

Congress Clears Overhaul of Immigration Law

After five years of trying, Congress Oct. 17 cleared legislation (S 1200 — PL 99-603) that transformed the nation's immigration laws.

For the first time, employers faced fines — and in flagrant cases jail terms — for knowingly hiring foreigners who were in the country illegally. These sanctions were designed to stem the tide of illegal aliens entering the United States, and they addressed an anomaly in existing law: While it was illegal to enter the country without proper papers and illegal to work here, it was not a violation of the law for an employer to hire so-called “undocumented workers.”

But the bill also created a mechanism for giving legal status, or amnesty, to perhaps millions of illegal aliens who could prove they had resided continuously in the United States since before Jan. 1, 1982. Sponsors hoped this program would end “the shadow society” of illegal aliens living in poverty, subject to exploitation and in fear of deportation.

And it included a controversial program designed to assure Western growers — who had historically relied on an illegal work force — that they would have an adequate supply of labor to harvest crops. The program would provide temporary resident status for up to 350,000 foreigners who could prove they had worked at least 90 days in American agriculture between May 1985 and May 1986.

The final bill was a delicate compromise forged by a host of competing interests that had fought out the issues in battles during the 97th and 98th Congresses. This time, members were in a mood to reach the necessary compromises to pass a bill, and the way was cleared once Republicans and Democrats reached a compromise on the farm worker issue.

At the heart of the deal was a recognition on the one hand that Western growers needed an adequate labor force, and a willingness on the other to grant these workers protection from exploitation by giving them legal status in the United States.

Provisions

As signed into law Nov. 6, S 1200 (PL 99-603):

Employer Sanctions

- Made it unlawful for any person knowingly to hire, recruit or refer for a fee any alien not authorized to work in the United States.

- Required employers to verify all newly hired people by examining either a U.S. passport, a certificate of U.S. citizenship, a certificate of naturalization or a resident alien card. If these documents were not available, verification could be established by a combination of papers showing identity and authority to work. For example, a person could show a driver's license in addition to either a U.S. birth certificate or a Social Security card.

- Required each employer to attest in writing under penalty of perjury that he saw such documentation before any hiring.

- Required the employee to attest in writing before being hired that he was authorized to work in the United States.

- Permitted the president to implement a more secure verification system upon notice and approval of Congress.

The appropriate agencies were directed to study the feasibility of a system, like the one already used to check credit cards, where employers could telephone a central number to get documents verified.

- Established civil and criminal penalties for hiring illegal aliens but provided a six-month education period during which employers would not be subject to penalties. During the subsequent 12-month period, a violator would be given a warning citation for the first offense.

- Established the following fines for violations after the citation period:

- First offense — a civil fine of not less than \$250 nor more than \$2,000 per each illegal alien found to be hired.

- Second offense — a civil fine of not less than \$2,000 nor more than \$5,000 per illegal alien.

- Third offense — a civil fine of not less than \$3,000 nor more than \$10,000 per illegal alien.

- Authorized criminal penalties of up to six months' imprisonment and/or a \$3,000 fine for a “pattern or practice” of knowingly hiring an illegal alien.

- Required employers, recruiters and those who refer for employment to keep records. The bill established a civil fine of not less than \$100 nor more than \$1,000 for failure to keep records.

- Allowed employers charged with violating the law to defend themselves by showing that they had complied in good faith with the verification procedure.

- Required the attorney general to notify alleged violators of the infractions and, upon request, grant a hearing within 30 days before imposing any penalty.

- Required administrative law judges to conduct the hearings “at the nearest practicable place” to where alleged violators lived and the infractions occurred.

- Required the judge to use a “preponderance of the evidence” as the standard for finding that a violation had occurred.

- Made the decision of the judge final unless the attorney general modified or vacated the order within 30 days.

- Gave a violator 45 days from the time the order became final to challenge his penalty in a federal appeals court.

- Relieved employers from verifying a worker's credentials when a state employment agency had done so and the worker retained a certification of such verification.

- Terminated sanctions after three years if the controller general determined that sanctions resulted in discrimination in employment or had unduly burdened employers, and Congress enacted a joint resolution adopting that determination.

- Provided expedited procedures for Congress to consider a joint resolution terminating sanctions.

Anti-Discrimination Measures

- Created an Office of Special Counsel in the Justice Department to investigate and prosecute any charges of discrimination stemming from unlawful immigration-related employment practices.

- Barred employers from discriminating against legal residents simply because they were not full-fledged citizens. However, this provision would cover only those permanent or temporary residents who had shown an intention to become citizens.

- Made clear that an employer could not be sued if,