

114TH CONGRESS
1ST SESSION

S. 2337

To improve homeland security by enhancing the requirements for participation in the Visa Waiver Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2015

Mrs. FEINSTEIN (for herself, Mr. FLAKE, Ms. HEITKAMP, Mr. COATS, Mr. HEINRICH, Mr. JOHNSON, Mr. BENNET, Ms. AYOTTE, Mr. WARNER, Ms. BALDWIN, Mr. TESTER, Mr. KING, Ms. KLOBUCHAR, Mrs. BOXER, Mr. BLUMENTHAL, Ms. COLLINS, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve homeland security by enhancing the requirements for participation in the Visa Waiver Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Visa Waiver Program
5 Security Enhancement Act”.

1 **SEC. 2. VISA REQUIRED FOR ALIENS WHO RECENTLY TRAV-**
2 **ELED TO IRAQ, SYRIA, OR CERTAIN OTHER**
3 **DESTINATIONS.**

4 Section 217(a) of the Immigration and Nationality
5 Act (8 U.S.C. 1187(a)) is amended by adding at the end
6 the following:

7 “(12) VISA REQUIRED FOR ALIENS WHO HAVE
8 RECENTLY TRAVELED TO IRAQ OR SYRIA.—

9 “(A) IN GENERAL.—A national of a pro-
10 gram country is ineligible to travel to the
11 United States under the program if the national
12 has traveled to Iraq or to Syria at any time
13 during the most recent 5-year period.

14 “(B) OTHER TRAVEL RESTRICTIONS.—The
15 Secretary of Homeland Security may prohibit a
16 national of a program country from traveling to
17 the United States under the program if the
18 Secretary determines that such national has
19 traveled during the past 5 years to a country in
20 which—

21 “(i) a designated foreign terrorist or-
22 ganization has a significant presence; and

23 “(ii) prohibiting such national from
24 traveling to the United States under the
25 program is in the national security inter-
26 ests of the United States.

1 “(C) RULE OF CONSTRUCTION.—Nothing
2 in this paragraph may be construed to other-
3 wise limit the authority of the Secretary of
4 Homeland Security.”.

5 **SEC. 3. ELECTRONIC PASSPORTS REQUIRED FOR VISA**
6 **WAIVER PROGRAM.**

7 (a) REQUIRING THE UNIVERSAL USE OF ELEC-
8 TRONIC PASSPORTS FOR PARTICIPATING VISA WAIVER
9 PROGRAM COUNTRIES.—

10 (1) IN GENERAL.—Section 217 of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1187) is amend-
12 ed—

13 (A) in subsection (a), by amending para-
14 graph (3) to read as follows:

15 “(3) MACHINE-READABLE, ELECTRONIC PASS-
16 PORT.—The alien, at the time of application for ad-
17 mission, is in possession of a valid, unexpired, tam-
18 per-resistant, machine-readable passport that incor-
19 porates biometric and document authentication iden-
20 tifiers that comply with the applicable biometric and
21 document identifying standards established by the
22 International Civil Aviation Organization.”; and

23 (B) in subsection (c)(2), by amending sub-
24 paragraph (B) to read as follows:

1 “(B) MACHINE-READABLE, ELECTRONIC
2 PASSPORT PROGRAM.—The government of the
3 country certifies that it issues to its citizens
4 machine-readable, electronic passports that
5 comply with the requirements set forth in sub-
6 section (a)(3).”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by paragraph (1) shall take effect on the date that
9 is 90 days after the date of the enactment of this
10 Act.

11 (3) CERTIFICATION REQUIREMENT.—Section
12 303(c) of the Enhanced Border Security and Visa
13 Entry Reform Act of 2002 (8 U.S.C. 1732(c)) is
14 amended—

15 (A) in paragraph (1), by striking “Not
16 later than October 26, 2005, the” and inserting
17 “The”; and

18 (B) by amending paragraph (2) to read as
19 follows:

20 “(2) USE OF TECHNOLOGY STANDARD.—Any
21 alien applying for admission under the Visa Waiver
22 Program established under section 217 of the Immi-
23 gration and Nationality Act (8 U.S.C. 1187) shall
24 present a passport that meets the requirements de-
25 scribed in paragraph (1).”.

1 **SEC. 4. INFORMATION SHARING AND COOPERATION BY**
2 **VISA WAIVER PROGRAM COUNTRIES.**

3 (a) **REQUIRED INFORMATION SHARING FOR VISA**
4 **WAIVER PROGRAM COUNTRIES.—**

5 (1) **INFORMATION SHARING AGREEMENTS.—**

6 (A) **FULL IMPLEMENTATION.—**Section
7 217(c)(2)(F) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1187(c)(2)(F)) is amended
9 by inserting “, and fully implements within the
10 time frame determined by the Secretary of
11 Homeland Security,” after “country enters
12 into”.

13 (B) **FEDERAL AIR MARSHAL AGREE-**
14 **MENT.—**Section 217(c) of such Act, as amend-
15 ed by subparagraph (A), is further amended—

16 (i) in paragraph (2), by adding at the
17 end the following:

18 “(G) **FEDERAL AIR MARSHAL AGREE-**
19 **MENT.—**The government of the country enters
20 into, and complies with, an agreement with the
21 United States to assist in the operation of an
22 effective Air Marshal Program.

23 “(H) **AVIATION STANDARDS.—**The govern-
24 ment of the country complies with United
25 States aviation and airport security standards,

1 as determined by the Secretary of Homeland
2 Security.”; and

3 (ii) in paragraph (9)—

4 (I) by striking subparagraph (B);

5 and

6 (II) by redesignating subpara-
7 graphs (C) and (D) as subparagraphs
8 (B) and (C), respectively.

9 (C) FAILURE TO FULLY IMPLEMENT IN-
10 FORMATION SHARING AGREEMENT.—Section
11 217(c)(5) of such Act (8 U.S.C. 1187(c)(5)) is
12 amended—

13 (i) by redesignating subparagraph (C)
14 as subparagraph (D); and

15 (ii) by inserting after subparagraph
16 (B) the following:

17 “(C) FAILURE TO FULLY IMPLEMENT IN-
18 FORMATION SHARING AGREEMENT.—

19 “(i) DETERMINATION.—If the Sec-
20 retary of Homeland Security, in consulta-
21 tion with the Secretary of State, deter-
22 mines that the government of a program
23 country has failed to fully implement the
24 agreements set forth in paragraph (2)(F),

1 the country shall be terminated as a pro-
2 gram country.

3 “(ii) REDESIGNATION.—Not sooner
4 than 90 days after the Secretary of Home-
5 land Security, in consultation with the Sec-
6 retary of State, determines that a country
7 that has been terminated as a program
8 country pursuant to clause (i) is now in
9 compliance with the requirement set forth
10 in paragraph (2)(F), the Secretary of
11 Homeland Security may redesignate such
12 country as a program country.”.

13 (2) ADVANCE PASSENGER INFORMATION EAR-
14 LIER THAN 1 HOUR BEFORE ARRIVAL.—

15 (A) IN GENERAL.—Section 217(a)(10) of
16 such Act (8 U.S.C. 1187(a)(10)) is amended by
17 striking “not less than one hour prior to ar-
18 rival” and inserting “as soon as practicable, but
19 not later than 1 hour before arriving”.

20 (B) TECHNICAL AMENDMENT.—Section
21 217(c)(3) of such Act is amended, in the matter
22 preceding subparagraph (A), by striking “the
23 initial period” and inserting “fiscal year 1989”.

1 (b) FACTORS THE DEPARTMENT OF HOMELAND SE-
2 CURITY SHALL CONSIDER FOR VISA WAIVER COUN-
3 TRIES.—

4 (1) CONSIDERATION OF COUNTRY'S CAPACITY
5 TO IDENTIFY DANGEROUS INDIVIDUALS.—Section
6 217(c)(4) of the Immigration and Nationality Act (8
7 U.S.C. 1187(c)(4)), is amended to read as follows:

8 “(4) REQUIRED SECURITY CONSIDERATIONS
9 FOR PROGRAM DESIGNATION AND CONTINUATION.—

10 In determining whether a country should be des-
11 ignated as a program country or whether a program
12 country should retain its designation as a program
13 country, the Secretary of Homeland Security shall
14 consider the following:

15 “(A) CAPACITY TO COLLECT, ANALYZE,
16 AND SHARE DATA CONCERNING DANGEROUS IN-
17 DIVIDUALS.—Whether the government of the
18 country—

19 “(i) collects and analyzes the informa-
20 tion described in subsection (a)(10), in-
21 cluding advance passenger information and
22 passenger name records, and similar infor-
23 mation pertaining to flights not bound for
24 the United States, to identify potentially

1 dangerous individuals who may attempt to
2 travel to the United States; and

3 “(ii) shares such information and the
4 results of such analyses with the Govern-
5 ment of the United States.

6 “(B) SCREENING OF TRAVELER PASS-
7 PORTS.—Whether the government of the coun-
8 try—

9 “(i) regularly screens passports of air
10 travelers against INTERPOL’s global
11 database of Stolen and Lost Travel Docu-
12 ments before allowing such travelers to
13 enter or board a flight arriving in or de-
14 parting from that country, including a
15 flight destined for the United States; and

16 “(ii) regularly and promptly shares in-
17 formation concerning lost or stolen travel
18 documents with INTERPOL.

19 “(C) BIOMETRIC EXCHANGES.—Whether
20 the government of the country, in addition to
21 meeting the mandatory qualifications set forth
22 in paragraph (2)—

23 “(i) collects and analyzes biometric
24 and other information about individuals
25 other than United States nationals who are

1 applying for asylum, refugee status, or an-
2 other form of non-refoulment protection in
3 such country; and

4 “(ii) shares the information and the
5 results of such analyses with the Govern-
6 ment of the United States.

7 “(D) INFORMATION SHARING ABOUT FOR-
8 EIGN TERRORIST FIGHTERS.—Whether the gov-
9 ernment of the country shares intelligence
10 about foreign fighters with the United States
11 and with multilateral organizations, such as
12 INTERPOL and EUROPOL.”.

13 (2) FAILURE TO REPORT STOLEN PASS-
14 PORTS.—Section 217(f)(5) of such Act is amended
15 by inserting “frequently and promptly” before “re-
16 porting the theft”.

17 **SEC. 5. BIOMETRIC SUBMISSION BEFORE ENTRY.**

18 (a) IN GENERAL.—Section 217(a) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1187(a)), as amended
20 by section 2, is further amended by adding at the end the
21 following:

22 “(13) SUBMISSION OF BIOMETRIC INFORMA-
23 TION.—The Secretary of Homeland Security shall
24 ensure that each alien traveling to the United States
25 under an approved Electronic System for Travel Au-

1 thorization has submitted biometric information, in-
2 cluding photographs and fingerprints, before board-
3 ing a conveyance bound for the United States.”.

4 (b) IMPLEMENTATION OF BIOMETRIC SUBMISSION.—

5 (1) PRIORITIZATION.—The Secretary of Home-
6 land Security, in consultation with the Secretary of
7 State, shall prioritize the implementation of the re-
8 quirements under section 217(a)(13) of the Immi-
9 gration and Nationality Act, as added by subsection
10 (a), in Visa Waiver Program countries that have a
11 significant number of nationals who have traveled to
12 fight with, or to assist, the group known as the Is-
13 lamic State of Iraq and the Levant (ISIL).

14 (2) EFFECTIVE DATE.—The requirements re-
15 ferred to in paragraph (1) shall take effect for all
16 Visa Waiver Program countries not later than 1 year
17 after the date of the enactment of this Act, except
18 that the Secretary of Homeland Security may extend
19 the effective date for additional periods of 6 months
20 (not to exceed a total of 24 months) for particular
21 countries if the Secretary determines that an exten-
22 sion for such a country does not present a signifi-
23 cant risk to the national security of the United
24 States.

1 (3) INCLUSION OF BIOMETRIC INFORMATION.—

2 Not later than 5 years after the date of the enact-
3 ment of this Act, the Secretary of Homeland Secu-
4 rity shall ensure that the information submitted
5 under section 217(a)(13) of the Immigration and
6 Nationality Act includes photographs and finger-
7 prints.

8 (4) COMPLIANCE.—The Secretary of Homeland
9 Security may determine that a Visa Waiver Program
10 country is in compliance with section 217(a)(13) of
11 the Immigration and Nationality Act, as added by
12 subsection (a), if the country signs and implements
13 an agreement—

14 (A) to collect biometric information from
15 each individual seeking to travel to the United
16 States through the Visa Waiver Program and to
17 share such information with the United States;

18 (B) to compare the biometric information
19 described in subparagraph (A) against the in-
20 formation, including the biometric information,
21 on the prospective traveler's machine readable,
22 electronic passport, before the prospective trav-
23 eler boards a conveyance bound for the United
24 States; and

1 (C) to inform the Department of Home-
2 land Security of—

3 (i) the results of the comparison de-
4 scribed in subparagraph (B) before the
5 prospective traveler boards a conveyance
6 bound for the United States, and

7 (ii) any other information indicating
8 that the prospective traveler may pose a
9 threat to the United States.

10 **SEC. 6. VISA WAIVER PROGRAM ADMINISTRATION.**

11 Section 217(h)(3)(B) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1187(h)(3)(B)) is amended—

13 (1) in clause (i), by amending subclause (II) to
14 read as follows:

15 “(II) an amount to ensure recov-
16 ery of the full costs of providing and
17 administering the System and imple-
18 menting the improvements to the pro-
19 gram provided in the Visa Waiver
20 Program Security Enhancement
21 Act.”; and

22 (2) by amending clause (ii) to read as follows:

23 “(ii) DISPOSITION OF AMOUNTS COL-
24 LECTED.—Amounts collected under clause
25 (i)(I) shall be credited to the Travel Pro-

1 motion Fund established under subsection
2 (d) of the Trade Promotion Act of 2009
3 (22 U.S.C. 2131(d)). Amounts collected
4 under clause (i)(II) shall be transferred to
5 the general fund of the Treasury and made
6 available to pay the costs incurred to ad-
7 minister the System and the improvements
8 made by the Visa Waiver Program Secu-
9 rity Enhancement Act. The portion of the
10 fee collected under clause (i)(II) to recover
11 the costs of implementing such improve-
12 ments may only be used for that pur-
13 pose.”.

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