

107TH CONGRESS
2^D SESSION

H. R. 4108

To amend the Immigration and Nationality Act to improve the administrative structure for carrying out the immigration laws.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2002

Mr. KOLBE (for himself and Mr. FLAKE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to improve the administrative structure for carrying out the immigration laws.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Immigration and Naturalization Service Reorganization
6 Act of 2002”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Activities within Department of Justice.
- Sec. 3. Activities within Department of State.

Sec. 4. Activities within Department of Labor.

Sec. 5. Conforming provisions.

Sec. 6. Effective date; transition.

1 **SEC. 2. ACTIVITIES WITHIN DEPARTMENT OF JUSTICE.**

2 (a) ABOLITION OF INS.—The Immigration and Nat-
3 uralization Service and the office of Commissioner of Im-
4 migration and Naturalization are abolished.

5 (b) CONSOLIDATION OF BORDER PATROL, INSPEC-
6 TIONS, INVESTIGATIONS, AND REMOVAL AND RELATED
7 ENFORCEMENT FUNCTIONS WITHIN A BUREAU OF IMMI-
8 GRATION ENFORCEMENT.—Title I of the Immigration and
9 Nationality Act is amended—

10 (1) by inserting the following after the heading
11 to the title:

12 “CHAPTER 1—DEFINITIONS AND GENERAL
13 AUTHORITIES”; and

14 (2) by adding at the end the following new
15 chapter:

16 “CHAPTER 2—ADMINISTRATION OF IMMIGRATION
17 SYSTEM

18 “IMMIGRATION ENFORCEMENT THROUGH A BUREAU FOR
19 IMMIGRATION ENFORCEMENT IN DEPARTMENT OF
20 JUSTICE

21 “SEC. 111. (a) ESTABLISHMENT OF BUREAU.—
22 There is hereby established in the Department of Justice
23 the Bureau for Immigration Enforcement.

24 “(b) DIRECTOR.—

1 “(1) APPOINTMENT.—The head of such Bureau
2 shall be the Director for Immigration Enforcement,
3 who—

4 “(A) shall be appointed by the President,
5 by and with the advice and consent of the Sen-
6 ate; and

7 “(B) shall report directly to the Attorney
8 General.

9 “(2) COMPENSATION.—The Director shall be
10 paid at the rate of basic pay payable for level II of
11 the Executive Schedule.

12 “(c) FUNCTIONS.—

13 “(1) IN GENERAL.—The Bureau shall perform
14 functions under the immigration laws relating to the
15 following:

16 “(A) Prevention of illegal entry.

17 “(B) Inspection at ports of entry.

18 “(C) Apprehension and detention, includ-
19 ing programs of parole or supervised release.

20 “(D) Exclusion, deportation, and removal.

21 “(E) Investigations, including investiga-
22 tions of immigration-related smuggling oper-
23 ations and document fraud.

24 “(2) DELEGATION OF DETENTION AUTHOR-
25 ITY.—Under regulations of the Attorney General,

1 the responsibilities of the Bureau relating to deten-
2 tion of aliens may be delegated to the Federal De-
3 tention Trustee.

4 “(d) GENERAL COUNSEL.—There shall be a position
5 of General Counsel for the Bureau of Immigration En-
6 forcement. The General Counsel and his or her delegates
7 shall, in addition to such other duties as they may be as-
8 signed by the Director for Immigration Enforcement, shall
9 represent the Bureau in all exclusion, deportation, and re-
10 moval proceedings before the Executive Office for Immi-
11 gration Review, including in proceedings to adjudicate re-
12 lief from exclusion, deportation and removal, and in other
13 legal, judicial, or administrative proceedings involving the
14 functions performed by the Bureau.

15 “(e) FIELD OFFICES.—The Bureau shall conduct its
16 enforcement activities through field offices. The location
17 of such offices shall be determined based upon the enforce-
18 ment priorities of the Bureau and without regard to the
19 location of previous district offices of the Immigration and
20 Naturalization Service or the location of service offices es-
21 tablished to carry out section 112. Nothing in this sub-
22 section shall be construed as preventing the Bureau from
23 continuing the use of regional offices for administrative
24 and managerial oversight of field offices.”.

1 **SEC. 3. ACTIVITIES WITHIN DEPARTMENT OF STATE.**

2 (a) IN GENERAL.—Chapter 2 of title I of the Immi-
3 gration and Nationality Act, as added by section 2(b), is
4 amended by adding at the end the following new section:

5 “PERFORMANCE OF FUNCTIONS RELATED TO IMMIGRA-
6 TION AND REFUGEE ADMISSIONS, ASYLUM AFFAIRS,
7 CITIZENSHIP, AND PASSPORT ACTIVITIES IN DE-
8 PARTMENT OF STATE

9 “SEC. 112. (a) ASSISTANT SECRETARIES OF
10 STATE.—There shall be appointed in the Department of
11 State an Assistant Secretary of State for Immigration Af-
12 fairs, an Assistant Secretary of State for Refugee Admis-
13 sions and Asylum Affairs, and an Assistant Secretary of
14 State for Citizenship and Passport Services. Such Assist-
15 ant Secretaries shall be in addition to such Assistant Sec-
16 retaries as are authorized under section 1(c) of the State
17 Department Basic Authorities Act of 1956.

18 “(b) UNDER SECRETARY FOR CITIZENSHIP, IMMI-
19 GRATION, AND REFUGEE ADMISSIONS.—

20 “(1) IN GENERAL.—Such Assistant Secretaries
21 shall be under the supervision and direction of an
22 Under Secretary of State for Citizenship, Immigra-
23 tion, and Refugee Admissions who—

24 “(A) shall be appointed by the President,
25 by and with the advice and consent of the Sen-
26 ate; and

1 “(B) shall be compensated at the rate pro-
2 vided for at level III of the Executive Schedule
3 under section 5314 of title 5, United States
4 Code.

5 “(2) RELATION TO OTHER AUTHORITY.—Such
6 Under Secretary shall be in addition to such Under
7 Secretaries as are authorized under section 1(b) of
8 the State Department Basic Authorities Act of
9 1956.

10 “(c) FUNCTIONS.—The Assistant Secretaries ap-
11 pointed under subsection (a) shall perform functions
12 under the immigration laws relating to adjudication of ap-
13 plications for citizenship, immigration, and refugee status,
14 and related benefits, both within the United States and
15 abroad, issuance of appropriate documentation, and over-
16 seas citizens services, and related anti-fraud activities.

17 “(d) REVIEW OF DECISIONS.—The Secretary of
18 State shall establish by regulation procedures for internal
19 review of decisions of consular and other officers in grant-
20 ing, refusing, or revoking visas, adjustment or change in
21 immigration status, and naturalization.”.

22 (b) FUNDING.—Section 286 of such Act (8 U.S.C.
23 1356) is amended—

24 (1) in subsection (m)—

1 (A) by striking “as are designated by the
2 Attorney General” and inserting “as are des-
3 ignated by the Secretary of State”,

4 (B) by striking “directly by the Attorney
5 General” and inserting “directly by the Sec-
6 retary of State, the Attorney General,”, and

7 (C) by striking “by the Attorney General”
8 after “received”;

9 (2) in subsection (n)—

10 (A) by striking “Attorney General” and in-
11 sserting “Secretary of State”, and

12 (B) by inserting “and other services de-
13 scribed in section 112(c)” after “naturalization
14 services”; and

15 (3) in subsection (o), by striking “Attorney
16 General” and inserting “Secretary of State”.

17 **SEC. 4. ACTIVITIES WITHIN DEPARTMENT OF LABOR.**

18 Chapter 2 of title I of the Immigration and Nation-
19 ality Act, as added by section 2(b) and as amended by
20 section 3(a), is amended by adding at the end the fol-
21 lowing new section:

22 “RESPONSIBILITIES OF DEPARTMENT OF LABOR

23 “SEC. 113. (a) RESPONSIBILITY FOR VERIFICATION-
24 RELATED ENFORCEMENT.—

25 “(1) IN GENERAL.—The Secretary of Labor is
26 responsible for enforcement of provisions of the im-

1 migration laws relating to verification of employment
2 authorization under subsections (a)(1)(B), (a)(5),
3 and (b) of section 274A.

4 “(2) ENFORCEMENT AUTHORITY.—The Sec-
5 retary of Labor is authorized to impose penalties
6 under section 274A(e)(5) for violations of section
7 274A(a)(1)(B).

8 “(3) NOTICE.—The Secretary of Labor shall
9 notify the Director of the Bureau for Immigration
10 Enforcement of any information discovered con-
11 cerning a violation of section 274A(a)(1)(A).

12 “(b) RESPONSIBILITY FOR ENFORCEMENT OF
13 TERMS AND CONDITIONS OF EMPLOYMENT.—

14 “(1) IN GENERAL.—The Secretary of Labor
15 shall monitor employers’ fulfillment of terms and
16 conditions of attestations, labor certifications, and
17 other applications filed in compliance with employ-
18 ment-related requirements for the admission of
19 aliens under the immigration laws, including under
20 subparagraphs (H), (L), (O), (P), and (Q) of section
21 101(a)(15) and under section 203(b).

22 “(2) AUTHORITY TO IMPOSE ADMINISTRATIVE
23 FINES.—The Secretary of Labor may assess admin-
24 istrative fines against those found to have violated

1 the terms and conditions of such attestations, labor
2 certifications, and applications.

3 “(3) NOTICE.—The Secretary of Labor shall
4 notify the Secretary of State of any finding of a sub-
5 stantial failure to meet the terms and conditions of
6 such attestations, labor certifications, and applica-
7 tions.

8 “(c) CONSTRUCTION.—Nothing in this section shall
9 be construed as affecting the administration of section
10 274B (relating to unfair immigration-related employment
11 practices).”.

12 **SEC. 5. CONFORMING PROVISIONS.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law, any reference in law or regulation to the Com-
15 missioner of Immigration and Naturalization, to the Im-
16 migration and Naturalization Service, or the Adminis-
17 trator described in section 104(b) of the Immigration and
18 Nationality Act with respect to a function or authority
19 shall be deemed a reference to the appropriate entity
20 which has such function or authority under chapter 2 of
21 title I of the Immigration and Nationality Act, as amended
22 by this Act.

23 (b) SUPERSEDING OTHER PROVISIONS OF LAW.—
24 Chapter 2 of title I of the Immigration and Nationality

1 Act, as added by this Act, is amended by adding at the
2 end the following:

3 “RELATIONSHIP TO OTHER PROVISIONS

4 “SEC. 114. (a) IN GENERAL.—The provisions of this
5 chapter supersede sections 103 and 104 and other provi-
6 sions of law to the extent such provisions are inconsistent
7 with the provisions of this chapter.

8 “(b) NO APPLICATION TO ADMINISTRATION OF REF-
9 UGEE ASSISTANCE.—This chapter shall not affect the ad-
10 ministration of title IV of this Act.”.

11 (c) SUBMISSION OF LEGISLATIVE PROPOSAL FOR
12 TECHNICAL AND CONFORMING AMENDMENTS.—Not later
13 than 90 days after the date of the enactment of this Act,
14 the Attorney General, in consultation with the Secretaries
15 of State and Labor and, as appropriate, with the heads
16 of other Federal agencies, shall submit to the Congress,
17 a legislative proposal proposing such technical and con-
18 forming amendments to the Immigration and Nationality
19 Act and other immigration-related laws as are necessary
20 to bring the law into conformity with the policies embodied
21 in this Act.

22 (d) CLERICAL AMENDMENTS.—The table of contents
23 of the Immigration and Nationality Act is amended—

24 (1) by inserting before the item relating to sec-
25 tion 101 the following:

“CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

1 (2) by amending the item relating to section
2 103 to read as follows:

“Sec. 103. Powers and duties of the Attorney General.”;

3 and

4 (3) by inserting after the item relating to sec-
5 tion 105 the following:

“CHAPTER 2—ADMINISTRATION OF THE IMMIGRATION SYSTEM

“Sec. 111. Immigration enforcement through a bureau for immigration enforce-
ment in Department of Justice.

“Sec. 112. Performance of refugee admissions, asylum affairs, citizenship, and
passport activities in Department of State.

“Sec. 113. Responsibilities of Department of Labor.

“Sec. 114. Relationship to other provisions.”.

6 **SEC. 6. EFFECTIVE DATE; TRANSITION.**

7 (a) **EFFECTIVE DATE.**—Except as provided in this
8 section, this Act, and the amendments made by this Act,
9 shall take effect on the date that is 6 months after the
10 date of the enactment of this Act.

11 (b) **TRANSFER AND ALLOCATION OF APPROPRIA-**
12 **TIONS AND PERSONNEL.**—

13 (1) **IN GENERAL.**—The personnel of the De-
14 partment of Justice or other agency employed in
15 connection with the functions transferred by this
16 Act, and the assets, liabilities, contracts, property,
17 records, and unexpended balance of appropriations,
18 authorizations, allocations, and other funds em-
19 ployed, held, used, arising from, available to, or to
20 be made available to such Department or agency in
21 connection with the functions transferred by this

1 Act, subject to section 202 of the Budget and Ac-
2 counting Procedures Act of 1950, shall be trans-
3 ferred to the entity to which such funds are so
4 transferred for appropriate allocation by the head of
5 such entity. Unexpended funds transferred pursuant
6 to this paragraph shall be used only for the purposes
7 for which the funds were originally authorized and
8 appropriated.

9 (2) EFFECT ON PERSONNEL.—

10 (A) IN GENERAL.—The transfer under this
11 Act of full-time personnel (except special Gov-
12 ernment employees) and part-time personnel
13 holding permanent positions shall not cause any
14 such employee to be separated or reduced in
15 grade or compensation, if at all, for 1 year after
16 the date of the transfer.

17 (B) EXECUTIVE SCHEDULE.—Any person
18 who, on the day preceding the effective date of
19 this Act, held a position compensated in accord-
20 ance with the Executive Schedule prescribed in
21 chapter 53 of title 5, United States Code, and
22 who, without a break in service, is appointed
23 into an agency established under this Act to a
24 position having duties comparable to the duties
25 performed immediately preceding such appoint-

1 ment shall continue to be compensated in such
2 new position at not less than the rate provided
3 for such previous position, for the duration of
4 the service of such person in such new position.

5 (c) DELEGATION AND ASSIGNMENT.—Except as oth-
6 erwise expressly prohibited by law or otherwise provided
7 in this Act, an official to whom functions are transferred
8 under this Act (including the head of any office to which
9 functions are transferred under this Act) may delegate
10 any of the functions so transferred to such officers and
11 employees of the office of the official as the official may
12 designate, and may authorize successive redelegations of
13 such functions as may be necessary or appropriate. No
14 delegation of functions under this section or under any
15 other provision of this Act shall relieve the official to whom
16 a function is transferred under this Act of responsibility
17 for the administration of the function.

18 (d) SAVINGS PROVISIONS.—

19 (1) CONTINUING LEGAL FORCE AND EFFECT.—
20 All orders, determinations, rules, regulations, per-
21 mits, agreements, grants, contracts, certificates, li-
22 censes, registrations, privileges, and other adminis-
23 trative actions—

24 (A) that have been issued, made, granted,
25 or allowed to become effective by the President,

1 any Federal agency or official thereof, or by a
2 court of competent jurisdiction, in the perform-
3 ance of functions that are transferred under
4 any amendment made by this Act; and

5 (B) that are in effect at the time such
6 transfer takes effect, or were final before the ef-
7 fective date of such transfer and are to become
8 effective on or after the effective date of such
9 transfer,

10 shall continue in effect according to their terms until
11 modified, terminated, superseded, set aside, or re-
12 voked in accordance with law by the President, or
13 other authorized official, a court of competent juris-
14 diction, or by operation of law.

15 (2) PENDING PROCEEDINGS.—(A) The provi-
16 sions of any amendment made by this Act shall not
17 affect any proceedings, including notices of proposed
18 rulemaking, or any application for any license, per-
19 mit, certificate, or financial assistance pending on
20 the effective date of any provision before any depart-
21 ment, agency, commission, or component thereof,
22 functions of which are transferred by any amend-
23 ment. Such proceedings and applications, to the ex-
24 tent that they relate to functions so transferred,
25 shall be continued.

1 (B) Orders shall be issued in such proceedings,
2 appeals shall be taken therefrom, and payments
3 shall be made pursuant to such orders, as if this Act
4 had not been enacted. Orders issued in any such
5 proceedings shall continue in effect until modified,
6 terminated, superseded, or revoked by the authorized
7 Federal official, by a court of competent jurisdiction,
8 or by operation of law.

9 (C) Nothing in this Act shall be deemed to pro-
10 hibit the discontinuance or modification of any such
11 proceeding under the same terms and conditions and
12 to the same extent that such proceeding could have
13 been discontinued or modified if this Act had not
14 been enacted.

15 (D) The head of each of the Federal Depart-
16 ments is authorized to promulgate regulations pro-
17 viding for the orderly transfer of proceedings contin-
18 ued under this paragraph with respect to such De-
19 partment.

20 (3) NO EFFECT ON JUDICIAL PROCEEDINGS.—
21 Except as provided in paragraph (5)—

22 (A) the provisions of this Act shall not af-
23 fect suits commenced prior to the effective date
24 of this Act, and

1 (B) in all such suits, proceedings shall be
2 had, appeals taken, and judgments rendered in
3 the same manner and effect as if this Act had
4 not been enacted.

5 (4) NONABATEMENT OF PROCEEDINGS.—No
6 suit, action, or other proceeding commenced by or
7 against any officer in the official capacity of such in-
8 dividual as an officer of any department or agency,
9 functions of which are transferred by any amend-
10 ment made by this Act, shall abate by reason of the
11 enactment of this Act. No cause of action by or
12 against any department or agency, functions of
13 which are transferred by any such amendment, or by
14 or against any officer thereof in the official capacity
15 of such officer shall abate by reason of the enact-
16 ment of this Act.

17 (5) CONTINUATION OF PROCEEDING WITH SUB-
18 STITUTION OF PARTIES.—If, before the date on
19 which any amendment made by this Act takes effect,
20 any department or agency, or officer thereof in the
21 official capacity of such officer, is a party to a suit,
22 and under this Act any function of such department,
23 agency, or officer is transferred to another official,
24 then such suit shall be continued with the other ap-
25 propriate official substituted or added as a party.

1 (6) REVIEWABILITY OF ORDERS AND ACTIONS
2 UNDER TRANSFERRED FUNCTIONS.—Orders and ac-
3 tions of the Attorney General or other Federal offi-
4 cial Secretary in the exercise of functions transferred
5 under any amendment made by this Act shall be
6 subject to judicial review to the same extent and in
7 the same manner as if such orders and actions had
8 been by the agency or office, or part thereof, exer-
9 cising such functions immediately preceding their
10 transfer. Any statutory requirements relating to no-
11 tice, hearings, action upon the record, or administra-
12 tive review that apply to any function transferred by
13 any such amendment shall apply to the exercise of
14 such function by the appropriate Federal official.

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