

tion 544(d) of Pub. L. 101-649, as amended, set out as an Effective Date of 1990 Amendment note under section 1227 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1324d. Civil penalties for failure to depart

(a) In general

Any alien subject to a final order of removal who—

- (1) willfully fails or refuses to—
 - (A) depart from the United States pursuant to the order,
 - (B) make timely application in good faith for travel or other documents necessary for departure, or
 - (C) present for removal at the time and place required by the Attorney General; or
- (2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order,

shall pay a civil penalty of not more than \$500 to the Commissioner for each day the alien is in violation of this section.

(b) Construction

Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities proscribed by section 1253(a) of this title or any other section of this chapter.

(June 27, 1952, ch. 477, title II, ch. 8, §274D, as added Pub. L. 104-208, div. C, title III, §380(a), Sept. 30, 1996, 110 Stat. 3009-650.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

EFFECTIVE DATE

Pub. L. 104-208, div. C, title III, §380(c), Sept. 30, 1996, 110 Stat. 3009-650, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to actions occurring on or after the title III-A effective date (as defined in section 309(a) of this division [set out as a note under section 1101 of this title])."

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

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REFERENCES TO ORDER OF REMOVAL DEEMED TO
INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of—

- (1) at least \$50 and not more than \$250 for each such entry (or attempted entry); or
- (2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

(c) Marriage fraud

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

(d) Immigration-related entrepreneurship fraud

Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, or both.

(June 27, 1952, ch. 477, title II, ch. 8, §275, 66 Stat. 229; Pub. L. 99-639, §2(d), Nov. 10, 1986, 100 Stat. 3542; Pub. L. 101-649, title I, §121(b)(3), title V, §543(b)(2), Nov. 29, 1990, 104 Stat. 4994, 5059; Pub. L. 102-232, title III, §306(c)(3), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 104-208, div. C, title I, §105(a), Sept. 30, 1996, 110 Stat. 3009-556.)

AMENDMENTS

1996—Subsecs. (b) to (d), Pub. L. 104-208 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1991—Subsec. (a), Pub. L. 102-232 substituted "fined under title 18" for "fined not more than \$2,000 (or, if greater, the amount provided under title 18)".

1990—Subsec. (a), Pub. L. 101-649, §543(b)(2), inserted "or attempts to enter" after "(1) enters" and "attempts to enter or" after "or (3)", and substituted "shall, for the first commission of any such offense, be fined not more than \$2,000 (or, if greater, the amount provided under title 18) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years" for "shall, for the first commission of any such offenses, be guilty of a misdemeanor

and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than \$500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than \$1,000”.

Subsec. (c). Pub. L. 101-649, §121(b)(3), added subsec. (c).

1986—Pub. L. 99-639 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title I, §105(b), Sept. 30, 1996, 110 Stat. 3009-556, provided that: “The amendments made by subsection (a) [amending this section] shall apply to illegal entries or attempts to enter occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Sept. 30, 1996].”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 121(b)(3) of Pub. L. 101-649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101-649, set out as a note under section 1101 of this title.

Amendment by section 543(b)(2) of Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101-649, set out as a note under section 1221 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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§ 1326. Reentry of removed aliens

(a) In general

Subject to subsection (b), any alien who—

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a), in the case of any alien described in such subsection—

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an ag-

gravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.¹ or

(4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term “removal” includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2)² of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

(June 27, 1952, ch. 477, title II, ch. 8, §276, 66 Stat. 229; Pub. L. 100-690, title VII, §7345(a), Nov. 18, 1988, 102 Stat. 4471; Pub. L. 101-649, title V, §543(b)(3), Nov. 29, 1990, 104 Stat. 5059; Pub. L.

¹ So in original. The period probably should be a semicolon.

² See References in Text note below.