

## **A SUMMARY OF THE Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003 (HR 2671)**

### **§ 101 Reaffirms inherent authority to enforce immigration law**

- Declares that CLEAR reaffirms state and local law enforcement officers' existing authority to enforce immigration laws and to investigate, apprehend, detain, transport and remove noncitizens from the United States.

### **§ 102 Requires states and local jurisdictions to enact laws to enforce immigration law**

- Requires state and local jurisdictions to enact statutes, within two years of the enactment of CLEAR, that expressly authorize law enforcement officers to enforce federal immigration laws during the course of their duties. Jurisdictions that fail to enact such statutes may not be federally reimbursed for incarcerating noncitizens and the reimbursement funds that would have gone to them must be reallocated to jurisdictions that are in compliance with the CLEAR Act.

### **§ 103 Criminalizes unlawful presence and greatly increases penalties for immigration violations**

- Adds a new section requiring noncitizens who are unlawfully present in the United States to be fined and imprisoned for a year and to be subject to asset forfeiture.
- Increases the penalties for illegal entry from 6 months imprisonment to one year.
- Increases civil penalties for illegal entry from:
  - A current range of \$50 to \$250 to a new penalty of \$500 for the first violation
  - A current range of \$100 to 500 to a new penalty of \$2,500 for the second violation
  - \$5,000 for a third violation
  - \$10,000 for more than three violations
- Defines immigration violators as noncitizens who
  - Are apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers;
  - Enter without inspection;
  - Fail to depart the United States within 30 days after the expiration of nonimmigrant visa or voluntary departure, and are not otherwise in lawful status; or
  - Fail to depart within 30 days of a final order of removal and are not otherwise in lawful status.
- Establishes that persons who fail to comply with a final order of removal within thirty days are subject to civil penalties that are five times the amount of the new penalties described above.
- Authorizes an increase in the civil penalties for willful failure to depart under §274D from the current penalty of not more than \$500 per day by striking “not more than.”

- Requires the asset forfeiture of any noncitizen who fails to depart for longer than one year.
- Allocates half of the funds collected through the imposition of penalties and asset forfeitures to the state and local law enforcement agencies that apprehend noncitizens.
- Lowers the maximum period for which voluntary departure can be granted in removal proceedings from 120 days to 30 days.

**§ 104 Requires insertion of immigration data into the National Crime Information Center (NCIC)**

- Authorizes the insertion of immigration data into the NCIC database and, within 180 days of enactment, requires the Department of Homeland Security (DHS) to transmit data on immigration violators to the NCIC.

**§ 105 Imposes onerous reporting requirements on state and local jurisdictions**

- Requires all state and local law enforcement agencies to collect the following information on all immigration violators, and to report this information to the Justice Dept. and Homeland Security Dept. within 10 days of encountering the violator:
  - Name
  - Address or place of residence
  - Physical description
  - Date, time and location of agent's encounter with immigration violator and the reason for stop, detention, apprehension or arrest
  - Driver's license number and its state of issuance, if applicable
  - Identification number, any designation number on the document and the issuing entity, if applicable
  - The license plate number, make and model of any automobile registered or driven by the violator, if applicable
  - A photo, if readily obtainable
  - Fingerprints, if readily obtainable
- Establishes a procedure for identifying and notifying state and local entities that fail to comply with reporting requirements. If the attorney general finds that a state or local jurisdiction fails to comply with the reporting requirements or engages in a pattern or practice of incomplete reporting, the attorney general must notify the jurisdiction and detail its deficiencies. A jurisdiction must respond to the attorney general, address each deficiency and provide plan for correcting them.

**§ 106 Authorizes financial assistance to state and local police agencies that enforce immigration law**

- Authorizes a billion dollars each fiscal year to assist state and local police agencies in obtaining equipment, technology and other administrative support to assist them in housing and processing noncitizens held for immigration violations. Law enforcement agencies are eligible for funds if they institute a policy and practice to enforce federal immigration laws.

**§ 107 Assigns custody obligations to federal, state and local enforcement agencies**

- Adds a new section requiring DHS and DOJ, when requested, to enter into contract agreements with state and local entities concerning the incarceration of “illegal aliens.” Under such contracts, the AG or DHS secretary must take noncitizens into federal custody or designate a federal, state or local facility to hold them.
- Defines “illegal alien” for purposes of this section as persons who
  - Entered the United States without inspection or at any time or place other than as designated by the attorney general or secretary;
  - Was admitted as a nonimmigrant and, at the time s/he was taken into custody by state or local law enforcement officers, failed to maintain such status or to comply with conditions of that status or
  - Failed to depart the United States under a final order of removal or voluntary departure.
- Requires the attorney general or secretary to ensure that noncitizens are incarcerated in facilities that provide an appropriate level of security, and to ensure the prompt apprehension of noncitizens who are held by state or local entities.
- Requires that one-third of the fees collected for immigrant and nonimmigrant visas and adjustment of status be deposited as offsetting receipts into a separate account entitled, “State and Local Immigration Law Enforcement Fee Account” in the U.S. Treasury, earmarked for state and local law enforcement.
- Allows the attorney general or secretary to increase the fees for applications for immigration benefits in order to carry out immigration enforcement.
- Within three years of enactment, requires a GAO audit of compensation to states and local entities for the incarceration of noncitizens under section INA 240D(a).

**§ 108 Establishes claims by states and localities against the federal government and authorizes increase in adjudication fees to pay fines levied against federal government**

- Allows states and local entities to file claims against federal agencies for failing to cooperate with them to enforce immigration laws.
- Establishes administrative law judges within the Justice Dept. to adjudicate claims by state and local entities against the federal government and subjects these adjudications to the Administration Procedure Act. Such claims may be appealed only to the attorney general or the secretary and would not be subject to judicial review.
- Upon the determination of a valid claim, allows judges to fine federal agencies \$1,000 for each instance of nonenforcement, upon determination of a valid claim. If the judge finds that the agency has engaged in a pattern or practice of non-enforcement or noncompliance with a state or local law enforcement agency, the agency must be fined \$10,000.
- Permits amounts deposited into the Immigration Examination Fee Account under INA section 286(m) to be made available to the attorney general or secretary of DHS for the payment of fines levied against a federal agency under this section.

- Requires fines levied against a federal agency to be paid to the state or local claimant no later than 90 days after the entry of final judgment.
- Authorizes the attorney general or the secretary to increase the amount of any of the adjudication fees under INA section 286(m) in order to ensure that funds sufficient to pay the fines are available.

**§ 109 Requires training of state and local law enforcement**

- Within 180 days of enactment, requires the attorney general or the secretary to establish a training manual for state and local law enforcement agencies to enforce immigration law. Such training must include information on transporting noncitizens across state lines and identifying fraudulent documents.
- Allows the attorney general to charge a fee for training but the fee may not be more than half the costs of actual training.
- Warns that training of state and local officers should not displace or adversely affect training of federal personnel.
- Requires the DOJ or DHS to provide the training through as many means as possible, including residential training at federal facilities, on-site training at state or local police agencies, on-line training courses by computer, teleconferencing, videotape or DVD.
- Clarifies that training may not be deemed a prerequisite for enforcement of immigration laws.

**§ 110 Provides broad immunity to law enforcement personnel and agencies**

- Renders federal state and local law enforcement agents immune from personal liability for enforcement of immigration law committed while on official duty; state or local law enforcement agents would also be immune from claims of money damages based on any incident arising out of enforcement of any immigration law, except for any violation of criminal law.

**§ 111 Requires detention facilities for immigration violators pending examination and decision on removal**

- Requires that noncitizens arrested for immigration violations be detained, pending examination. Such detention must take place in a state or local prison, jail, detention center or other comparable facility. Detention facilities are deemed adequate if
  - o The facility is suitably located;
  - o An arrangement for use of the facility can be made and
  - o The facility satisfies the standards for housing, care and security of persons held in custody of a United States Marshal

**§ 112 Requires states and local entities to participate in the Institutional Removal program (IRP)**

- Mandates that the DOJ and DHS continue to operate the Institutional Removal Program (IRP) that identifies removable noncitizens in federal and state correctional facilities, ensures that they are not released into the community and removes them from the United States after the completion of their sentences.

- Mandates that the IRP be extended to all states.
- Requires states that receive federal funds for the incarceration of criminal noncitizens to cooperate with the IRP and, as a condition for receiving such funds, expeditiously and systematically identify criminal noncitizens in its prison and jail populations and promptly convey such information to Federal IRP authorities.

**§ 113 Authorizes appropriations**

- Authorizes one billion dollars for fiscal years for state criminal alien assistance program (SCAAP) under INA 245(i)(5).
- Authorizes five hundred million for the detention and removal of noncitizens who are unlawfully present under the INA.

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