The background of the slide is a photograph of the Oklahoma State Capitol building. The building is a large, classical-style structure with a prominent central dome topped by a statue. The dome is surrounded by a circular colonnade. The main entrance is a portico supported by several tall, white columns. The building is set against a blue sky with scattered white clouds. Two American flags are visible on the left and right sides of the building.

# Overview of HB 1804

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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 veto-proof margins (85-13; 41-6) and was signed by Governor Henry on May 8<sup>th</sup>.
- The bill took effect November 1, 2007 (although one employment section is deferred until July 1, 2008).

# Overview of HB 1804

- Hailed by supporters and touted by local and national 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

Psychological impact of 1804 preceded and exceeded its legal impact.

<sup>4</sup> Mostly anecdotal, partial evidence of effects

# Overview of HB 1804

## Major Subject Areas

- Public benefits
- Identification cards
- Employment
- Law Enforcement
- 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.
- 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

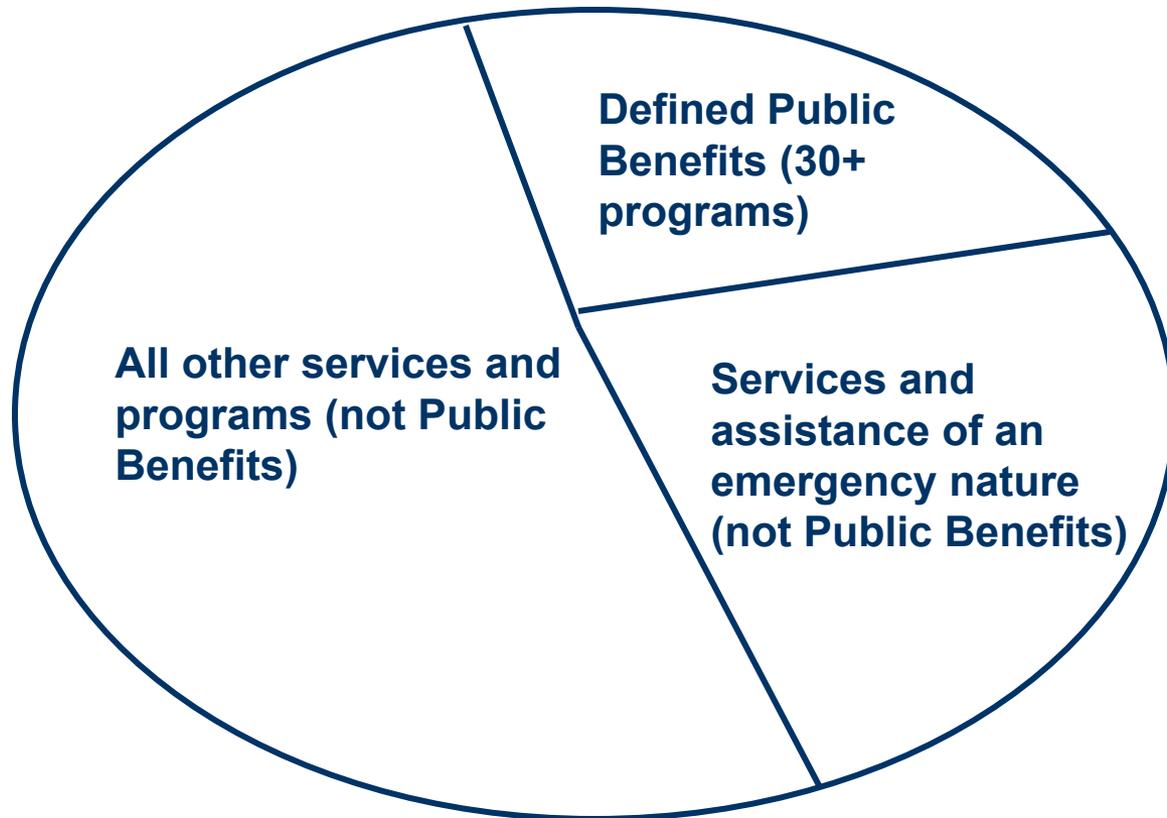
- Regulatory clarification issued by Department of Health and Human Services (DHHS, 1998 Federal Register);
- Generally, a narrow definition of what is a Public Benefit:
  - 31 DHHS federal programs identified as “public benefits”, including TANF, Food Stamps, Medicare, Medicaid, SSI, Child Care subsidies, 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.
  - FEMA and Agriculture also defined some programs as public benefits
  - Unless and until a program is defined as a Public Benefit, the guiding assumption is that it is not one.

# 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



# Public Benefits

## BOTTOM LINE: SINCE...

- HB 1804 defers to federal law on eligibility for federal, state and local public benefits, and
- Federal law has been in effect for over 10 years,
- THERE MAY ULTIMATELY BE LITTLE OR NO CHANGE AS A RESULT OF HB 1804 IN THIS AREA
  - State Health Department temporarily applied verification requirement to one program- then reversed course
  - Licenses and permits being interpreted as public benefits

# 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

Affidavit requirement may be confusing and intimidating - especially for legal residents

# 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;
    - DPS will begin marking drivers licenses issued to temporary immigrants as “TEMPORARY”
    - DPS interpreted the law to require proof of legal presence from anyone - citizen or alien - whose drivers license has expired
      - Loosened its interpretation in January after public backlash over long waits at DMV offices

# 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
    - State Department of Education issued a “red letter” to clarify what schools must do

# 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

## The E-Verify Program

- Automated Internet-based verification system that checks the employment authorization of newly hired employees against federal databases,
- First established in 1997; now operates in all 50 states and is used voluntarily by about 17,000 employers.
- Verification begins after an employer has completed the standard I-9 form for a new hire. Program then matches a new employee's name, Social Security number and date of birth against the federal databases.
- If these matches are unsuccessful, employer will receive "tentative non-confirmation notices", which a worker may contest.
- Federal and state laws apply to new hires only.

# Employment

## The E-Verify Program

- Several independent studies have confirmed that the Basic Pilot Program has had problems since its inception.
- Unclear whether the E-Verify Program is fit to handle the increased volume of verification requests that would follow from Oklahoma's adoption of HB 1804.

# 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?
  - 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?

# 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 minimum punishments of 1 year in prison and/or \$1,000 fine
  - Exempts the provision of state or local public benefits or regulated health services provided by a private charity
  - Federal case law has established that an offender must be acting “in furtherance of the alien’s violation of the law” to be guilty. Unclear how the law would be interpreted by local officers, DA’s and judges.
    - Considerable fear and concern about how this provision will be applied.
    - Does it apply to: family members, clergy, co-workers, landlords, etc? Probably not - but no one has issued guidance

# Law Enforcement

2. Section 5 requires jail authorities to attempt to verify the citizenship status of anyone charged with a felony offence or DUI
  - 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

- City of Tulsa has gone beyond HB 1804 by requiring verification of legal status for anyone booked on a felony or “full-custody misdemeanor”.
- Tulsa County Sheriff’s Office has negotiated a Memorandum of Understand with federal Department of Homeland Security allowing it to issue immigration detainers and to transport arrested aliens to ICE-approved detention centers.
  - Sheriff’s Office is in the process of training officers to assume immigration powers specified in the MOU
- No reported instances so far of other municipalities or counties conferring or seeking increased immigration authority

# 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

# Law Enforcement

- Unclear if state MOU will apply only to state law enforcement agencies or include local agencies as well
- The law provides no requirement for any local police force to apply for immigration enforcement duties for any of its officers.
- HB 1804 offers no funding for state or local law enforcement agencies to take on added immigration enforcement duties
- NOTE: Tulsa County Sheriff Office's MOU grants certified officials broad immigration enforcement authority

# Miscellaneous

- Section 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.

# Miscellaneous

- Sections 11+ 13 preserved in-state tuition for undocumented students who graduated from an Oklahoma high school and attended classes for at least two years, but prohibits them from receiving state financial aid or scholarships in the future

# Miscellaneous

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

# Options for Revisiting HB 1804

- Defer employment verification requirements
  - Clarify definition of harboring and transporting
- 

- Change affidavit for public benefits
- Exclude schools from ID requirements
- Re-establish eligibility for college support

# 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.**

# For additional information

**See CAP's full-length issue brief on HB 1804 at:  
[www.okpolicy.org](http://www.okpolicy.org)**

**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/ceindex.htm#know-rights>
- **MALDEF (Mexican-American Leal Education and Defense and Education Fund)**  
<http://www.maldef.org/>