISTRICT COURTS IN THE NINTH CIRCUIT HAVE UNIFORMLY FOUND ANTI-SOLICITATION ORDINANCES SIMILAR TO HB 1446 UNCONSTITUTIONAL.⁷
- ⇒ JURISDICTIONS ACROSS THE COUNTRY ARE FACING LAWSUITS AND LEGAL INJUNCTIONS FOR PASSING SIMILAR BANS ON DAY LABOR SOLICITATION.⁸

THIS SECTION OF THE BILL VASTLY EXPANDS POLICE POWERS TO MONITOR, INTERVIEW, STOP, DETAIN AND ARREST PEOPLE ON THE STREET AND IN MOTOR VEHICLES:

- ⇒ IT WOULD SUBJECT ANY PERSON LOOKING FOR WORK OR LOOKING FOR WORKERS, REGARDLESS OF THEIR IMMIGRATION STATUS, TO INCREASED SCRUTINY.
- ⇒ IT DEFINES ‘SOLICIT’ AS ANY NOD OR GESTURE THAT COULD BE CONSTRUED AS INTENT TO HIRE OR INTENT TO WORK. THIS REPRESENTS A SIGNIFICANT INTRUSION OF PRIVACY, REGULATING THE BEHAVIOR OF ANYONE WALKING OR DRIVING IN A PUBLIC SPACE.

IT CRIMINALIZES WORK – BOTH SEEKING WORK AND SEEKING WORKERS:

- ⇒ DAY LABOR IS A COMMON PRACTICE IN FARMING, CONSTRUCTION, LANDSCAPING, PARKING SERVICES AND MECHANICAL/INDUSTRIAL EMPLOYMENT.
- ⇒ THE LANGUAGE IS SO BROAD IT COULD EVEN APPLY TO PARENTS STOPPING TO PICK UP AND DROP OFF BABYSITTERS TO TRANSPORT THEM TO WORK AT A DIFFERENT LOCATION.
- ⇒ US COURTS, INCLUDING THE SUPREME COURT, HAVE HELD THAT FEDERAL LAW PREEMPTS THE REGULATION OF EMPLOYMENT OF UNAUTHORIZED WORKERS IN THE UNITED STATES.
- ⇒ 8 U.S.C. 1324A(H)(2) EXPRESSLY PREEMPTS ANY STATE OR LOCAL LAW FROM IMPOSING CIVIL OR CRIMINAL SANCTIONS UPON THOSE WHO EMPLOY OR RECRUIT UNAUTHORIZED ALIENS FOR EMPLOYMENT.⁹

Hiring (Section 5)

Prohibits employers from hiring aliens who do not have a valid state-issued identification card, driver license, immigrant visa, permanent resident card, or other acceptable form of identification, issued by either a state or federal agency.

POTENTIAL IMPACT

THE IMMIGRATION REFORM AND CONTROL ACT (IRCA) ALREADY REQUIRES EMPLOYERS TO VERIFY THE IDENTITY AND EMPLOYMENT ELIGIBILITY OF ALL EMPLOYEES HIRED AFTER NOVEMBER 6, 1986, BY COMPLETING THE EMPLOYMENT ELIGIBILITY VERIFICATION (I-9) FORM.¹⁰

IRCA ALREADY REQUIRES EMPLOYERS TO REVIEW DOCUMENTS SHOWING EMPLOYMENT AUTHORIZATION.

IF OKLAHOMA PROHIBITS AN EMPLOYER FROM HIRING AN ASYLEE BECAUSE HE DOES NOT HAVE ANY OF THE LISTED DOCUMENTS, OKLAHOMA LAW IS IN CONFLICT WITH FEDERAL LAW AND IS PREEMPTED.

HB 1446 Provision

Officials or agencies in the state may not be restricted from sending, receiving or maintaining information on an individual's immigration status or exchanging that information with other governmental entities for official purposes [except as provided in federal law].

POTENTIAL IMPACT

THIS SECTION OF THE BILL DOES NOT EFFECTIVELY CREATE NEW LAW:

- ⇒ IT IS NEARLY IDENTICAL TO LANGUAGE ALREADY ENACTED INTO LAW BY HB 1804, SECTION 10 (O.S. TITLE 74, SECTION 20J) WHICH FORBIDS ANY GOVERNMENT ENTITY FROM PROHIBITING ANY GOVERNMENT OFFICIAL FROM REQUESTING, SENDING, OR MAINTAINING ANY INFORMATION REGARDING IMMIGRATION STATUS, OR EXCHANGING SUCH INFORMATION WITH ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY.¹¹
- ⇒ 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).

HB 1446 Provision

Amends O.S. Title 70, Section 3242 to make undocumented aliens ineligible for any post-secondary education benefit.

POTENTIAL IMPACT

HB 1804 ALREADY MADE UNDOCUMENTED STUDENTS INELIGIBLE FOR SCHOLARSHIPS AND FINANCIAL AID.

HB 1446 REPEALS AN EXISTING STATUTE THAT ALLOWS THE BOARD OF REGENTS TO OFFER RESIDENT TUITION TO UNDOCUMENTED OKLAHOMA STUDENTS WHO GRADUATED FROM A PUBLIC OR PRIVATE HIGH SCHOOL IN THE STATE AND LIVED IN THE STATE FOR AT LEAST TWO YEARS BEFORE GRADUATION. IN THE 2008-2009 SCHOOL YEAR,¹² THE LATEST YEAR DATA IS AVAILABLE:

- ⇒ 16 UNDOCUMENTED STUDENTS RECEIVED RESIDENT TUITION WAIVERS IN THE AMOUNT OF \$17,685.
- ⇒ UNDOCUMENTED STUDENTS (272 IN TOTAL) PAID THE STATE \$336,129 IN TUITION AND FEES.

For questions about this brief or additional information about immigration legislation in Oklahoma, contact Kate Richey at 918-794-3944 or krichey@okpolicy.org

- (1) "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," U.S. Immigration and Customs Enforcement [<http://www.ice.gov/287g/>]
- (2) "287(g) Results and Participating Entities," U.S. Immigration and Customs Enforcement, accessed on 3/3/11 [<http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa>]
- (3) "Court Blocks Implementation of Key Sections of Arizona's Racial Profiling Law," National Immigration Law Center 7/28/10 [<http://www.nilc.org/pubs/news-releases/nr023.htm>]
- (4) "Distinctions Between Human Smuggling and Human Trafficking," U.S. Department of State [<http://www.state.gov/m/ds/hstcenter/90434.htm>]
- (5) Cox v. State of New Hampshire, 312 U.S. 569, 574 (1941), [<http://supreme.justia.com/us/312/569/case.html>]
- (6) "Challenges To Anti-Begging, Anti-Soliciting And Anti-Peddling Laws," National Coalition for the Homeless accessed 3/30/11 [[Http://www.nationalhomeless.org/publications/crimreport/casesummaries_2.html](http://www.nationalhomeless.org/publications/crimreport/casesummaries_2.html)]
- (7) "Court Blocks Local Arizona Anti-Solicitation Law," American Civil Liberties Union 6/2/08 [<http://www.aclu.org/immigrants-rights/court-blocks-local-arizona-anti-solicitation-law>]
- (8) [a] "Federal judge blocks Oyster Bay, N.Y. anti-solicitation law on First Amendment grounds," New York Times Editorial 4/14/2011 [<http://www.nytimes.com/2011/03/15/opinion/15tue4.html?partner=rss&emc=rss>] [b] "Arizona immigration law faces new road blocks," Associated Press 4/29/10 [http://www.salon.com/news/feature/2010/04/29/us_immigration_enforcement_5/]
- (9) "Facts About Federal Preemption," National Immigration Law Center [http://www.nilc.org/immlawpolicy/LocalLaw/federalpreemptionfacts_2007-06-28.pdf]
- (10) Immigration Reform and Control Act of 1986 [<http://www.oig.lsc.gov/legis/irca86.htm>]
- (11) Enrolled House Bill No. 1804 [http://okpolicy.org/files/HB1804_ENR.pdf]
- (12) Annual Report, Advancement of Hispanic Students in Higher Education Task Force, Created by HB 2145, June 2009 [<http://www.okpolicy.org/files/Task%20Force%20Report%20Final%20June%202009-1.doc>]