

**Enhanced Border Security and Visa Entry Reform Act of 2002**  
**Pub. L. No. 107-173 (H.R. 3525)**  
**Section-by-Section Explanation**

**Section 1. Short Title and Table of Contents.** Section 1 sets forth the name of H.R. 3525 and contains a table of contents. The Act may be cited as the “Enhanced Border Security and Visa Entry Reform Act of 2002.”

**Section 2. Definitions.** Section 2 of H.R. 3525 provides definitions for terminology used in the bill.

**TITLE I-FUNDING**

**Section 101. Authorizes Appropriations for Hiring and Training Government Personnel.**

Section 101(a) provides for additional staff and training to increase security on both the northern and southern borders. Specifically, this section authorizes the Attorney General to hire, at minimum, an additional 200 INS inspectors and associated support staff, and 200 INS investigative personnel and associated staff, in each of fiscal years (FYs) 2003 through 2006, to be employed at either the northern or southern border. These new positions are over and above the threefold increase in staffing provided for in the USA PATRIOT Act (Pub. L. No. 107-56), signed by President Bush on October 26, 2001.

To help the INS retain staffing along the border, section 101(b) of the bill boosts the annual rate of basic pay for border patrol agents and INS inspectors who have completed at least one year of service with the agency. The bill also raises the pay rates for inspections assistants and associated support staff.

Section 101(c) of H.R. 3525 provides funds for the ongoing training of INS personnel along the border, as well as funds for the continued cross-training of border personnel from other agencies. This section also authorizes funding to fully train immigration officers to use the appropriate lookout databases and to monitor passenger traffic patterns. Finally, section 101(c) expands the Carrier Consultant Program of INA § 235A(b). [**Note: H.R. 3525 incorrectly cites to INA § 235(b)**]. The Carrier Consultant Program assigns additional immigration officers to assist air carriers in the detection of fraud at those foreign airports from which a significant number of aliens arriving at U.S. ports of entry without valid documentation departed, but where no preinspection station currently exists.

Section 101(d) authorizes funding for, and directs the Secretary of State to, implement enhanced security measures for the review of visa applicants, to adequately staff the

facilities and programs associated with such review, and to provide ongoing training for consular officers and diplomatic security agents to carry out this mandate.

**Section 102. Authorizes Appropriations for Improvements in Technology and Infrastructure.**

Section 102 authorizes an additional \$150 million for the INS to improve and expand the use of technology for the purpose of enhancing border security, and to facilitate the flow of people and commerce at ports of entry by improving and expanding programs for preenrollment and preclearance. In addition, section 102 allows federal agencies involved in border security to waive all or part of the enrollment fees for technology-based screening programs, as an incentive for U.S. citizens and aliens to participate voluntarily in such programs. The legislation permits those agencies waiving this type of fee to increase fees for other services so as to recover from other users the amounts waived. In addition, the bill authorizes the Attorney General to increase land border fees to offset technology costs. Finally, section 102 authorizes funding for the INS and the State Department to improve and expand border infrastructure.

**Section 103. Machine Readable Visas.** Section 103 of H.R. 3525 sets the machine-readable visa (MRV) fee charged by the State Department at the higher of \$65 or the cost of the MRV service, to be determined by the Secretary of State after conducting a study on such costs. This section also permits the Department to levy a \$10 surcharge when an MRV is placed in a non-machine-readable passport, and allows the agency to continue to offset the costs of providing consular services with the MRV fees it collects.

**TITLE II-INTERAGENCY INFORMATION SHARING**

**Section 201. Access to and Coordination of Law Enforcement and Other Information**

Section 201 provides that, within 120 days of H.R. 3525's enactment, the President must submit a report to the appropriate congressional committees identifying the information that the State Department and the INS need from the federal law enforcement and intelligence communities to screen visa applicants and identify individuals who are inadmissible or deportable. This section repeals § 414(d) of the USA PATRIOT Act, which contains a similar reporting requirement

Upon submission of the report, H.R. 3525 requires the President, in consultation with Congress and within one year of the date of enactment of the USA PATRIOT Act, to develop and implement an information-sharing plan based upon the findings of the report. The President's plan must contain certain protections against the misuse of information shared among the agencies, including limitations on the redissemination of the information, security and privacy protections, a mechanism for the removal and destruction of obsolete or erroneous information, and procedures for protecting the sources and methods used to gather intelligence information. The bill provides for criminal penalties for the misuse of the information received.

Section 201 further provides that until the plan required under this section is implemented, federal law enforcement agencies and the intelligence community must share information with the State Department and INS relevant to the admissibility and deportability of aliens, “to the maximum extent practicable.”

Finally, § 201 accelerates the deadlines contained in § 403(c) of the USA PATRIOT Act for the development of a “technology standard” to confirm the identity of visa applicants, and for the delivery to Congress of a corresponding report on this technology standard.

### **Section 202. Interoperable Law Enforcement and Intelligence Data System with Name-Matching Capacity and Training**

This section requires the President, upon the date of implementation of the plan required under § 201 above, to develop and implement an interoperable electronic data system to provide current and immediate access to information contained in the databases of federal law enforcement agencies and the intelligence community that is relevant to visa issuance determinations and determinations of an alien’s admissibility or deportability. As part of this effort, § 202 requires the INS to fully integrate all of its databases, the final product of which will be an interoperable component of the data system mandated by this section. The new data system must be readily accessible to consular officers, federal officials responsible for determining an alien’s admissibility or deportability, and federal law enforcement and intelligence officers responsible for the investigation or identification of aliens.

Section 202 further requires that the new interoperable electronic data system include sophisticated, linguistically sensitive name-matching algorithms that could account for transliterations of the same name. The new algorithms are required for at least four priority languages. This section also requires the provision of adequate user support and training for the new system.

Finally, § 202 authorizes funding for these data improvements and requires various reports to Congress on the progress of implementing the system.

### **Section 203. Commission on Interoperable Data Sharing**

Section 203 requires the establishment, within one year of enactment of the USA PATRIOT Act, a nine-member Commission on Interoperable Data Sharing, with the purpose of monitoring the protections against the misuse of information in the system, providing oversight of the data system, and reporting to Congress annually on its findings and recommendations.

### **Section 204. Personnel Management Authorities for Positions Involved in the Development and Implementation of the Interoperable Electronic Data System ("Chimera System")**

Section 204 provides that the Attorney General may hire and fix the compensation of necessary scientific, technical, engineering, and other analytical personnel for the purpose of the development and implementation of the interoperable electronic data system described in § 202 (also known as the "Chimera system"). Section 204 also requires the Attorney General, within 90 days of the legislation's enactment, to submit an operating plan to various congressional committees describing his intended use of the authority provided for under this section and identifying any provisions of Title 5 of the U.S. Code being waived for the purposes of the development and implementation of the Chimera system.

### **TITLE III-VISA ISSUANCE**

#### **Section 301. Electronic Provision of Visa Files**

This section requires consular officers issuing a visa to an alien to transmit an electronic version of the alien's visa file to the INS so that the file is available to immigration inspectors at U.S. ports of entry before the alien's arrival.

#### **Section 302. Implementation of an Integrated Entry and Exit Data System**

Section 302 of H.R. 3525 addresses the INS Data Management and Improvement Act of 2000 (Pub. L. No. 106-215), which provided for the gradual phasing-in of the integrated entry and exit data system first mandated by § 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Pub. L. No. 104-208).

Section 302 directs the Attorney General and the Secretary of State, in developing the entry/exit data system, to: implement, fund, and use a technology standard pursuant to that described in § 403(c) of the USA PATRIOT Act at all U.S. ports of entry and consular posts; establish a database that compiles the arrival/departure data from all travel, entry and identity documents possessed by aliens; and make all security databases involved in determining the admissibility of aliens interoperable. In implementing this system, the INS and the State Department must use technology that facilitates lawful cross-border movement, and they must consider implementing the Perimeter National Security Program described in § 401 of this bill.

#### **Section 303. Machine-Readable, Tamper-Resistant Entry and Exit Documents**

This section requires the Attorney General and the Secretary of State to begin issuing machine-readable, tamper-resistant, travel documents with biometric identifiers no later than October 26, 2004. In addition, also by October 26, 2004, the government of each country participating in the Visa Waiver Program (VWP) must certify that it has a program to issue its nationals the same type of documents, and all individuals entering the U.S. under the VWP beginning on that date must present a passport meeting the above-described requirements unless the document was issued prior to that date. This section also requires the installation of biometric readers and scanners at all ports of entry by October 26, 2004.

Finally, § 303 requires, within 180 days of enactment, that the Attorney General, the Secretary of State, and the National Institute of Standards and Technology (NIST) submit to Congress a comprehensive report assessing the actions that will be necessary to achieve the above technology requirements. This section also provides for the necessary funding to carry out its requirements.

#### **Section 304. Terrorist Lookout Committees**

Section 304 requires each embassy or consulate that issues visas to establish a terrorist lookout committee. The purpose of these committees will be to use the resources of the consulate to identify potential terrorists and develop information on those individuals. In addition, the committees will be responsible for regularly notifying the appropriate person in the consulate of suspected terrorists and ensuring that the names of those suspects are included in the appropriate lookout databases. Section 304 also provides for the composition of such committees and the frequency of their meetings, sets forth a reporting requirement, and provides for appropriation of the necessary funding.

#### **Section 305. Improved Training for Consular Officers**

Section 305 requires consular officers to receive specific training in identifying inadmissible aliens, in interagency and international intelligence sharing regarding terrorism, and in cultural sensitivity toward visa applicants. This section also requires that information from federal law enforcement agencies and the intelligence community be shared with the consular officers who screen visa applicants. Funds are authorized as necessary to implement these requirements.

#### **Section 306. Restriction on Issuance of Visas to Nonimmigrants from Countries that are State Sponsors of International Terrorism**

Section 306 proscribes the issuance of a nonimmigrant visa to an alien from a country designated as a state-sponsor of terrorism, *unless* the Secretary of State, after consulting with the Attorney General, determines that the alien poses no safety or national security threat to the U.S. This section defines the term “state sponsor of terrorism” to mean “any country the government of which has been determined by the Secretary of State under any of the laws specified in paragraph (2) to have repeatedly provided support for acts of international terrorism.” Such laws include the Export Administration Act of 1979, the Arms Export Control Act, and the Foreign Assistance Act of 1961.

#### **Section 307. Designation of Program Countries Under the Visa Waiver Program**

Section 307 provides that before a country may participate (or continue to participate) in the Visa Waiver Program, the government of the country must certify that it reports to the U.S. government on a timely basis the theft of blank passports. If the Attorney General and the Secretary of State jointly determine that the program country is not reporting the theft of blank passports, as required, the Attorney General must terminate the designation

of that country as a program country. Section 307 also shortens from five years to two the period of time between the required periodic reviews of a program country's compliance with the requirements for continued participation in the Visa Waiver Program. In addition, whenever an alien from a Visa Waiver country seeks to enter the U.S., the INS must check the appropriate lookout databases to make sure that the alien does not appear in any of them.

### **Section 308. Tracking System for Stolen Passports**

Section 308 requires the Attorney General, in consultation with the Secretary of State, to enter stolen passport numbers into the interoperable electronic data system, mandated under § 202 above, within 72 hours of notification of loss or theft. Until the new data system is implemented, the Attorney General must enter that information into the system currently used to determine the admissibility or deportability of aliens.

### **Section 309. Identification documents for Certain Newly Admitted Aliens**

Section 309 provides that refugees, upon admission to the U.S., and asylees, upon a grant of asylum, must be provided with an employment authorization document that bears their fingerprint and photograph. This process must be implemented within 180 days of the bill's enactment.

## **TITLE IV-INSPECTION AND ADMISSION OF ALIENS**

### **Section 401. Study of the feasibility of a North American National Security Program**

Section 401 requires the President, within one year of the bill's enactment, to submit to Congress a report discussing the feasibility of establishing a North American National Security Program to enhance the mutual security and safety of the U.S., Canada, and Mexico. The study serving as the basis for the report must consider the feasibility of establishing a preclearance program established by the INS and the DOS to determine admissibility, and of expanding preinspection facilities at foreign airports.

### **Section 402. Passenger Manifests**

Section 402 amends INA § 231 to require that all commercial flights and vessels coming to the U.S. from any place outside the country must provide to an immigration officer manifest information about each passenger, crew member, and other occupant prior to arrival in the U.S. In addition, each vessel or aircraft departing from the U.S. for any destination outside the U.S., must provide manifest information before departure. The information that must be provided for each individual listed on the manifest includes: complete name, date of birth, citizenship, sex, passport number and country of issuance, country of residence, U.S. visa number, date, and place of issuance, when applicable, alien registration number, when applicable, U.S. address while in the U.S., and "such other information the Attorney General...determines as being necessary for the

identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.”

By January 1, 2003, the manifests must be transmitted electronically. Section 402 further requires the President to conduct a study, within two years of the bill’s enactment, regarding the feasibility of extending the new manifest requirements to land carriers transporting persons to the U.S. Finally, this section raises existing penalties against noncomplying carriers raised from \$300 to \$1000.

### **Section 403. Time Period for Inspections**

This section repeals the requirement at INA § 286(g) that the INS must complete its inspection of arriving passengers within 45 minutes of their arrival at a U.S. port of entry. It further requires the INS to staff ports of entry at levels adequate to meet traffic flow and inspection time objectives without compromising the safety and security of the U.S.

### **Section 404. Joint United States-Canada Projects for Alternative Inspections Services**

Section 404 provides that U.S. border inspections agencies, acting jointly and under an agreement of cooperation with the government of Canada, may conduct joint U.S.-Canada inspections projects on the border between the two countries. Such projects may provide alternative inspections services and must attempt to harmonize the inspections criteria applied by the two countries. This section also requires the submission of an annual report to Congress on the joint inspections projects conducted under this section.

## **TITLE V-FOREIGN STUDENTS AND EXCHANGE VISITORS**

### **Section 501. Foreign Student Monitoring Program**

As background, § 416 of the USA PATRIOT Act required the Attorney General, by January 1, 2003, to implement fully the foreign student visa monitoring program established by § 641 of the IIRIRA, and to expand the program to include other approved educational institutions such as flight schools, language training schools, and vocational schools.

Section 501 of H.R. 3525 amends § 641 of the IIRIRA to heighten and strengthen the “monitoring” aspect of the IIRIRA’s student information collection requirements and also mandates the collection of additional data. Specifically, § 501 requires the Attorney General, in consultation with the Secretary of State, to establish an electronic means to monitor and verify the various steps involved in the admittance to the U.S. of foreign students, such as: the issuance of documentation of acceptance of a foreign student by an educational institution or exchange visitor program; the transmittal of such documentation to the Department of State’s Bureau of Consular Affairs; visa issuance;

the student's admission to the U.S.; the registration and enrollment of the student in his or her institution or program; and any other relevant act such as changing schools or termination of studies or program participation. Section 501 also requires schools to notify the INS if a student has not reported for school more than 30 days after the deadline for registering for classes.

Additional data that must be collected under H.R. 3525 includes: the student's date of entry, port of entry, date of school enrollment, date the student leaves school (e.g., graduates, quits), and the degree program or field of study. Student visa applicants must also provide additional information to the consular officer including their address, names and addresses of relatives, names of contacts in the country of residence who can verify information about the student visa applicant and previous work history, if any, including the names and addresses of employers.

Section 501 also establishes an interim system to be used until the full IIRIRA program, as amended, is implemented. Under this temporary system, the State Department is prohibited from issuing student visas unless the agency has received electronic evidence of acceptance documentation from an approved academic or other institution and the consular officer has adequately reviewed the applicant's visa record. Once a visa is issued, the Secretary of State must transmit to the INS notice that the visa has been issued, the INS must notify the academic institution that the alien has been admitted to the U.S., and the institution must notify the INS not later than 30 days after the class registration deadline should the alien fail to enroll. In addition, within 30 days of enactment, the INS must provide the State Department with a list of approved institutions authorized to receive nonimmigrants.

#### **Section 502. Review of Institutions and Other Entities Authorized to Enroll or Sponsor Certain Nonimmigrants**

Section 502 requires the INS to conduct periodic reviews of educational institutions certified to receive nonimmigrants to determine their compliance with the reporting requirements under § 641 of the IIRIRA and under the INA. The Secretary of State is required to conduct similar reviews of entities designated to sponsor exchange visitor program participants. If an institution or program fails to comply materially with the reporting requirements, its authorization to accept foreign students will be suspended for one year or revoked.

### **TITLE VI-MISCELLANEOUS PROVISIONS**

#### **Section 601. Extension of Deadline for Improvement in Border-Crossing Identification Cards**

This section extends by one year the deadline for border-crossers to acquire machine-readable border crossing cards from the State Department.

#### **Section 602. General Accounting Office Study**



Section 602 requires the Comptroller General to conduct a study to determine the feasibility of requiring every nonimmigrant alien in the U.S. to provide the INS, on an annual basis, with a current address, and where applicable, the name and address of an employer. The Comptroller General must report to Congress within one year of the bill's enactment on the results of the study as well as recommendations.

### **Section 603. International Cooperation**

Section 603 requires the Secretary of State and the INS Commissioner, in consultation with the Director of the Office of Homeland Security, to conduct a study on the procedures necessary for encouraging or requiring countries participating in the Visa Waiver Program to develop an intergovernmental network of interoperable electronic data systems. This section provides details on what that network should entail and directs the Secretary of State and the Attorney General to submit a report to the appropriate congressional committees within one year of the bill's enactment.

### **Section 604. Statutory Construction**

This section precludes this bill from changing or adding to the documentary requirements of the North American Free Trade Agreement (NAFTA).

### **Section 605. Annual Report on Aliens Who Fail to Appear after Release on Own Recognizance**

Section 605 requires the Attorney General to report annually on the number of aliens who fail to appear for a removal hearing after being released on their own recognizance.

### **Section 606. Retention of Nonimmigrant Visa Applications by the Department of State**

This section requires the Department of State to retain nonimmigrant visa applications, whether approved or denied, for a period of seven years and in a form that will be admissible in court and in administrative proceedings.