

American Immigration Lawyers Association

The Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330): A Brief Overview

On May 12, 2005, Senators John McCain (R-AZ) and Edward Kennedy (D-MA), and Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ), and Luis Gutierrez (D-IL) introduced the Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330). Reflecting the universal consensus that our immigration system is broken, S. 1033/H.R. 2330 would reform our immigration laws so that they enhance our national security and address the concerns of American businesses and families. The legislation contains provisions to address the problems that have long plagued our current immigration system, as briefly outlined below.

Title I of the bill would create a national strategy for border security and enhanced border intelligence by:

- mandating the development and implementation of various plans and reports dealing with information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other border security initiatives;
- authorizing the development of a Border Security Advisory Committee made up of various stakeholders in the border region to provide recommendations to the Department of Homeland Security regarding border security and enforcement issues;
- requiring the Secretary of State to provide a framework for better management, communication and coordination between the governments of North America, including the development of multilateral agreements to establish a North American security perimeter and improve border security south of Mexico.

Title II of the bill would reauthorize the State Criminal Alien Assistance Program for fiscal years 2005 through 2011 and provide that such funds may only be used for correctional purposes. In addition, Title II authorizes additional funding to states for reimbursement of the indirect costs relating to the incarceration of undocumented aliens.

Title III would establish a new essential worker visa program with the following characteristics:

- a new temporary (H-5A) visa would allow foreign workers to enter the U.S. and fill available jobs that require few or no skills;
- applicants would be required to demonstrate the availability of a job in the U.S., pay a \$500 fee in addition to application fees, and clear all security, medical, and other checks;
- the H-5A visa would be valid for 3 years, and could be renewed one time for a total of 6 years; at the end of the visa period the worker would have to return home or be in the pipeline for a green card. The visa would be portable;
- the initial cap on H-5A visas would be set at 400,000, with the annual limit gradually adjusted based on demand in subsequent years;
- an employer could sponsor the H-5A visa holder for permanent residence or, after accumulating 4 years of work in H-5A status, the worker could apply to adjust status through self-petition;
- the bill sets forth various employer obligations under the program, detailed worker protections, and an enforcement scheme to deal with violations of these provisions;
- the bill sets up a task force to evaluate the H-5A program and recommend improvements, and requires updating of America's Job Bank to ensure job opportunities are seen first by American workers.

Title IV deals with enforcement and would:

- require all new visas issued by the Secretary of State and immigration-related documents issued by the Secretary of Homeland Security to be biometric, machine-readable and tamper-resistant, within 6 months of the bill's enactment;
- mandate the establishment of a new Employment Eligibility Confirmation System which will gradually replace the existing I-9 system, and which will contain certain safeguards to prevent the unlawful use of the system and a process by which individuals can correct false information;
- amend the IIRIRA to provide for the collection of biometric machine-readable information from an alien's immigration-related documents upon arrival and departure from the U.S. to determine the alien's status;
- broaden the Department of Labor's investigative authority to conduct random audits of employers and ensure compliance with labor laws, and include new worker protections and enhanced fines for illegal employment practices.

Title V is designed to promote circular migration patterns by:

- authorizing the establishment of Independent Savings Accounts for participants in the new temporary worker program established under Title III;
- authorizing the establishment of labor migration facilitation programs with foreign governments whose citizens participate in the new temporary worker program. The programs would facilitate the flow of foreign nationals to jobs in the U.S., with an emphasis on encouraging the re-integration of foreign nationals returning to their home countries;
- encouraging the U.S. government to work with Mexico to promote economic opportunities for Mexican nationals in their home country to reduce migration pressures and costs.

Title VI would promote family unity and reduce backlogs by, among other things:

- exempting immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas and reallocating the family-sponsored numbers;
- increasing the number of employment-based numbers from 140,000 to 290,000 per year, reallocating the distribution of those numbers, and providing for the recapture of unused numbers;
- increasing the per-country limits for both family- and employment-based immigrants;
- lowering the income requirements for sponsoring a family member from 125% of the federal poverty guidelines to 100%, and removing other obstacles to ensure fairness.

Title VII provides a mechanism by which eligible undocumented immigrants present in the U.S. on the date of the bill's introduction can adjust to temporary nonimmigrant (H-5B) status with an initial period of stay of 6 years.

- applicants would be required to undergo criminal and security background checks, submit fingerprints and other data, pay a fine, and establish a previous work history in the U.S. Spouses and children would also be eligible for adjustment under this section;
- the bill provides a subsequent mechanism by which H-5B nonimmigrants could adjust to permanent residence status upon meeting a prospective work requirement, paying a fine, and fulfilling additional eligibility criteria. Children and spouses would again be eligible for such adjustment.

Title VIII seeks to protect individuals from immigration fraud by defining who is an authorized representative for purposes of representation in an immigration matter and providing eligibility for “U” nonimmigrant status for certain individuals who have suffered substantial harm at the hands of an unauthorized representative.

Title IX deals with civics integration, authorizing the establishment of the United States Citizenship Foundation, as well as a competitive grant program to fund civics and English language classes.

Title X would promote access to health care by extending the authorization of federal reimbursement for hospitals that provide emergency care to undocumented immigrants and by adding H-5A and H-5B workers to the list of persons for whom hospitals may be reimbursed.

Title XI comprises various miscellaneous provisions, including provisions that would:

- require periodic reports to Congress on the use of the worker programs established under the bill;
- provide for the distribution of fees and fines paid by H-5A and H-5B applicants;
- include H-5A and H-5B workers in the class of individuals protected under the INA’s anti-discrimination provisions;
- provide special immigrant status for certain women and children at risk of harm.

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