

Column 37

From the Bench and Beyond

Retired District Judge Janice P. Dreiling

Oklahoma's New Immigration Law: Part 7

HB 1804, the "Oklahoma Taxpayer and Citizen Protection Act of 2007," includes postsecondary education as a state and local public benefit. As such, illegal aliens 14 years of age or older are ineligible for postsecondary education scholarships, resident tuition, or other financial aid pursuant to Section 8 of the bill.

Notwithstanding the above, Section 11 of the bill carves out special exceptions and circumstances in which an illegal alien can pursue postsecondary education benefits.

Section 11, Subsection A, states as follows: "Except as otherwise provided in Section 3242 of Title 70 (Schools) of the Oklahoma Statutes, an individual who is not lawfully present in the United States shall not be eligible on the basis of residence within the state for (1) any postsecondary education benefit, including, but not limited to, scholarships or financial aid; or (2) resident tuition."

A clear reading of the above would seem to say that illegal aliens are, in fact, ineligible for any assistance to pursue their education beyond high school. But, having set forth the above, the Legislature proceeded to carve out two exceptions. The first was the following paragraph that was added to Section 11 of HB 1804:

"The provisions of subsection A of this section shall not apply to a student enrolled in a degree program at a postsecondary educational institution within The Oklahoma State System of Higher Education during the 2006-2007 or any prior year who received a resident tuition benefit pursuant to Section 3242 of Title 70 of the Oklahoma Statutes at that institution."

This "grandfather clause" allows illegal aliens who have been enrolled in a postsecondary Oklahoma institution for the Spring semester 2007 or before AND who have been given resident tuition to continue receiving in-state tuition. It does not allow this for any illegal alien who might be starting postsecondary education in the Fall semester of 2007 or after.

The second exception the Legislature created was the amendment of Section 3242 of Title 70. The amendment is found in Section 13 of HB 1804.

Under current law, Section 3242 requires the Oklahoma State Regents for Higher Education to adopt a policy which allows a student to enroll in an institution of higher learning and be eligible for in-state tuition if the student graduated from high school in Oklahoma or completed the GED in Oklahoma AND resided with a parent in Oklahoma for at least two years prior to graduation or completing the GED.

HB 1804 amends Section 3242 by making it optional whether or not the Oklahoma State Regents for Higher Education adopt such a policy AND by eliminating the GED as a means to being eligible for in-state tuition.

HB 1804 requires an illegal alien student to file an application to legalize his/her immigration status within one year after enrollment and present a copy of said application to the school. If the student fulfills those requirements, he/she may be eligible for scholarships or financial aid.

But for those illegal alien students who have previously (during the 2006-2007 school year or any prior year) been awarded in-state tuition, those students will continue to receive the benefit of in-state tuition after November 1, 2007, when HB 1804 becomes law.

Whether an illegal alien student risks deportation if he/she complies with the above is one of the many unanswered questions raised by HB 1804.

Looking at the big picture, illegal immigrants living in Oklahoma will be navigating uncharted waters when HB 1804 becomes law. Without any question, the Oklahoma Legislature has sent a loud and clear message -- "get legal or get out of Oklahoma."

And, believe it or not, in seven columns, I have not covered every detail of this comprehensive and controversial legislation.

Only the passage of time will measure the impact of this bill on state and local governmental entities, public and private employers, law enforcement, school systems, and any citizen who might knowingly or unwittingly transport or provide shelter for an illegal immigrant.

One thing is certain. On November 1, just two weeks before we celebrate the 100<sup>th</sup> birthday of our beloved state, Oklahoma will no longer be a "brand new state, gonna treat you great" if you are an illegal immigrant.