

# Rewarding Employers that Abide by the Law and Guaranteeing Uniform Enforcement to Stop Terrorism (REAL GUEST) Act of 2005

## TITLE I – REWARDING EMPLOYERS THAT ABIDE BY THE LAW

### Subtitle A – Access; Opportunity

#### *IN GENERAL—*

- 4 *Establishes the framework for a truly temporary guest worker program that responds to market conditions, rather than setting arbitrary caps, and that does not include an amnesty component of any kind; and*
- 4 *Prescreens foreign workers so they are available to employers who can establish a true need for additional, short-term labor, while ensuring that U.S. workers are not harmed.*

#### **SEC. 101—H NONIMMIGRANT WORKER CATEGORY.**

- Eliminates current H-1B (high-tech), H-1B1 (Chile/Singapore high-tech), H-1C (nurses), H-2A (agricultural), and H-2B (seasonal or temporary) nonimmigrant visas and replaces them with a single H nonimmigrant visa for all needed workers, skilled and unskilled.
- Requires the sponsoring employer to file a petition for an H worker with the Department of Labor (DoL) pursuant to section 212(n)(1); allows H nonimmigrant visas to be issued only when—

No qualified and lawfully present workers are available to perform the work, and no such workers could be trained in under a year to perform the work.
- Limits the period of authorized admission of H nonimmigrants to 365 days during any two-year period but allows them to renew their visas upon the expiration of each two-year period.
- Precludes H nonimmigrants from adjusting to lawful permanent resident status or changing to any other nonimmigrant classification; and prohibits spouses and children from accompanying or following to join H nonimmigrants.
- Delays implementation of this section until 180 days after the last of the section 111 certifications have been made, thus ensuring that measurable enforcement goals have been satisfied before the temporary guest worker program is implemented. *[The current H nonimmigrant programs will continue normal operation until the new H nonimmigrant program is ready to be implemented. Thus, foreign workers will be available continuously to U.S. employers who can demonstrate a need for them.]*

## **SEC. 102—INTERNET-BASED JOB POSTING SYSTEM.**

- Directs DoL to ensure that all state employment agencies and all employers can acquire secure, password-protected access to the Internet-based job database, “America’s Job Bank,” in order to post job openings [America’s Job Bank is an electronic employment center provided by DoL and several State employment agencies on which employers can post job announcements and workers can submit resumes]; allows DoL to use data from America’s Job Bank to determine whether employers petitioning for H nonimmigrants are complying with requirements that they try to recruit U.S. workers, offer proper wages and benefits, and are providing accurate data during the petition process; and directs DoL to compile and make available to the public quarterly reports indicating unemployment and real wage trends by occupational category and geographic region.
- Precludes DoL from approving an employer’s petition for an H nonimmigrant in a particular occupational category and geographic region if compensation (including real wages, benefits, and working conditions) in that category and region have been stagnant or in decline for the six-month period immediately preceding the employer’s filing; petition approvals may not resume until:
  - Compensation in that category and region has increased each month for at least six months by an amount to be determined by DoL; and
  - DoL has reassessed the prevailing wage in that category and region to ensure that it reflects the rising real wage levels.

## **SEC. 103—REQUIREMENTS FOR PROSPECTIVE EMPLOYERS OF H NONIMMIGRANTS.**

- Requires employers seeking to hire H nonimmigrants to post the available jobs on America’s Job Bank and to pay a user fee of \$10 per worker sought, which is to be used by DoL to maintain and improve America’s Job Bank, with any remaining amounts to be used to investigate abuses of the H nonimmigrant program.
- Requires each posted job announcement to include, at a minimum:
  - The name, contact information, and a description of the employer;
  - A description of the job and the minimum skills necessary to perform it; a description of any additional knowledge, skills, or abilities that are preferred by the employer;
  - The wage rate or salary being offered, which must be the greater of the median national wage rate or the prevailing wage for the occupation; and the benefits package being offered.
- Requires employers to:
  - Post each job announcement for at least 14 days, including the seven days that end one week before the job begins, before the employer may seek authorization to hire an H nonimmigrant.
  - Hold in escrow sufficient funds to transport the H nonimmigrants to their home country when the job ends or the period of authorized admission expires;
  - File with DoL a labor condition application (under section 212(n)) in the same format and with the same components as are currently required of H-1B employers, except that H employers must attest that:

They will pay H nonimmigrants wages that are the greater of the median national wage rate (as determined by the Occupational Employment Statistics survey of BLS) or the prevailing wage for the occupation;

They have taken good faith steps to recruit U.S. workers for the available jobs and have offered the jobs to any U.S. worker who is as qualified or better qualified for the job as the H nonimmigrants being sought;

They have not laid off U.S. workers performing the same or an equivalent job in the six months prior to filing the application, they will not lay off or dismiss (except for cause) any U.S. worker while employing an H nonimmigrant, and if lay offs are unavoidable, they will terminate the H nonimmigrant prior to laying off an equivalent U.S. worker.

- Doubles the civil penalties to which employers are subject for failure to meet the requirements above or for misrepresentation of a material fact in a labor condition application; the range of fines increases from \$1,000-\$35,000 per violation to \$2,000-\$70,000 per violation.
- Delays implementation of this section until 180 days after the last of the section 111 certifications have been made.

#### **SEC. 104—REQUIREMENTS FOR ALIENS SEEKING H NONIMMIGRANT STATUS.**

- Requires an alien seeking an H nonimmigrant visa to:

Apply from the alien's home country; pay the standard visa processing fee (based on a formula spelled out in Section 281 of the INA); and file an application (along with supporting documentation and references) that includes educational attainment, job skills, and prior employment history.

Sign a legally enforceable affidavit attesting that the alien:

Understands that he/she is ineligible to change or to adjust status to any other immigrant or nonimmigrant classification;

Acknowledges that a child born to the alien during his/her stay in the United States will not be granted automatic birthright citizenship, unless the child's other parent is a US citizen or lawful permanent resident;

Waives eligibility for all Federal, State, and local non-emergency government assistance; and

Understands the penalties for failing to abide by the terms of admission as an H nonimmigrant.

Apply to be added to the database of prescreened, available workers (see section 214(g)(7) of the INA, as amended by section 105 of this Act), rather than applying for a particular, available job;

Remain in the home country until selected from the database to fill an available job with an employer whose petition for an H nonimmigrant has been approved;

Submit to fingerprinting and photographing so that the biometric data may be added to the Chimera system (required by the Enhanced Border Security and Visa Entry Reform Act of 2002) and to criminal background and health checks to ensure admissibility under section 212(a).

- Requires the Department of State (DoS) to take reasonable steps to verify the education and work history provided by aliens seeking H nonimmigrant status prior to adding them to the database.
- Requires that alien-applicants who are selected by employers from the database be rechecked against criminal and terrorist watchlists no more than one week prior to admission to the United States.
- Requires that an alien applying to renew an H nonimmigrant visa undergo new criminal background and health checks before renewal may be granted; requires that an alien be removed from the database after being listed for a continuous period of 24 months without being selected by an employer, unless the alien submits an updated application in a timely manner; requires DoS to extend the alien's listing on the database for an additional 24 months, without additional cost to the alien, if the updated application is timely, complete, and accurate.
- Requires that an alien selected by an employer be removed from the database upon admission to the United States; allows such an alien to be re-listed following his authorized stay in the United States if he submits a timely, complete, and accurate application, and if he satisfied all the terms of his H nonimmigrant visa
- Bars an alien who violates a term or condition of his H nonimmigrant visa from receiving any immigrant or nonimmigrant visa for 10 years. (This section encompasses visa overstays)
- Amends current law to clarify that a child born in the United States to an H nonimmigrant parent is not a U.S. citizen at birth, unless the child's other parent is a citizen or lawful permanent resident.

#### **SEC. 105—DATABASE OF APPROVED PROSPECTIVE H NONIMMIGRANTS.**

- Requires DoL to establish and maintain a database of all aliens approved for H nonimmigrant status and to include in such database all information regarding the aliens' job skills, education, and employment history; directs DoL, upon approving an employer's petition under section 212(n)(1), to make available to the employer the list of prescreened, approved aliens with qualifications suitable for the open job.
- Prohibits DoL from providing any employer with access to contact information, other than names, about aliens listed in the database; requires DoL to prevent employers from gaining access to any information in the database until after the particular employer's labor condition application is approved; directs DoL to provide an employer with contact information for workers as soon as the employer has decided which workers he wants, so that the employer can make the employment offers; requires DoL to issue an H nonimmigrant visa to an approved alien within three days of the alien accepting an offer of employment from an employer with an approved petition.

#### **SEC. 106—EFFECTIVE DATE.**

- Delays implementation of the provisions of subtitle A, except as otherwise noted, until the last of the certifications in section 111 of this Act are made. *[This allows the database of pre-approved workers to be started six months prior to implementation of the new H nonimmigrant program so that H workers will be available immediately, should they be needed by U.S. employers.]*

## **Subtitle B – Requiring Lawful Migration**

### ***IN GENERAL—***

- 4 *Establishes measurable enforcement goals that must be satisfied before the new H nonimmigrant program may be implemented. These enforcement measures are critical to the success of the new H nonimmigrant program since, currently, there is no way to ensure that temporary workers leave when they are supposed to; there is no adequate labor market test to ensure that employers are not simply importing cheap labor to replace U.S. workers; and the costs of illegal immigration and the largely unskilled wave of legal immigration are being borne by our own native poor, while the benefits accrue almost exclusively to the wealthy.*

### **SEC. 111—CERTIFICATIONS**

- Requires DHS, in consultation with DoJ and DoS, to certify to the Congress that:
  - 1) The integrated entry and exit data system (the US-VISIT system) is fully implemented and functional, including biometric machine readers, at every port of entry, and the cross-border movement of all noncitizens is being recorded;
  - 2) All noncitizens residing in or traveling to the United States have been issued biometric, machine readable travel and entry documents (as required by the Enhanced Border Security and Visa Reform Act of 2002);
  - 3) No visas are being issued to nationals of foreign states that refuse to permit the return of their nationals who are ordered removed from the United States;
  - 4) The EASI Check system (see section 221 of this Act) is fully implemented and DHS has an interior enforcement plan in place that targets U.S. employers based on compiled information rather than random chance.
  - 5) All of the 10,000 additional Border Patrol agents authorized by the Intelligence Reform and Terrorism Prevention Act of 2004 have been hired, trained, and deployed; if necessary, a sufficient number of U.S. military personnel has been deployed to support the Border Patrol and reduce illegal entry so as to result in a net decline in the illegal population of the United States;
  - 6) The Chimera integrated data system, required by the Enhanced Border Security and Visa Entry Reform Act of 2002, is fully implemented and functional and incorporates the biometric data from US-VISIT and IDENT;
  - 7) All DHS databases on noncitizens are interoperable with the FBI's National Crime Information Center database;
  - 8) The absconder rate for aliens ordered removed from the United States is less than 5 percent for the previous 12-month period;
  - 9) State and local law enforcement agencies are assisting in the enforcement of immigration laws by detaining illegal aliens with whom they come into contact and ICE employees respond to every request for assistance from State and local law enforcement agencies; and
  - 10) At least 80 percent of visa overstays are located and removed within one year of overstaying.
- Requires a broad range of executive-branch agencies, led by the Director of the Census, to jointly produce an immigration impact study prior to implementation of the H nonimmigrant program established in subtitle A of this Act:

Directs the Departments of Agriculture, Education, Energy, Health & Human Services,

Homeland Security, Housing and Urban Development, Interior Justice, Labor, and Transportation, and the Environmental Protection Agency to examine the impacts on US infrastructure and quality of life of:

- 1) Current annual levels of immigrant and nonimmigrant admissions;
- 2) Current levels of illegal immigration; and
- 3) Implementation of the new H nonimmigrant program.

Requires the agencies to submit a report to Congress on the findings of the joint study, including the following information:

An estimate of the total legal and illegal populations of the United States (as they relate to the total population);

The projected impact of legal and illegal immigration on the overall population over the next 50 years;

The impact of the current and projected foreign-born populations on:

The natural environment;

Employment and wage rates—particularly in industries in which the foreign born are concentrated—and associated public costs;

The U.S. transportation infrastructure;

Homeownership rates, housing prices, and the demand for low-income and subsidized housing;

Access to quality health care and the cost of health care and health insurance; and

The U.S. criminal justice system.

## **TITLE II – GUARANTEEING UNIFORM ENFORCEMENT TO STOP TERRORISM**

### **Subtitle A – No Access; No Opportunity**

#### ***IN GENERAL:***

- 4 *Enumerates measures that are necessary to secure the borders, reduce immigration fraud and identity theft, curb illegal immigration, and re-establish the rule of law, all of which will make it more difficult for terrorists to abuse the immigration system in order to attack from within the United States.*

#### **SEC. 201—SENSE OF CONGRESS REGARDING USE OF MILITARY TO GUARD LAND BORDERS OF THE UNITED STATES.**

- Recites the sense of Congress that the President should deploy U.S. military troops, when feasible, to conduct training exercises in supporting functions for the Border Patrol.

**SEC. 202—USE OF ARMY AND AIR FORCE TO SECURE THE BORDERS.**

- Amends the criminal statute barring the use of the Army or the Air force as a posse comitatus to exempt their use at or near the border to prevent the entry into the United States of illegal aliens, terrorists, and drug smugglers.

**SEC. 202—INCREASE IN FULL-TIME USCBP IMMIGRATION INSPECTORS.**

- Authorizes the hiring of 2,000 new CBP immigration inspectors over the number funded in 2006, plus support personnel and equipment.

**SEC. 203—INCREASE IN FULL-TIME USICE DETENTION AND REMOVAL OFFICERS**

- Authorizes the hiring of 2,000 new ICE detention and removal officers over the number funded in 2006, plus support personnel and equipment.

**SEC. 204—FUNCTIONS OF DETENTION AND REMOVAL OFFICERS.**

- Authorizes GS-9 and GS-11 ICE detention and removal officers to perform interior patrol functions, including locating, detaining, and transporting visa overstays, alien absconders, and aliens apprehended by State or local authorities.

**SEC. 205—INCREASE IN USICE CRIMINAL INVESTIGATORS FOR BENEFITS FRAUD.**

- Authorizes the hiring of 300 new attorneys for the ICE Legal Program over the number funded in 2006, plus funding for training and support.

**SEC. 206—INCREASE IN ATTORNEYS FOR THE USICE LEGAL PROGRAM.**

- Authorizes the hiring of 500 new 1811-series criminal investigators to be assigned to the benefits fraud unit in the USICE over the number funded in 2006, plus funding for related training and support.

**SEC. 207—SUSPENSION OF VISA WAIVER PROGRAM.**

- Suspends the Visa Waiver Program until DHS certifies to the Congress that:
  - The automated entry-exit control system (US-VISIT) is fully implemented and functional;
  - All U.S. ports of entry have functional biometric machine readers; and
  - All nonimmigrants, including Border Crossing Cardholders, are being processed through the entry-exit system.
- Repeals the Secretary of State's authority to waive the requirement that, in order to participate in the Visa Waiver Program, countries must issue their nationals machine-readable passports.

**SEC. 208—CIVIL AND CRIMINAL PENALTIES FOR UNLAWFUL PRESENCE.**

- Makes unlawful presence in the United States a felony, punishable by a fine and/or

imprisonment of not less than one year, and to asset forfeiture.

Establishes an affirmative defense to unlawful presence for an alien who overstayed a visa due to “an exceptional and extremely unusual hardship or physical illness that prevented the alien from leaving the United States by the required date.”

- Makes the first instance of entry without inspection a felony, punishable by a fine and/or imprisonment of not less than one year. *[Currently, entry without inspection, or illegal entry, is a misdemeanor the first time, and a felony thereafter. This is one reason U.S. Attorneys often decline to prosecute—a misdemeanor offense is not worth their time, and to get a felony conviction, they have to prove prior illegal entry.]*

#### **SEC. 209—LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.**

- Requires DHS to transmit to DoJ for inclusion in the NCIC database all available information on all aliens against whom a final order of removal has been issued, all aliens who have signed a voluntary departure agreement, and all aliens known to have overstayed a visa;
- Conditions receipt of funds under the State Criminal Alien Assistance Program (SCAAP) on states and localities agreeing to provide DHS identifying information regarding each alien apprehended in the state or locality;
- Authorizes funding to reimburse states and localities for reasonable costs incurred in providing DHS this information.
- Establishes criminal penalties for the act of forging or counterfeiting Federal documents. Subjects—to fines, or imprisonment for not more than 10 years, or both—any person who:
  - 1) falsely makes, alters, forges, or counterfeits any Federal record, document, writing, activity, service, contract, obligation, duty, property, etc.
  - 2) utters or publishes as true, or possesses with intent to utter or publish as true, any record, document, or writing described above, knowing, or negligently failing to know, that such record, document, or writing has not been verified, has been inconclusively verified, is unable to be verified, or is false, altered, forged, or counterfeited;
  - 3) transmits to, or presents at any U.S. office or to any U.S. officer, any record, document, or writing described above, knowing, or negligently failing to know, that such record, document, or writing has not been verified, has been inconclusively verified, is unable to be verified, or is false, altered, forged, or counterfeited;
  - 4) attempts, or conspires to commit, any of the acts described above;
  - 5) engages in any of the acts described above while outside of the U.S.

#### **SEC. 210—CIVIL AND CRIMINAL PENALTIES FOR DOCUMENT FRAUD AND FALSE CLAIMS OF CITIZENSHIP.**

- Doubles the civil fines for document fraud committed for the purpose of obtaining an immigration benefit;
- Doubles the prison term for making a false claim regarding citizenship or immigration status; and

- Increases the prison terms for crimes involving document fraud.

#### **SEC. 211—IDENTIFICATION STANDARD FOR FEDERAL BENEFITS**

- Prohibits all federal agencies and employees thereof, and all state and local agencies and employees charged with providing or approving federally-funded benefits or services, from accepting, recognizing, or authorizing the acceptance for the purpose of establishing identity any document except one of the following:

Valid, unexpired U.S. passports, immigration documents, and other identity documents issued by the Federal government, except that an Individual Taxpayer Identification Number (ITIN) may not be considered an identity document at all;

Valid, unexpired identity documents issued by a state or local authority if:

The state/local authority statutorily prohibits the issuance of such documents to illegal aliens; and

The state/local authority requires independent verification of the breeder documents used to obtain the identity documents; and

Valid, unexpired foreign passports if accompanied by proof of lawful presence in the United States.

#### **SEC. 212—FINGERPRINTING OF APPLICANTS FOR UNITED STATES PASSPORTS.**

- Requires applicants for United States passports on or after January 1, 2008, to be fingerprinted electronically; and
- Requires that the fingerprints of each applicant be checked against the NCIC database.

#### **SEC. 213—VISA TERM COMPLIANCE BONDS.**

- Authorizes consular officers to require applicants for nonimmigrant visas to obtain a visa term compliance bond as a condition for granting the application; specifies that visa term compliance bonds expire after one year, upon the expiration, cancellation or surrender of the visa, or upon nonpayment of the premium; makes the bonds renewable annually with payment of the premium; states that the bond premium is forfeited if the nonimmigrant violates any term of the visa; in the case of a forfeiture, the bail agent may attempt to locate and deliver the alien to DHS, which is obliged to accept delivery and release the bail agent from any liability on the bond.

#### **SEC. 214—RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.**

- Prohibits DHS from releasing an alien in removal proceedings from detention on his own recognizance unless an immigration judge has expressly found that the alien is not a flight risk or a threat to the United States; and
- Sets the minimum bond on which an alien in removal proceedings may be released from detention at \$10,000.

## **SEC. 215—DETENTION OF ALIENS DELIVERED BY BONDSMEN.**

- Clarifies that DHS must take custody of an alien subject to a final order of removal who is produced by a bondsman within the prescribed time period, and DHS must release the bondsman from liability on the bond.

## **SEC. 216—INDEPENDENT VERIFICATION OF BIRTH RECORDS PROVIDED IN SUPPORT OF APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.**

- Requires the Social Security Administration to verify the validity of any birth certificate produced by an applicant for a social security account number, other than for purposes of enumeration at birth.
- Applies the new requirement to applications filed more than 180 days after the date of enactment of this Act.

## **SEC. 217—BIRTH CERTIFICATES.**

- Requires states and localities to meet certain minimum standards in issuing birth certificates; holds states responsible for compliance by localities.
- Prohibits federal agencies from accepting for any official purpose a birth certificate issued by a state, beginning three years after the date of enactment, unless DHS has determined that the state is meeting the following minimum standards:

Document requirements:

The use of safety paper;

The seal of the issuing custodian of record; and

Other features determined necessary by DHS to prevent tampering, counterfeiting, and duplicating for fraudulent use, except that DHS may not require a single design for all birth certificates.

Issuance requirements:

A state must require and verify the following information from the requestor prior to issuing an authenticated copy of a birth certificate:

The name of the registrant;

The date and location of the birth;

The mother's maiden name; and

Substantial proof of the requestor's identity; proof must be verified.

If the requestor is not the person named on the birth certificate, a state must require the presentation of legal authorization to request the birth certificate before issuance.

Within one year after enactment, DHS, in consultation with HHS and the states, must establish minimum standards for the issuance of a birth certificate to specific family members, their authorized representatives, and others with a legitimate need for it.

A state must employ third party verification, or equivalent verification, of the identity of the requestor if the request is made electronically, by mail, or by phone or fax.

Procedural requirements:

Establish and ensure minimum building security standards for state and local vital records offices;

Restrict public access to birth certificates and information gathered in the issuance process to ensure that only entities with which the state has a binding privacy protection agreement have access;

Require all persons with access to vital records to submit to appropriate security clearance;

Develop programs to train appropriate employees to detect fraudulent documents;

Establish a central database for interoperative data exchange with other states and with Federal agencies, subject to privacy restrictions and confirmation of the authority and identity of the requestor;

Ensure that birth and death records are matched effectively and efficiently, and that all electronic birth records and paper birth certificates of decedents are marked "deceased."

- DHS, in consultation with HHS and the Commissioner of Social Security, must work with the states to establish a common data set and data exchange protocol for electronic birth and death registration systems; coordinate requirements for such systems to align with a national model; ensure that fraud prevention is built into the registration systems in the collection of vital event data, the issuance of birth certificates, and the exchange of data among government agencies; ensure that the electronic systems for issuing birth certificates employ a common format of the certified copy to facilitate confirmation of validity; and establish uniform field requirements for state birth registries.

Within one year of enactment, establish a process with the Defense Department for the sharing of data regarding the deaths of U.S. military personnel and the birth and deaths of their dependents;

Within one year of enactment, establish a process with the State Department to improve registration, notification, and the sharing of data regarding births and deaths of U.S. citizens abroad;

- Within three years of establishment of databases provided for under this section, require states to record and retain electronic records of identification information collected from requestors who are not the registrants; and
- Within six months of enactment, submit to Congress a report on the need for Federal laws to address penalties for fraud and misuse of vital records and whether violations are sufficiently enforced.
- Requires DHS to lead the implementation of electronic verification of births and deaths; directs DHS to issue regulations within five years of enactment to establish a means by which authorized government agency employees can query the records of all participating jurisdictions to verify the contents of paper birth certificates. The regulations shall ensure that an electronic response to such a query will indicate a

matching record and whether the registrant is deceased

- Authorizes DHS to award grants to states in fiscal years 2006 through 2009 to assist them in conforming to the minimum standards established in this Chapter.

#### **SEC. 218—MAXIMUM PERIOD OF VALIDITY FOR STATE LICENSES AND IDENTIFICATION DOCUMENTS.**

- Reduces the maximum period of validity of a driver's license from eight years under the REAL ID Act to five years.

#### **SEC. 219—ESTABLISHMENT OF IMMIGRATION AND CUSTOMS FIELD OFFICE IN TULSA, OKLAHOMA.**

- Requires DHS, subject to the availability of appropriated funds, to establish a U.S. Immigration and Customs Enforcement Office of Investigations field office in Tulsa, Oklahoma not later than 180 days after the date of the enactment of this Act.

### **Subtitle B—Reversing Unlawful Migration**

#### ***IN GENERAL:***

- 4 *Institutes measures designed to make it difficult for illegal aliens to live, work and remain in the United States illegally. This subtitle is based on a theory of attrition which says that illegal aliens who are unable to find work, who face a high risk of apprehension, and who are unable to profit from their presence in the United States will have no choice but to return to their home countries. Since it is unlikely that the United States will have the will or devote the resources to deport 11 million illegal aliens, it is vital that all incentives and rewards are removed and deterrents are strengthened.*

#### **SEC. 221—MANDATORY EMPLOYMENT AUTHORIZATION VERIFICATION.**

- Renames the current Basic Pilot program the “Employment Authorization Status Instant Check” or EASI Check system.
- Makes use of the program mandatory for all employers, but phases them in over three years, beginning with federal agencies, and the industries where illegal aliens are most concentrated; requires all employers to verify current employees, in addition to new hires, by no later than the fourth year after enactment; permits employers to begin using the system before use is required under the phase in process; requires employers to terminate employees for whom a final nonconformation is received.
- Establishes good faith use of the EASI Check system as prima facie evidence that an employer is not liable for hiring illegal aliens; establishes failure to use the EASI Check system as creating a rebuttable presumption that the employer has violated the law.

#### **SEC. 222—EMPLOYER SANCTIONS.**

- Increases significantly the fines to which employers are subject for knowingly hiring illegal aliens; makes violators ineligible to petition for H nonimmigrant workers; and

subjects employers who engage in a pattern or practice of violations to imprisonment for not less than one year and possible fines of not more than \$25,000.

**SEC. 223—LIMITED DURATION SOCIAL SECURITY ACCOUNT NUMBERS FOR NONIMMIGRANTS.**

- Requires the Social Security Administration to issue temporary social security account numbers to nonimmigrants; the temporary social security cards must bear on their face an expiration date that matches the expiration date of the alien's permission to be employed in the United States; upon expiration of the temporary account numbers, the EASI Check system shall reject such account numbers in the event that an individual should attempt to use it to prove work authorization.

**SEC. 224—MANDATORY NOTIFICATION OF SOCIAL SECURITY ACCOUNT NUMBER MISMATCHES AND MULTIPLE USES.**

- Requires the Social Security Administration to notify annually each U.S. employer with one or more employees whose social security account number does not match the employee's name or date of birth in SSA's records; requires SSA to instruct employers to notify the employees that they have 10 business days to correct the problem with SSA, or the employer will be required to terminate them; requires SSA to notify employers that they may not terminate an employee before the end of the 10<sup>th</sup> business day.
- Requires SSA to notify any individual on whose behalf more than one employer is reporting concurrent earnings to the same social security account number; directs SSA to instruct such individuals to contact SSA to present proof that the individual is the proper owner of the account number and, if applicable, to present documentation establishing that such individual is employed by both or all employers reporting earnings to the account number.

**SEC. 225—NO SOCIAL SECURITY CREDIT FOR WORK PERFORMED WHILE UNLAWFULLY PRESENT.**

- Amends the Social Security Act to require that, for the purpose of qualifying for social security benefits, a worker may be credited for work performed only if the worker was both lawfully present in the United States and authorized to work.

**SEC. 226—REDUCING INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER ABUSE.**

- Requires the Internal Revenue Service to modify the format of the Individual Taxpayer Identification Number so that it no longer resembles a social security account number.
- Requires the IRS to verify that an applicant for any identifying number is lawfully present in the United States.
- Requires the IRS to provide DHS with a list of the name and mailing address of each person assigned an ITIN.

## **SEC. 227—LIMITED ELIGIBILITY FOR TAX CREDITS AND REFUNDS.**

- Makes ineligible for tax credits, including the earned income tax credit, and refunds any individual who submits an income tax return that relies on an ITIN in lieu of a social security account number.

## **SEC. 228—PENALTY FOR FAILURE TO FILE CORRECT INFORMATION RETURNS.**

- Requires the IRS to assess the maximum penalty available on employers designated by SSA as the “most egregious non-compliant employers,” who are so designated as a result of their continued submission of incorrect information returns, a violation of the tax code that IRS has consistently ignored.
- Requires IRS to develop a standard procedure for assessing and collecting penalties from filers of incorrect information returns.
- Requires IRS to report to Congress within six months of enactment on the number of filers who submit incorrect information returns, the number of incorrect returns submitted by such filers, the total amount of penalties assessed and collected, and the number of waivers IRS granted to filers of incorrect information returns.

## **SEC. 229—ADJUSTMENT OF STATUS.**

- Restricts adjustment of status (i.e., a change from a nonimmigrant status to legal permanent residence from within the United States) to exceptional cases like asylees, refugees, and victims of domestic abuse. All other nonimmigrants seeking green cards would have to apply for them and be processed outside the United States.

## **SEC. 230—REVOCAION OF TEMPORARY STATUS.**

- Requires DHS to revoke asylum status from any alien who voluntarily returns to the country from which he fled.
- Requires DHS to revoke temporary protected status from any alien who voluntarily leaves the protection of the United States.

## **SEC. 231—REPEAL OF AMNESTY PROVISION.**

- Repeals the rolling amnesty provision (Section 249 of the INA) that permits aliens who have been in the United States illegally since 1972 to adjust to lawful permanent residence.

## **SEC. 232—PENALTIES FOR VIOLATIONS OF FEDERAL IMMIGRATION LAWS BY STATES AND LOCALITIES.**

- Prohibits states from granting in-state tuition rates to illegal aliens on the basis of graduation from a U.S. high school (in addition to residence, as current law provides) unless they offer the same rate to all U.S. citizens and nationals of the United States; Requires the AG to report to Congress annually which States are in violation of this section; and

Prohibits federal agencies from providing any grants, reimbursement, or other funding to any post-secondary institution that is in violation of this section.

- Prohibits the AG from making funds available under the State Criminal Alien Assistance Program (SCAAP) to any state or locality that has a formal or informal policy of non-cooperation in violation of 8 U.S.C. 1373.

**SEC. 233—CLARIFICATION OF INHERENT AUTHORITY OF STATE AND LOCAL LAW ENFORCEMENT.**

- Affirms the inherent authority of State and local law enforcement officers to enforce the immigration laws of the United States.

**SEC. 234—USICE RESPONSE TO REQUESTS FOR ASSISTANCE FROM STATE AND LOCAL LAW ENFORCEMENT.**

- Requires federal immigration authorities to respond to requests for assistance from state and local police officers who encounter and detain illegal and/or criminal aliens; federal authorities must either take custody of the detained aliens or reimburse the state or locality for the costs of detaining them until they can be transferred to federal custody.

**SEC. 235—BASIC IMMIGRATION ENFORCEMENT TRAINING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT OFFICERS.**

- Requires Cameron University (located in Lawton, Oklahoma) to establish and implement a “demonstration project” to assess the feasibility of establishing a nationwide “e-learning training course,” covering basic immigration law enforcement issues. State, local, and tribal law enforcement officers will use the “e-learning training course” to improve and enhance their ability, during their routine course of duties, to assist Federal immigration officers in the enforcement of Federal immigration laws.
- Requires the Project Director charged with establishing and implementing the “demonstration project” to develop an “on-line, e-learning website” to provide State, local, and tribal law enforcement officers access to the “e-learning training course.” The “on-line, e-learning website” shall be capable of enrolling officers in the “e-learning training course,” recording officers’ performance on the course, and tracking officers’ proficiency in learning the course’s concepts; ensure a high level of security; and encrypt personal and sensitive information.
- Provides for the development of the “e-learning training course,” which shall entail no more than four hours of training, be accessible through the “on-line, e-learning website, cover both the basic principles and practices of immigration law and the policies that relate to the enforcement of immigration laws, incorporate content similar to that covered in the four-hour training course the Immigration and Naturalization Service provided to all Alabama State Troopers in 2003 (in addition to, and separate from, the training given pursuant to the State’s Section 287(g) agreement).
- Requires the Project Director to assess the feasibility of expanding to State, local, and tribal law enforcement agencies throughout the nation the “on-line, e-learning

website,” including the “e-learning training course.”

- Requires the “demonstration project” to include enrollee-officers in the “e-learning training course” from Alabama, Colorado, Florida, Oklahoma, and Texas, and from at least one, but not more than three, other additional States. Requires 100,000 officers, apportioned according to the State populations of the participating States, to complete the “e-learning training course” provided under the “demonstration project.” These officers shall be equally apportioned between State, county, and municipal law enforcement agency officers; include, when practicable, a significant subset of tribal law enforcement officers; and include officers from urban, rural, and highly rural areas. These officers shall be granted continuous access, throughout the demonstration project’s one-year period, to on-line course material and to other training and reference resources accessible through the “on-line, e-learning website.” Makes officers ineligible to participate in the “demonstration project” if they are employed by a State, local, or tribal law enforcement agency that has in effect a statute, policy, or practice that prohibits its law enforcement officers from cooperating with federal immigration enforcement agents (or if the enforcement agency is otherwise in contravention of section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(a)).
- Requires the Project Director to transmit, within the demonstration project’s one-year period, to the Committees on the Judiciary and on Homeland Security of the Senate and the House of Representatives a report about the “e-learning training” course completed by State, local, and tribal law enforcement officers through the “demonstration project.” This report shall specify an estimate of the cost savings realized by offering training through the “e-learning training course” as opposed to offering similar training through the residential classroom method; an estimate of the difference between the 100,000 law enforcement officers who received training through the “e-learning training course” and the number of law enforcement officers who could have received training through the residential classroom method in the same one-year period; the effectiveness of the “e-learning training course” with respect to student-officer performance; the convenience accorded to student-officers with respect to their ability to access the “e-learning training course” at their own convenience and to return to the “on-line, e-learning website” for refresher training and reference; and the ability of the “on-line, e-learning website” to safeguard the student officers’ private and personal information while providing supervisors with appropriate information about student performance and course completion.
- Instructs DHS, following completion of the “demonstration project,” to continue to make available the “e-learning website” and the “e-learning training course,” enroll in the “e-learning training course” 100,000 new State, local, and tribal law enforcement officers annually, and consult with Congress regarding the addition, substitution, or removal of participating States. Makes officers ineligible to participate in the program’s expansion if they are employed by a State, local, or tribal law enforcement agency that has in effect a statute, policy, or practice that prohibits its law enforcement officers from cooperating with federal immigration enforcement agents (or if the enforcement agency is otherwise in contravention of section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(a)).
- Authorizes \$3,000,000 in FY 2006 to carry out this section. Authorizes necessary funds in each subsequent fiscal year to be appropriated to operate, promote, and expand this program.

# **Title III—Revision of Federal Reimbursement of Emergency Health Care Services Furnished to Illegal Aliens**

## **SEC. 301—REVISION OF FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH CARE SERVICES FURNISHED TO ILLEGAL ALIENS.**

- Appropriates, beginning in FY 2006, funds necessary to fully reimburse providers of federally mandated emergency medical treatment of illegal aliens, but only if the individual provider collects and reports to DHS, within 72 hours of the time that the provider discharges the alien, all citizenship information and other non-clinical information concerning each illegal alien treated.