(b) Current address of natives of any one or more foreign states

The Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

(c) Notice to parent or legal guardian

In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notice required by this section shall be given to such parent or legal guardian.

(June 27, 1952, ch. 477, title II, ch. 7, §265, 66 Stat. 225; Dec. 29, 1981, Pub. L. 97–116, §11, 95 Stat. 1617; Oct. 24, 1988, Pub. L. 100–525, §9(*o*), 102 Stat. 2620.)

AMENDMENTS

1988—Pub. L. 100–525 inserted ''Notices of change of address'' as section catchline.

1981—Pub. L. 97–116 amended section generally and in adding subsection designations struck out the annual registration requirement for permanent resident aliens and the registration requirement for those aliens in a lawful temporary residence who were to notify the Attorney General in writing of an address every three months while residing in the United States and inserted provision authorizing the Attorney General, in his discretion and upon ten days notice, to require the natives of any one or more foreign states who are in the United States and required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as required.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of alien, Attorney General, parent, residence, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1306 of this title.

§1306. Penalties

(a) Willful failure to register

Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Failure to notify change of address

Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be taken into custody and deported in the manner provided by Part V of this subchapter, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(c) Fraudulent statements

Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be deported in the manner provided in Part V of this subchapter.

(d) Counterfeiting

Any person who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any certificate of alien registration or an alien registration receipt card or any colorable imitation thereof, except when and as authorized under such rules and regulations as may be prescribed by the Attorney General, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both.

(June 27, 1952, ch. 477, title II, ch. 7, §266, 66 Stat. 225.)

CROSS REFERENCES

Definition of alien, Attorney General, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

PART VIII—GENERAL PENALTY PROVISIONS

§1321. Prevention of unauthorized landing of aliens

(a) Failure to report; penalties

It shall be the duty of every person, including the owners, masters, officers, and agents of vessels, aircraft, transportation lines, or international bridges or toll roads, other than transportation lines which may enter into a contract as provided in section 1228 of this title, bringing an alien to, or providing a means for an alien to come to, the United States (including an alien crewman whose case is not covered by section 1284(a) of this title) to prevent the landing of such alien in the United States at a port of entry other than as designated by the Attorney General or at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be liable to a penalty to be imposed

by the Attorney General of $3,000 for each such violation, which may, in the discretion of the Attorney General, be remitted or mitigated by him in accordance with such proceedings as he shall by regulation prescribe. Such penalty shall be a lien upon the vessel or aircraft whose owner, master, officer, or agent violates the provisions of this section, and such vessel or aircraft may be libeled therefor in the appropriate United States court.

(b) Prima facie evidence

Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

(c) Liability of owners and operators of international bridges and toll roads

(1) Any owner or operator of a railroad line, international bridge, or toll road who establishes to the satisfaction of the Attorney General that the person has acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section shall not be liable for the penalty described in such subsection, notwithstanding the failure of the person to prevent the unauthorized landing of any alien.

(2)(A) At the request of any person described in paragraph (1), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such person for the purpose of complying with subsection (a) of this section. The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

(B) Proof that any person described in paragraph (1) has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which the approval is effective) shall be prima facie evidence that such person acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section (within the meaning of paragraph (1) of this subsection).

(June 27, 1952, ch. 477, title II, ch. 8, § 271, 66 Stat. 226; Nov. 6, 1986, Pub. L. 99–603, title I, § 114, 100 Stat. 3383; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(8), 104 Stat. 5058.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649 substituted ''$3,000'' for ''$1,000''.

1986—Subsec. (c). Pub. L. 99–603 added subsec. (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Definition of alien, Attorney General, crewman, entry, immigration officer, and United States, see section 1101 of this title.

Forfeitures and seizures—

Jurisdiction, see sections 1355 and 1356 of Title 28, Judiciary and Judicial Procedure.

Proceedings, see section 2461 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1356 of this title.

§ 1322. Bringing in aliens subject to exclusion on a health-related ground; persons liable; clearance papers; exceptions; "person" defined

(a) Any person who shall bring to the United States an alien (other than an alien crewman) who is excludable under section 1182(a)(1) of this title shall pay to the Commissioner for each and every alien so afflicted the sum of $3,000 unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of the excluding condition could not have been detected by the exercise of due diligence prior to the alien's embarkation.

(b) No vessel or aircraft shall be granted clearance papers pending determination of the question of liability to the payment of any fine under this section, or while the fines remain unpaid, nor shall such fines be remitted or refunded; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the Commissioner.

(c) Nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of entry in the United States aliens who are entitled by law to exemption from the excluding provisions of section 1182(a) of this title.

(d) As used in this section, the term ''person'' means the owner, master, agent, commanding officer, charterer, or consignee of any vessel or aircraft.

(June 27, 1952, ch. 477, title II, ch. 8, § 272, 66 Stat. 226; Oct. 3, 1965, Pub. L. 89–236, § 18, 79 Stat. 920;

Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(9), title VI, § 603(a)(15), 104 Stat. 5058, 5083; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(*l*)(7), 105 Stat. 1757; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(*o*), 108 Stat. 4317.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–416 struck out comma after ''every alien so afflicted''.

1991—Subsec. (a). Pub. L. 102–232 struck out comma before ''shall pay''.

1990—Pub. L. 101–649, § 603(a)(15)(D), substituted ''exclusion on a health-related ground'' for ''disability or afflicted with disease'' in section catchline.

Subsec. (a). Pub. L. 101–649, § 603(a)(15)(A), substituted ''excludable under section 1182(a)(1) of this title'' for ''(1) mentally retarded, (2) insane, (3) afflicted with psychopathic personality, or with sexual deviation, (4) a chronic alcoholic, (5) afflicted with any dangerous contagious disease, or (6) a narcotic drug addict'' and ''the excluding condition'' for ''such disease or disability''.

Pub. L. 101–649, § 543(a)(9)(A), substituted ''Commissioner'' for ''collector of customs of the customs district in which the place of arrival is located'' and ''$3,000'' for ''$1,000''.

Subsec. (b). Pub. L. 101–649, § 603(a)(15)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Any person who shall bring to the United States an alien (other than an alien crewman) afflicted with any mental defect other than those enumerated in subsection (a) of this section, or any physical defect of a nature which may affect his ability to earn a living, as provided in section 1182(a)(7) of this title, shall pay to the Commissioner for each and every alien so afflicted, the sum of $3,000, unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of such disease or disability could not have been detected by the exercise of due diligence prior to the alien's embarkation.''

Pub. L. 101–649, § 543(a)(9)(B), substituted ''Commissioner'' for ''collector of customs of the customs district in which the place of arrival is located'' and ''$3,000'' for ''$250''.

Subsec. (c). Pub. L. 101–649, § 603(a)(15)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 101–649, § 543(a)(9)(C), substituted ''Commissioner'' for ''collector of customs''.

Subsecs. (d), (e). Pub. L. 101–649, § 603(a)(15)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1965—Subsec. (a). Pub. L. 89–236 substituted ''mentally retarded'' for ''feeble-minded'', struck out references to epileptics and persons afflicted with tuberculosis and leprosy, and inserted reference to persons afflicted with sexual deviation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(a)(9) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

Amendment by section 603(a)(15) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–236 effective, except as otherwise provided, on first day of first month after expiration of thirty days following date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Crewman, see section 1101(a)(10) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigrant visa, see section 1101(a)(16) of this title.
- Nonimmigrant visa, see section 1101(a)(26) of this title.
- Person, as used in subchapter I of this chapter and this subchapter, see section 1101(b)(3) of this title.
- Service, see section 1101(a)(34) of this title.
- United States, see section 1101(a)(38) of this title.

Reentry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1323. Unlawful bringing of aliens into United States

(a) Persons liable

It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this chapter or regulations issued thereunder.

(b) Evidence

If it appears to the satisfaction of the Attorney General that any alien has been so brought, such person, or transportation company, or the master, commanding officer, agent, owner, charterer, or consignee of any such vessel or aircraft, shall pay to the Commissioner a fine of $3,000 for each alien so brought and, except in the case of any such alien who is admitted, or permitted to land temporarily, in addition, an amount equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter fine to be delivered by the Commissioner to the alien on whose account the assessment is made. No vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine or while such fine remain[1] unpaid, except that

[1] So in original. Probably should be ''remains''.

clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner.

(c) Remission or refund

Except as provided in subsection (e) of this section, such fine shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

(d) Alien stowaways

The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States who fails to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer, shall pay to the Commissioner a fine of $3,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The provisions of section 1225 of this title for detention of aliens for examination before special inquiry officers and the right of appeal provided for in section 1226 of this title shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.

(e) Reduction, refund, or waiver

A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or

(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

(June 27, 1952, ch. 477, title II, ch. 8, § 273, 66 Stat. 227; Nov. 29, 1990, Pub. L. 101–649, title II, § 201(b), title V, § 543(a)(10), 104 Stat. 5014, 5058; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(4)(D), 105 Stat. 1752; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 209(a), 216, 219(p), 108 Stat. 4312, 4315, 4317.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416, § 219(p), in first sentence substituted ''Commissioner'' for ''collector of customs'' before ''to the alien''.

Pub. L. 103–416, § 209(a)(1), which directed that subsec. (b) be amended by substituting ''a fine of $3,000'' for ''the sum of $3000'', was executed in the first sentence by making the substitution for ''the sum of $3,000'', to reflect the probable intent of Congress.

Pub. L. 103–416, § 209(a)(2), (4), in first sentence substituted ''an amount equal to'' for ''a sum equal to'' and ''such latter fine'' for ''such latter sum'', and in second sentence substituted ''such fine or while such fine'' for ''such sums or while such sums'' and ''cover such fine'' for ''cover such sums''.

Subsec. (c). Pub. L. 103–416, § 209(a)(4), (5), substituted ''Except as provided in subsection (e) of this section, such fine'' for ''Such sums''.

Subsec. (d). Pub. L. 103–416, § 216, amended first sentence generally. Prior to amendment, first sentence read as follows: ''The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the Commissioner the sum of $3,000 for each alien stowaway, in respect of whom any such failure occurs.''

Pub. L. 103–416, § 209(a)(1), which directed that subsec. (d) be amended by substituting ''a fine of $3,000'' for ''the sum of $3000'', was executed in the first sentence by making the substitution for ''the sum of $3,000'', to reflect the probable intent of Congress.

Pub. L. 103–416, § 209(a)(3), in second sentence substituted ''an amount'' for ''a sum'' before ''sufficient to cover such fine''.

Subsec. (e). Pub. L. 103–416, § 209(a)(6), added subsec. (e).

1991—Subsec. (b). Pub. L. 102–232 substituted ''Commissioner'' for ''collector of customs'' before period at end of second sentence.

1990—Subsec. (a). Pub. L. 101–649, § 201(b)(1), inserted ''a valid passport and'' before ''an unexpired visa''.

Subsec. (b). Pub. L. 101–649, § 543(a)(10)(A), substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $1,000''.

Subsec. (c). Pub. L. 101–649, § 201(b)(2), inserted ''valid passport or'' before ''visa was required''.

Subsec. (d). Pub. L. 101–649, § 543(a)(10)(B), substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $1,000'' in first sentence and ''Commissioner'' for ''collector of customs'' in second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 209(b) of Pub. L. 103–416 provided that: ''The amendments made by this subsection [probably should be ''this section'', meaning section 209 of Pub. L. 103–416, which amended this section] shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act [Oct. 25, 1994].''

Amendment by section 219(p) of Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(a)(10) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

CROSS REFERENCES

Definition of alien, attorney general, immigration officer, and United States, see section 1101 of this title.

Funds collected to be held in trust, see section 1321 of Title 31, Money and Finance.

Revocation of visas or documents, notice prior to alien's embarkation as prerequisite to imposition of penalty, see section 1201 of this title.

Stowaways on vessels and aircraft, penalties generally, see section 2199 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1225, 1330, 1356 of this title.

§ 1324. Bringing in and harboring certain aliens

(a) Criminal penalties

(1)(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law,

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i), be fined under title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), or (iv), be fined under title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), or (iv) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), or (iv) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) a second or subsequent offense,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined in accordance with title 18 or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both..[1]

(b) Seizure and forfeiture of conveyances; exceptions; officers and authorized persons; disposition of forfeited conveyances; suits and actions

(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a) of this section shall be seized and subject to forfeiture, except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

(2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been or is being used in a violation of subsection (a) of this section and circumstances exist where a warrant is not constitutionally required.

(3) All provisions of law relating to the seizure, summary and judicial forfeiture, and con-

[1] So in original.

demnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(4) Whenever a conveyance is forfeited under this section the Attorney General may—

(A) retain the conveyance for official use;

(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(C) require that the General Services Administration, or the Maritime Administration if appropriate under section 484(i) of title 40 take custody of the conveyance and remove it for disposition in accordance with law; or

(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) Authority to arrest

No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(June 27, 1952, ch. 477, title II, ch. 8, § 274, 66 Stat. 228; Nov. 2, 1978, Pub. L. 95–582, § 2, 92 Stat. 2479; Dec. 29, 1981, Pub. L. 97–116, § 12, 95 Stat. 1617; Nov. 6, 1986, Pub. L. 99–603, title I, § 112, 100 Stat. 3381; Oct. 24, 1988, Pub. L. 100–525, § 2(d), 102 Stat. 2610; Sept. 13, 1994, Pub. L. 103–322, title VI, § 60024, 108 Stat. 1981.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, § 60024(1)(F), which directed the substitution of ''shall be punished as provided in subparagraph (B)'' for ''shall be fined in accordance with title 18 or imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs'' in concluding provisions, was executed by making the substitution in text which contained the words ''United States Code,'' after ''title 18,'', to reflect the probable intent of Congress.

Pub. L. 103–322, § 60024(1)(A)–(E), (G), designated existing provisions of par. (1) as subpar. (A) of par. (1), redesignated subpars. (A) to (D) of former par. (1) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 103–322, § 60024(2), in concluding provisions, substituted ''or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both.'' for ''or imprisoned not more than five years, or both''.

1988—Subsec. (a)(1). Pub. L. 100–525, § 2(d)(1), in closing provisions substituted ''or imprisoned'' for ''imprisoned'' and ''this paragraph'' for ''this subsection''.

Subsec. (b)(4)(C), (5). Pub. L. 100–525, § 2(d)(2), amended Pub. L. 99–603, § 112(b)(5), (8). See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–603, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

''(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

''(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

''(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

''(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the

immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.''

Subsec. (b)(1). Pub. L. 99–603, §112(b)(1), (2), substituted ''has been or is being used'' for ''is used'' and ''seized and subject to'' for ''subject to seizure and'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 99–603, §112(b)(3), inserted ''or is being'' after ''has been''.

Subsec. (b)(3). Pub. L. 99–603, §112(b)(4), substituted ''property'' for ''conveyances''.

Subsec. (b)(4)(C). Pub. L. 99–603, §112(b)(5), as amended by Pub. L. 100–525, §2(d)(2)(A), inserted '', or the Maritime Administration if appropriate under section 484(i) of title 40,''.

Subsec. (b)(4)(D). Pub. L. 99–603, §112(b)(6), added subpar. (D).

Subsec. (b)(5). Pub. L. 99–603, §112(b)(7)–(9), as amended by Pub. L. 100–525, §2(d)(2)(B), substituted '', except that'' for '': *Provided*, That'' in provisions preceding subpar. (A), substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not lawfully entitled to enter, or reside within, the United States'' wherever appearing, inserted ''or of the Department of State'' in subpar. (B), and substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not entitled to enter, or reside within, the United States'' in subpar. (C).

1981—Subsec. (b). Pub. L. 97–116 strengthened the seizure and forfeiture authority by striking out the ''innocent owner'' exemption and merely requiring the Government to show probable cause that the conveyance seized has been used to illegally transport aliens, which when demonstrated, shifts the burden of proof to the owner or claimant to show by a preponderance of the evidence that the conveyance was not illegally used, by relieving the Government of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided probable cause for the original seizure was demonstrated, and by striking out the requirement that the Government satisfy any valid lien or third party interest in the conveyance without expense to the interest holder by providing the lienholders interest be satisfied only after costs associated with the seizure have been deducted.

1978—Subsecs. (b), (c). Pub. L. 95–582 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Crewman, see section 1101(a)(10) of this title.
Entry, see section 1101(a)(13) of this title.
Immigration officer, see section 1101(a)(18) of this title.
Residence, see section 1101(a)(33) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title; title 10 section 374.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment, or

(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b) of this section.

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) of this section with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in

the manner described in subsection (b)(3) of this section) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) of this section with respect to the individual's referral.

(b) Employment verification system

The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) of this section are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation

(A) In general

The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual's—

(i) United States passport;

(ii) certificate of United States citizenship;

(iii) certificate of naturalization;

(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or

(v) resident alien card or other alien registration card, if the card—

(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, and

(II) is evidence of authorization of employment in the United States.

(C) Documents evidencing employment authorization

A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual

A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(2) Individual attestation of employment authorization

The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the Attorney General to be hired, recruited, or referred for such employment.

(3) Retention of verification form

After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual—

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated,

whichever is later.

(4) Copying of documentation permitted

Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form

A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of title 18.

(c) No authorization of national identification cards

Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and changes in employment verification system

(1) Presidential monitoring and improvements in system

(A) Monitoring

The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) of this section provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system

To the extent that the system established under subsection (b) of this section is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) of this section as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system

Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity

The system must be capable of reliably determining whether—

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents

If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system

Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information

The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification

A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

The system may not be used for law enforcement purposes, other than for enforcement of this chapter or sections 1001, 1028, 1546, and 1621 of title 18.

(G) Restriction on use of new documents

If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this chapter (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18) nor to be carried on one's person.

(3) Notice to Congress before implementing changes

(A) In general

The President may not implement any change under paragraph (1) unless at least—

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the

substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report

In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes

(i) Hearings and review

The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action

No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes defined

As used in this paragraph, the term ''major change'' means a change which would—

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act [42 U.S.C. 301 et seq.], including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) of this section are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act [42 U.S.C. 405(c)(2)(D)].

(E) General revenue funding of social security card changes

Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act [42 U.S.C. 301 et seq.].

(4) Demonstration projects

(A) Authority

The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b) of this section. No such project may extend over a period of longer than five years.

(B) Reports on projects

The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance

(1) Complaints and investigations

The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1) of this section,

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) of this section as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) of this section under this subsection.

(2) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing

(A) In general

Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where

the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations

With respect to a violation of subsection (a)(1)(A) or (a)(2) of this section, the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) of this section (or subsection (d) of this section if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations

With respect to a violation of subsection (a)(1)(B) of this section, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds

With respect to a violation of subsection (g)(1) of this section, the order under this subsection may provide for the remedy described in subsection (g)(2) of this section.

(7) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review

A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders

If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal penalties and injunctions for pattern or practice violations

(1) Criminal penalty

Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of this section shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations

Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a) of this section, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of indemnity bonds

(1) Prohibition

It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employ-

ment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty

Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e) of this section, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous provisions

(1) Documentation

In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien

As used in this section, the term ''unauthorized alien'' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

(i) Effective dates

(1) 6-month public information period

During the six-month period beginning on the first day of the first month after November 6, 1986—

(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of this section, and

(B) the Attorney General shall not conduct any proceeding, nor issue any order, under this section on the basis of any violation alleged to have occurred during the period.

(2) 12-month first citation period

In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) of this section during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor issue any order, under this section on the basis of such alleged violation or violations.

(3) Deferral of enforcement with respect to seasonal agricultural services

(A) In general

Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under this section on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

(B) Prohibition of recruitment outside the United States

(i) In general

During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

(ii) Exception

Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 1160(a)(2) of this title (relating to performance of seasonal agricultural services).

(iii) Penalty for violation

A person, entity, or agent that violates clause (i) shall be deemed to be subject to an order under this section in the same manner as if it had violated subsection (a)(1)(A) of this section, without regard to paragraph (2) of this subsection.

(C) Definitions

In this paragraph:

(i) Application period

The term ''application period'' means the period described in section 1160(a)(1) of this title.

(ii) Seasonal agricultural services

The term ''seasonal agricultural services'' has the meaning given such term in section 1160(h) of this section.

(j) General Accounting Office reports

(1) In general

Beginning one year after November 6, 1986, and at intervals of one year thereafter for a period of three years after such date, the Comptroller General shall prepare and transmit to the Congress and to the taskforce established under subsection (k) of this section a report describing the results of a review of the implementation and enforcement of this section during the preceding twelve-month period, for the purpose of determining if—

(A) such provisions have been carried out satisfactorily;

(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(C) an unnecessary regulatory burden has been created for employers hiring such workers.

(2) Determination on discrimination

In each report, the Comptroller General shall make a specific determination as to whether the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin.

(3) Recommendations

If the Comptroller General has determined that such a pattern of discrimination has resulted, the report—

(A) shall include a description of the scope of that discrimination, and

(B) may include recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(k) Review by taskforce

(1) Establishment of joint taskforce

The Attorney General, jointly with the Chairman of the Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to review each report of the Comptroller General transmitted under subsection (j)(1) of this section.

(2) Recommendations to Congress

If the report transmitted includes a determination that the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin, the taskforce shall, taking into consideration any recommendations in the report, report to Congress recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(3) Congressional hearings

The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting any report of the taskforce under paragraph (2) within 60 days after the date of receipt of the report.

(*l*) Termination date for employer sanctions

(1) If report of widespread discrimination and congressional approval

The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (j) of this section, if—

(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section; and

(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

(2) Senate procedures for consideration

Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (n) of this section.

(m) Expedited procedures in House of Representatives

For the purpose of expediting the consideration and adoption of joint resolutions under subsection (*l*) of this section, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(n) Expedited procedures in Senate

(1) Continuity of session

For purposes of subsection (*l*) of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

(2) Rulemaking power

Paragraphs (3) and (4) of this subsection are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (*l*) of this section, and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(3) Committee consideration

(A) Motion to discharge

If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (*l*) of this section has not reported such joint resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

(B) Consideration of motion

A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is

privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(4) Motion to proceed to consideration

(A) In general

A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on resolution

Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate on motion

Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) Motions to limit debate

A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.

(June 27, 1952, ch. 477, title II, ch. 8, § 274A, as added Nov. 6, 1986, Pub. L. 99–603, title I, § 101(a)(1), 100 Stat. 3360; amended Oct. 24, 1988, Pub. L. 100–525, § 2(a)(1), 102 Stat. 2609; Nov. 29, 1990, Pub. L. 101–649, title V, §§ 521(a), 538(a), 104 Stat. 5053, 5056; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 306(b)(2), 309(b)(11), 105 Stat. 1752, 1759; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 213, 219(z)(4), 108 Stat. 4314, 4318.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(D)(iii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–416, § 219(z)(4), made technical correction to Pub. L. 102–232, § 306(b)(2). See 1991 Amendment note below.

Subsec. (d)(4)(A). Pub. L. 103–416, § 213, substituted ''five'' for ''three'' in second sentence.

1991—Subsec. (b)(1)(D)(ii). Pub. L. 102–232, § 309(b)(11), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (b)(3). Pub. L. 102–232, § 306(b)(2), as amended by Pub. L. 103–416, § 219(z)(4), made technical correction to Pub. L. 101–649, § 538(a). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–649, § 521(a), struck out ''to hire, or to recruit or refer for a fee, for employment in the United States'' after ''or other entity'' in introductory provisions, inserted ''to hire, or to recruit or refer for a fee, for employment in the United States'' after ''(A)'' in subpar. (A), and inserted ''(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States'' after ''(B)'' in subpar. (B).

Subsec. (b)(3). Pub. L. 101–649, § 538(a), as amended by Pub. L. 102–232, § 306(b)(2), as amended by Pub. L. 103–416, § 219(z)(4), inserted '', the Special Counsel for Immigration-Related Unfair Employment Practices,'' after ''officers of the Service''.

1988—Subsec. (b)(1)(A). Pub. L. 100–525, § 2(a)(1)(A), substituted ''the first sentence of this paragraph'' for ''such sentence'' and ''such another document'' for ''such a document''.

Subsec. (d)(3)(D). Pub. L. 100–525, § 2(a)(1)(B), in heading substituted ''defined'' for ''requiring two years notice and congressional review''.

Subsec. (e)(1). Pub. L. 100–525, § 2(a)(1)(C)(i), inserted reference to subsec. (g)(1) in three places.

Subsec. (e)(3). Pub. L. 100–525, § 2(a)(1)(C)(i), (ii), inserted reference to subsec. (g)(1) in two places and reference to par. (6) in two places.

Subsec. (e)(4)(A)(ii), (iii). Pub. L. 100–525, § 2(a)(1)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (e)(6) to (9). Pub. L. 100–525, § 2(a)(1)(C)(iii), (iv), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (g)(2). Pub. L. 100–525, § 2(a)(1)(E), inserted reference to subsec. (e) of this section.

Subsec. (i)(3)(B)(iii). Pub. L. 100–525, § 2(a)(1)(F), substituted ''an order'' for ''a order'' and ''subsection (a)(1)(A) of this section'' for ''paragraph (1)(A)''.

Subsec. (j)(1). Pub. L. 100–525, § 2(a)(1)(G), made technical amendment to provision of original act which was translated as ''November 6, 1986,'' and struck out ''of the United States'' after ''Comptroller General''.

Subsec. (j)(2). Pub. L. 100–525, § 2(a)(1)(H), substituted ''this section'' for ''that section''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(4) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(b)(2) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 521(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to recruiting and referring occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 538(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

DATE OF ENACTMENT OF THIS SECTION FOR ALIENS EMPLOYED UNDER SECTION 8704 OF TITLE 46, SHIPPING

Date of enactment of this section with respect to aliens deemed employed under section 8704 of Title 46, Shipping, as the date 180 days after Jan. 11, 1988, see section 5(f)(3) of Pub. L. 100–239, set out as a Construction note under section 8704 of Title 46.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Feb. 10, 1992, 57 F.R. 24345, provided:

Memorandum for the Secretary of Health and Human Services

Section 205(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immigration and Nationality Act (the ''Act'') (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [8 U.S.C. 1101 et seq.], I hereby:

(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on the Judiciary and the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act, and

(2) Authorize you to cause to have printed in the Federal Register the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be further redelegated within the Department of Health and Human Services.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

Authority of President under subsec. (d)(4) of this section to undertake demonstration projects of different changes in requirements of employment verification system delegated to Attorney General by section 2 of Ex. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101–238, § 5, Dec. 18, 1989, 103 Stat. 2104, provided that:

''(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

''(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(b)(1)].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

''(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section.''

INTERIM REGULATIONS

Section 101(a)(2) of Pub. L. 99–603 provided that: ''The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], first issue, on an interim or other basis, such regulations as may be necessary in order to implement this section [enacting this section, amending sections 1802, 1813, 1816, and 1851 of Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 405 of Title 42, The Public Health and Welfare].''

GRANDFATHER PROVISION FOR CURRENT EMPLOYEES

Section 101(a)(3) of Pub. L. 99–603 provided that:

''(A) Section 274A(a)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(a)(1)] shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act [Nov. 6, 1986].

''(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.''

STUDY OF USE OF TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS

Section 101(d) of Pub. L. 99–603 provided that:

''(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens.

''(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance.

''(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974 [5 U.S.C. 552a, 552a note].

''(4) Such study shall be conducted within twelve months of the date of enactment of this Act [Nov. 6, 1986].

''(5) The Attorney General shall prepare and transmit to the Congress a report—

''(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

''(B) not later than twelve months after such date, setting forth the findings of such study.''

FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM

Section 101(e) of Pub. L. 99–603 provided that: ''The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a], and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate.''

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

Section 402 of Pub. L. 99–603 provided that: ''The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a] (relating to unlawful employment of aliens) during the first three years after its implementation. Each report shall include—

''(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

''(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

''(3) an analysis of the impact of the enforcement of that section on—

''(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

''(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

''(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors.''

[Functions of President under section 402 of Pub. L. 99–603 delegated to Attorney General, except functions in section 402(3)(A) which were delegated to Secretary of Labor, by sections 1(b) and 2(a) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

EX. ORD. NO. 12989. ECONOMY AND EFFICIENCY IN GOVERNMENT PROCUREMENT THROUGH COMPLIANCE WITH CERTAIN IMMIGRATION AND NATURALIZATION ACT PROVISIONS

Ex. Ord. No. 12989, Feb. 13, 1996, 61 F.R. 6091, provided:

This order is designed to promote economy and efficiency in Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose work force is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose work force is more stable. It remains the policy of this Administration to enforce the immigration laws to the fullest extent, including the detection and deportation of illegal aliens. In these circumstances, contractors cannot rely on the continuing availability and service of illegal aliens, and contractors that choose to employ unauthorized aliens inevitably will have a less stable and less dependable work force than contractors that do not employ such persons. Because of this Administration's vigorous enforcement policy, contractors that employ unauthorized alien workers are necessarily less stable and dependable procurement sources than contractors that do not hire such persons. I find, therefore, that adherence to the general policy of not contracting with providers that knowingly employ unauthorized alien workers will promote economy and efficiency in Federal procurement.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 486(a) and 3 U.S.C. 301, it is hereby ordered as follows:

SECTION 1. (a) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies should not contract with employers that have not complied with section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2)) (the ''INA employment provisions'') prohibiting the unlawful employment of aliens. All discretion under this Executive order shall be exercised consistent with this policy.

(b) It remains the policy of this Administration to fully and aggressively enforce the antidiscrimination provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] to the fullest extent. Nothing in this order relieves employers from their obligation to avoid unfair immigration-related employment practices as required by the antidiscrimination provisions of section 1324(b) [274B] of the INA (8 U.S.C. 1324b) and all other antidiscrimination requirements of applicable law, including the requirements of 8 U.S.C. 1324b(a)(6) concerning the treatment of certain documentary practices as unfair immigration-related employment practices.

SEC. 2. Contractor, as used in this Executive order, shall have the same meaning as defined in subpart 9.4 of the Federal Acquisition Regulation.

SEC. 3. Using the procedures established pursuant to 8 U.S.C. 1324a(e), the Attorney General: (a) may investigate to determine whether a contractor or an organizational unit thereof is not in compliance with the INA employment provisions;

(b) shall receive and may investigate complaints by employees of any entity covered under section 3(a) of this order where such complaints allege noncompliance with the INA employment provisions; and

(c) shall hold such hearings as are required under 8 U.S.C. 1324a(e) to determine whether an entity covered under section 3(a) is not in compliance with the INA employment provisions.

SEC. 4. (a) Whenever the Attorney General determines that a contractor or an organizational unit thereof is not in compliance with the INA employment provisions, the Attorney General shall transmit that determination to the appropriate contracting agency and such other Federal agencies as the Attorney General may determine. Upon receipt of such determination from the Attorney General, the head of the appropriate contracting agency shall consider the contractor or an organizational unit thereof for debarment as well as for such other action as may be appropriate in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation.

(b) The head of the contracting agency may debar the contractor or an organizational unit thereof based on the determination of the Attorney General that it is not in compliance with the INA employment provisions. The Attorney General's determination shall not be reviewable in the debarment proceedings.

(c) The scope of the debarment generally should be limited to those organizational units of a Federal contractor that the Attorney General finds are not in compliance with the INA employment provisions.

(d) The period of the debarment shall be for 1 year and may be extended for additional periods of 1 year if, using the procedures established pursuant to 8 U.S.C. 1324a(e), the Attorney General determines that the organizational unit of the Federal contractor continues to be in violation of the INA employment provisions.

(e) The Administrator of General Services shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible

to participate in any procurement or nonprocurement activities.

SEC. 5. (a) The Attorney General shall be responsible for the administration and enforcement of this order, except for the debarment procedures. The Attorney General may adopt such additional rules and regulations and issue such orders as may be deemed necessary and appropriate to carry out the responsibilities of the Attorney General under this order. If the Attorney General proposes to issue rules, regulations, or orders that affect the contracting departments and agencies, the Attorney General shall consult with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and such other agencies as may be appropriate.

(b) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the debarment responsibility and other related responsibilities assigned to heads of contracting departments and agencies under this order.

SEC. 6. Each contracting department and agency shall cooperate with and provide such information and assistance to the Attorney General as may be required in the performance of the Attorney General's functions under this order.

SEC. 7. The Attorney General, the Secretary of Defense, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and the heads of contracting departments and agencies may delegate any of their functions or duties under this order to any officer or employee of their respective agencies.

SEC. 8. This order shall be implemented in a manner intended to least burden the procurement process. This order neither authorizes nor requires any additional certification provision, clause, or requirement to be included in any contract or contract solicitation.

SEC. 9. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1186, 1188, 1324b, 1324c of this title; title 18 section 1546; title 20 section 1091; title 29 sections 1813, 1851; title 46 section 8704.

§ 1324b. Unfair immigration-related employment practices

(a) Prohibition of discrimination based on national origin or citizenship status

(1) General rule

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–2], or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) "Protected individual" defined

As used in paragraph (1), the term ''protected individual'' means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a),[1] or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens

Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(5) Prohibition of intimidation or retaliation

It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of

[1] See References in Text note below.

subsections (d) and (g) of this section, to have been discriminated against.

(6) Treatment of certain documentary practices as employment practices

For purposes of paragraph (1), a person's or other entity's request, for purposes of satisfying the requirements of section 1324a(b) of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

(b) Charges of violations

(1) In general

Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c) of this section). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints

No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) of this section if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) Special Counsel

(1) Appointment

The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the ''Special Counsel'') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) Duties

The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1) of this section.

(3) Compensation

The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5.

(4) Regional offices

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) Investigation of charges

(1) By Special Counsel

The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) Private actions

If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice. The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.

(3) Time limitations on complaints

No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1) of this section.

(e) Hearings

(1) Notice

Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment

practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases

Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party

Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

(f) Testimony and authority of hearing officers

(1) Testimony

The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges

In conducting investigations and hearings under this subsection[2] and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) Determinations

(1) Order

The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i) of this section.

(2) Orders finding violations

(A) In general

If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) Contents of order

Such an order also may require the person or entity—

(i) to comply with the requirements of section 1324a(b) of this title with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 1324a(b)(5) of this title, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay;

(iv)(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against,

(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against,

(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against, and

(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6) of this section, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against;

(v) to post notices to employees about their rights under this section and employers' obligations under section 1324a of this title;

(vi) to educate all personnel involved in hiring and complying with this section or section 1324a of this title about the requirements of this section or such section;

(vii) to remove (in an appropriate case) a false performance review or false warning from an employee's personnel file; and

[2] So in original. Probably should be ''section''.

(viii) to lift (in an appropriate case) any restrictions on an employee's assignments, work shifts, or movements.

(C) Limitation on back pay remedy

In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) Treatment of distinct entities

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) Orders not finding violations

If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged and is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of attorney's fees

In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of final orders

(1) In general

Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(j) Court enforcement of administrative orders

(1) In general

If an order of the agency is not appealed under subsection (i)(1) of this section, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) Court enforcement order

Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) Enforcement decree in original review

If, upon appeal of an order under subsection (i)(1) of this section, the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) Awarding of attorneys' fees

In any judicial proceeding under subsection (i) of this section or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) Termination dates

(1) This section shall not apply to discrimination in hiring, recruiting, or referring, or discharging of individuals occurring after the date of any termination of the provisions of section 1324a of this title, under subsection (*l*) of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 1324a(j) of this title if—

(A) the Comptroller General determines, and so reports in such report that—

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 1324a of this title, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 1324a of this title shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (*l*) of such section.

(*l*) Dissemination of information concerning antidiscrimination provisions

(1) Not later than 3 months after November 29, 1990, the Special Counsel, in cooperation with the chairman of the Equal Employment Oppor-

tunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section and under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] in connection with unfair immigration-related employment practices. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section and such title.

(2) In order to carry out the campaign under this subsection, the Special Counsel—

(A) may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign, and

(B) shall consult with the Secretary of Labor, the chairman of the Equal Employment Opportunity Commission, and the heads of such other agencies as may be appropriate.

(3) There are authorized to be appropriated to carry out this subsection $10,000,000 for each fiscal year (beginning with fiscal year 1991).

(June 27, 1952, ch. 477, title II, ch. 8, §274B, as added Nov. 6, 1986, Pub. L. 99–603, title I, §102(a), 100 Stat. 3374; amended Oct. 24, 1988, Pub. L. 100–525, §2(b), 102 Stat. 2610; Nov. 29, 1990, Pub. L. 101–649, title V, §§531, 532(a), 533(a), 534(a), 535(a), 536(a), 537(a), 539(a), 104 Stat. 5054–5056; Dec. 12, 1991, Pub. L. 102–232, title III, §306(b)(1), (3), (c)(1), 105 Stat. 1752; Oct. 25, 1994, Pub. L. 103–416, title II, §219(q), 108 Stat. 4317.)

REFERENCES IN TEXT

Section 1161(a) of this title, referred to in subsec. (a)(3)(B), was repealed by Pub. L. 103–416, title II, §219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

The Civil Rights Act of 1964, referred to in subsecs. (b)(2) and (*l*)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VII of the Civil Rights Act of 1964 is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (g)(2)(C). Pub. L. 103–416 substituted ''the Special Counsel'' for ''an administrative law judge'' in first sentence.

1991—Subsec. (g)(2)(B)(iv)(II). Pub. L. 102–232, §306(b)(1), substituted ''subclauses (III) and (IV)'' for ''subclause (IV)''.

Subsec. (g)(2)(B)(iv)(IV). Pub. L. 102–232, §306(b)(3)(A), substituted a semicolon for period at end.

Subsec. (g)(2)(B)(v), (vi). Pub. L. 102–232, §306(b)(3)(B), substituted semicolons for commas at end.

Subsec. (g)(2)(B)(vii). Pub. L. 102–232, §306(b)(3)(C), (D), substituted a semicolon for comma at end and ''to remove (in an appropriate case)'' for ''to order (in an appropriate case) the removal of''.

Subsec. (g)(2)(B)(viii). Pub. L. 102–232, §306(b)(3)(E), substituted ''to lift (in an appropriate case)'' for ''to order (in an appropriate case) the lifting of''.

Subsec. (g)(2)(D). Pub. L. 102–232, §306(c)(1), substituted ''physically'' for ''physicially''.

1990—Subsec. (a)(1)(B). Pub. L. 101–649, §533(a)(1), substituted ''protected individual'' for ''citizen or intending citizen''.

Subsec. (a)(3). Pub. L. 101–649, §533(a)(2), (3), in heading and text substituted ''protected individual'' for ''citizen or intending citizen''.

Subsec. (a)(3)(B). Pub. L. 101–649, §533(a)(4), substituted ''is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a), or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not'' for ''is an alien who—

''(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a), or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title, and

''(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not'', and in closing provisions substituted ''(i)'' and ''(ii)'' for ''(I)'' and ''(II)'', respectively.

Pub. L. 101–649, §532(a), inserted reference to sections 1160(a) and 1161(a) of this title in cl. (i).

Subsec. (a)(5). Pub. L. 101–649, §534(a), added par. (5).

Subsec. (a)(6). Pub. L. 101–649, §535(a), added par. (6).

Subsec. (d)(2). Pub. L. 101–649, §537(a), inserted ''the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and'' after ''120-day period,'', inserted ''within 90 days after the date of receipt of the notice'' before period at end, and inserted at end ''The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.''

Subsec. (g)(2)(B)(iii). Pub. L. 101–649, §539(a)(1), struck out ''and'' at end.

Subsec. (g)(2)(B)(iv). Pub. L. 101–649, §539(a)(2), which directed the substitution of a comma for the period at end of cl. (iv)(II), could not be executed because of the general amendment of cl. (iv) by Pub. L. 101–649, §536(a), see below.

Pub. L. 101–649, §536(a), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows:

''(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

''(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.''

Subsec. (g)(2)(B)(v) to (viii). Pub. L. 101–649, §539(a)(3), added cls. (v) to (viii).

Subsec. (*l*). Pub. L. 101–649, §531, added subsec. (*l*).

1988—Subsec. (a)(1). Pub. L. 100–525, §2(b)(1), inserted reference to section 1324a(h)(3) of this title.

Subsec. (e)(3). Pub. L. 100–525, §2(b)(2), struck out ''said'' before ''proceeding''.

Subsec. (g)(2)(A). Pub. L. 100–525, §2(b)(3), substituted ''that'' for ''that that''.

Subsec. (g)(2)(B)(ii). Pub. L. 100–525, §2(b)(4), substituted ''1324a'' for ''1324''.

Subsec. (g)(3). Pub. L. 100–525, §2(b)(5), substituted ''engaged and'' for ''engaged or''.

Subsec. (h). Pub. L. 100–525, §2(b)(6), substituted ''attorney's'' for ''attorneys' '' in heading.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 532(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to actions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 533(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to unfair immigration-related employment practices occurring before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 534(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 535(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990], but shall apply to actions occurring on or after such date.''

Section 536(b) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section] shall apply to unfair immigration-related employment practices occurring after the date of the enactment of this Act [Nov. 29, 1990].''

Section 537(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to charges received on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 539(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to orders with respect to unfair immigration-related employment practices occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

NO EFFECT ON EEOC AUTHORITY

Section 102(b) of Pub. L. 99–603 provided that: ''Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), or any other authority provided therein.''

§ 1324c. Penalties for document fraud

(a) Activities prohibited

It is unlawful for any person or entity knowingly—

(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this chapter,

(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter,

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter, or

(4) to accept or receive or to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title.

(b) Exception

This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of title 18.

(c) Construction

Nothing in this section shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18.

(d) Enforcement

(1) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(2) Hearing

(A) In general

Before imposing an order described in paragraph (3) against a person or entity under this subsection for a violation of subsection (a) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity has

violated subsection (a) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (3).

(3) Cease and desist order with civil money penalty

With respect to a violation of subsection (a) of this section, the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(A) not less than $250 and not more than $2,000 for each document used, accepted, or created and each instance of use, acceptance, or creation, or

(B) in the case of a person or entity previously subject to an order under this paragraph, not less than $2,000 and not more than $5,000 for each document used, accepted, or created and each instance of use, acceptance, or creation.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(4) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection.

(5) Judicial review

A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(6) Enforcement of orders

If a person or entity fails to comply with a final order issued under this section against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(June 27, 1952, ch. 477, title II, ch. 8, §274C, as added Nov. 29, 1990, Pub. L. 101–649, title V, §544(a), 104 Stat. 5059; amended Dec. 12, 1991, Pub. L. 102–232, title III, §306(c)(5)(A), 105 Stat. 1752; Oct. 25, 1994, Pub. L. 103–416, title II, §219(r), 108 Stat. 4317.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416 substituted ''chapter 224 of title 18'' for ''title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)''.

1991—Subsec. (a)(2) to (4). Pub. L. 102–232 inserted ''or to provide'' after ''receive'' in pars. (2) and (4) and ''or to provide or attempt to provide'' after ''attempt to use'' in par. (3).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section applicable to persons or entities that have committed violations on or after Nov. 29, 1990, see section 544(d) of Pub. L. 101–649, as amended, set out as an Effective Date of 1990 Amendment note under section 1251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1251, 1330 of this title.

§ 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Marriage fraud

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

(c) Immigration-related entrepreneurship fraud

Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, or both.

(June 27, 1952, ch. 477, title II, ch. 8, §275, 66 Stat. 229; Nov. 10, 1986, Pub. L. 99–639, §2(d), 100 Stat. 3542; Nov. 29, 1990, Pub. L. 101–649, title I, §121(b)(3), title V, §543(b)(2), 104 Stat. 4994, 5059; Dec. 12, 1991, Pub. L. 102–232, title III, §306(c)(3), 105 Stat. 1752.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232 substituted ''fined under title 18'' for ''fined not more than $2,000 (or, if greater, the amount provided under title 18)''.

1990—Subsec. (a). Pub. L. 101–649, §543(b)(2), inserted ''or attempts to enter'' after ''(1) enters'' and ''attempts to enter or'' after ''or (3)'', and substituted ''shall, for the first commission of any such offense, be fined not more than $2,000 (or, if greater, the amount

provided under title 18) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years'' for ''shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000''.

Subsec. (c). Pub. L. 101–649, § 121(b)(3), added subsec. (c).

1986—Pub. L. 99–639 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 121(b)(3) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 543(b)(2) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

CROSS REFERENCES

Definition of entry, immigration laws, immigration officer, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title; title 10 section 374.

§ 1326. Reentry of deported alien; criminal penalties for reentry of certain deported aliens

(a) Subject to subsection (b) of this section, any alien who—

(1) has been arrested and deported or excluded and deported, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously excluded and deported, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection—

(1) whose deportation was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both; or

(2) whose deportation was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

For the purposes of this subsection, the term ''deportation'' includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law.

(June 27, 1952, ch. 477, title II, ch. 8, § 276, 66 Stat. 229; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7345(a), 102 Stat. 4471; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(3), 104 Stat. 5059; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130001(b), 108 Stat. 2023.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322, in par. (1), inserted ''three or more misdemeanors involving drugs, crimes against the person, or both, or'' after ''commission of'' and substituted ''10'' for ''5'', in par. (2), substituted ''20'' for ''15'', and added concluding sentence.

1990—Subsec. (a). Pub. L. 101–649 substituted ''shall be fined under title 18, or imprisoned not more than 2 years'' for ''shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000''.

1988—Pub. L. 100–690 designated existing provisions as subsec. (a), substituted ''Subject to subsection (b) of this section, any alien'' for ''Any alien'', and added subsec. (b).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7345(b) of Pub. L. 100–690 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any alien who enters, attempts to enter, or is found in, the United States on or after the date of the enactment of this Act [Nov. 18, 1988].''

CROSS REFERENCES

Definition of alien, Attorney General, entry, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title; title 10 section 374.

§ 1327. Aiding or assisting certain aliens to enter

Any person who knowingly aids or assists any alien excludable under section 1182(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under title 18, or imprisoned not more than 10 years, or both.

(June 27, 1952, ch. 477, title II, ch. 8, § 277, 66 Stat. 229; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7346(a), (c)(1), 102 Stat. 4471; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(4), title VI, § 603(a)(16), 104 Stat. 5059, 5084.)

AMENDMENTS

1990—Pub. L. 101–649, § 603(a)(16), substituted ''1182(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof)'' for ''1182(a)(9), (10), (23) (insofar as an alien excludable

under any such paragraph has in addition been convicted of an aggravated felony), (27), (28), or (29)''.

Pub. L. 101–649, § 543(b)(4), substituted ''shall be fined under title 18, or imprisoned not more than 10 years'' for ''shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than $5,000 or by imprisonment for not more than five years''.

1988—Pub. L. 100–690 substituted ''certain aliens'' for ''subversive alien'' in section catchline and inserted ''(9), (10), (23) (insofar as an alien excludable under any such paragraph has in addition been convicted of an aggravated felony),'' after ''1182(a)''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(b)(4) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

Amendment by section 603(a)(16) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7346(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any aid or assistance which occurs on or after the date of the enactment of this Act [Nov. 18, 1988].''

CROSS REFERENCES

Definition of alien, entry, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 374.

§ 1328. Importation of alien for immoral purpose

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall be fined under title 18, or imprisoned not more than 10 years, or both. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other.

(June 27, 1952, ch. 477, title II, ch. 8, § 278, 66 Stat. 230; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(5), 104 Stat. 5059.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''shall be fined under title 18, or imprisoned not more than 10 years, or both'' for ''shall, in every such case, be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $5,000 and by imprisonment for a term of not more than ten years''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

CROSS REFERENCES

Definition of alien and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title; title 10 section 374.

§ 1329. Jurisdiction of district courts

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor.

(June 27, 1952, ch. 477, title II, ch. 8, § 279, 66 Stat. 230.)

CROSS REFERENCES

Jurisdiction of all offenses against the laws of the United States, see section 3231 of Title 18, Crimes and Criminal Procedure.

United States defined, see section 1101 of this title.

§ 1330. Collection of penalties and expenses

(a) Notwithstanding any other provisions of this subchapter, the withholding or denial of clearance of or a lien upon any vessel or aircraft provided for in section 1221, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1321, 1322, or 1323 of this title shall not be regarded as the sole and exclusive means or remedy for the enforcement of payments of any fine, penalty or expenses imposed or incurred under such sections, but, in the discretion of the Attorney General, the amount thereof may be recovered by civil suit, in the name of the United States, from any person made liable under any of such sections.

(b) Notwithstanding section 3302 of title 31, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990 shall be credited to the appropriation—

(1) for the Immigration and Naturalization Service for activities that enhance enforcement of provisions of this subchapter, including—

(A) the identification, investigation, and apprehension of criminal aliens,

(B) the implementation of the system described in section 1252(a)(3)(A) of this title, and

(C) for the repair, maintenance, or construction on the United States border, in

areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and

(2) for the Executive Office for Immigration Review in the Department of Justice for the purpose of removing the backlogs in the preparation of transcripts of deportation proceedings conducted under section 1252 of this title.

(June 27, 1952, ch. 477, title II, ch. 8, § 280, 66 Stat. 230; Nov. 29, 1990, Pub. L. 101–649, title V, § 542(a), 104 Stat. 5057; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(s), 108 Stat. 4317.)

REFERENCES IN TEXT

Sections 203(b), 543(a), and 544 of the Immigration Act of 1990, referred to in subsec. (b), are sections 203(b), 543(a), and 544 of Pub. L. 101–649. Section 203(b) of the Act amended section 1281 of this title. Section 543(a) of the Act amended sections 1221, 1227, 1229, 1284, 1285, 1286, 1287, 1321, 1322, and 1323 of this title. Section 544 of the Act enacted section 1324c of this title and amended section 1251 of this title.

AMENDMENTS

1994—Subsec. (b)(1)(C). Pub. L. 103–416 substituted ''maintenance'' for ''maintainance''.

1990—Pub. L. 101–649 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 542(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fines and penalties collected on or after January 1, 1991.''

CROSS REFERENCES

Definition of Attorney General and United States, see section 1101 of this title.

PART IX—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided*, That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis.

(June 27, 1952, ch. 477, title II, ch. 9, § 281, 66 Stat. 230; Oct. 3, 1965, Pub. L. 89–236, § 14, 79 Stat. 919; Oct. 21, 1968, Pub. L. 90–609, § 1, 82 Stat. 1199.)

REFERENCES IN TEXT

The Headquarters Agreement, referred to in text, is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1968—Pub. L. 90–609 struck out provisions fixing statutory fees for specified immigration and nationality benefits and services rendered, including those pertaining to immigrant visas, reentry permits, adjustments of status to permanent residence, creation of record of admission for permanent residence, suspension of deportation, extension of stay to nonimmigrants, and application for admission to practice as attorney or representative before the Service.

1965—Subsec. (a). Pub. L. 89–236, § 14(a), (b), designated opening provision beginning ''The following fees shall be charged:'' and ending with the end of par. (7) as subsec. (a) and substituted reference to section 1154 of this title for sections 1154(b) and 1155(b) of this title in par. (6).

Subsec. (b). Pub. L. 89–236, § 14(c), added subsec. (b).

Subsec. (c). Pub. L. 89–236, § 14(d), designated closing provision consisting of the paragraph beginning ''The fees for the furnishing'' as subsec. (c).

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

SURCHARGE FOR PROCESSING MACHINE READABLE NONIMMIGRANT VISAS

Pub. L. 103–236, title I, § 140(a), Apr. 30, 1994, 108 Stat. 399, as amended by Pub. L. 103–415, § 1(bb), Oct. 25, 1994, 108 Stat. 4302, provided that:

''(1) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

''(2) Fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

''(3) For fiscal years 1994 and 1995, fees deposited under the authority of paragraph (2) may not exceed a total of $107,500,000. For subsequent fiscal years, fees may be collected under the authority of paragraph (1) only in such amounts as shall be prescribed in subsequent authorization Acts.

''(4) The provisions of the Act of August 18, 1856 (Revised Statutes 1726–28; 22 U.S.C. 4212–14), concerning accounting for consular fees shall not apply to fees collected under this subsection.

''(5) No fee or surcharge authorized under paragraph (1) may be charged to a citizen of a country that is a signatory as of the date of enactment of this Act [Apr. 30, 1994] to the North American Free Trade Agreement, except that the Secretary of State may charge such fee or surcharge to a citizen of such a country if the Secretary determines that such country charges a visa application or issuance fee to citizens of the United States.''

Provisions directing the continuing effect for specific periods of authorities provided under section 140(a) of Pub. L. 103–236, set out above, were contained in the following appropriation acts:

Pub. L. 104–56, title I, § 118, Nov. 20, 1995, 109 Stat. 552.
Pub. L. 104–54, title I, § 118, Nov. 19, 1995, 109 Stat. 544.
Pub. L. 104–31, § 119, Sept. 30, 1995, 109 Stat. 281.

AGREEMENTS ON PASSPORT VISA FEES

The United States has various bilateral agreements reciprocally waiving or reducing passport fees for nonimmigrants from foreign countries.

Country	Date signed	Entered into force	Citation
Albania	May 7, 1926	June 1, 1926	
Argentina ...	April 15, 1942 ...	June 1, 1942	56 Stat. 1578.
Australia	Feb. 10, 1950	Feb. 10, 1950	1 UST 457.
	July 29, Aug. 9, 17, 20, 1955.	Aug. 20, 1955 ...	6 UST 6225.
	Mar. 13, June 1, Aug. 19, 1959.	Aug. 19, 1959 ...	11 UST 2049.