

reasonably to fulfill the duty imposed by subsection (a) of this section shall not be liable for the penalty described in such subsection, notwithstanding the failure of the person to prevent the unauthorized landing of any alien.

(2)(A) At the request of any person described in paragraph (1), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such person for the purpose of complying with subsection (a) of this section. The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

(B) Proof that any person described in paragraph (1) has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which the approval is effective) shall be prima facie evidence that such person acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section (within the meaning of paragraph (1) of this subsection).

(June 27, 1952, ch. 477, title II, ch. 8, § 271, 66 Stat. 226; Pub. L. 99-603, title I, § 114, Nov. 6, 1986, 100 Stat. 3383; Pub. L. 101-649, title V, § 543(a)(8), Nov. 29, 1990, 104 Stat. 5058; Pub. L. 104-208, div. C, title III, § 308(g)(1), Sept. 30, 1996, 110 Stat. 3009-622.)

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208 substituted “section 1223” for “section 1228”.

1990—Subsec. (a). Pub. L. 101-649 substituted “\$3,000” for “\$1,000”.

1986—Subsec. (c). Pub. L. 99-603 added subsec. (c).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by 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

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.

### § 1322. Bringing in aliens subject to denial of admission on a health-related ground; persons liable; clearance papers; exceptions; “person” defined

(a) Any person who shall bring to the United States an alien (other than an alien crewman) who is inadmissible under section 1182(a)(1) of this title shall pay to the Commissioner for each and every alien so afflicted the sum of \$3,000 unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired non-

immigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of the condition causing inadmissibility could not have been detected by the exercise of due diligence prior to the alien’s embarkation.

(b) No vessel or aircraft shall be granted clearance papers pending determination of the question of liability to the payment of any fine under this section, or while the fines remain unpaid, nor shall such fines be remitted or refunded; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the Commissioner.

(c) Nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of entry in the United States aliens who are entitled by law to exemption from the provisions of section 1182(a) of this title.

(d) As used in this section, the term “person” means the owner, master, agent, commanding officer, charterer, or consignee of any vessel or aircraft.

(June 27, 1952, ch. 477, title II, ch. 8, § 272, 66 Stat. 226; Pub. L. 89-236, § 18, Oct. 3, 1965, 79 Stat. 920; Pub. L. 101-649, title V, § 543(a)(9), title VI, § 603(a)(15), Nov. 29, 1990, 104 Stat. 5058, 5083; Pub. L. 102-232, title III, § 307(D)(7), Dec. 12, 1991, 105 Stat. 1757; Pub. L. 103-416, title II, § 219(o), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104-208, div. C, title III, § 308(d)(3)(A), (4)(I)(i), Sept. 30, 1996, 110 Stat. 3009-617, 3009-618.)

#### AMENDMENTS

1996—Pub. L. 104-208, § 308(d)(4)(I)(i)(I), amended section catchline.

Subsec. (a). Pub. L. 104-208, § 308(d)(3)(A), (4)(I)(II), substituted “inadmissible” for “excludable” and “condition causing inadmissibility” for “excluding condition”.

Subsec. (c). Pub. L. 104-208, § 308(d)(4)(I)(i)(III), struck out “excluding” after “exemption from the”.

1994—Subsec. (a). Pub. L. 103-416 struck out comma after “every alien so afflicted”.

1991—Subsec. (a). Pub. L. 102-232 struck out comma before “shall pay”.

1990—Pub. L. 101-649, § 603(a)(15)(D), substituted “exclusion on a health-related ground” for “disability or afflicted with disease” in section catchline.

Subsec. (a). Pub. L. 101-649, § 603(a)(15)(A), substituted “excludable under section 1182(a)(1) of this title” for “(1) mentally retarded, (2) insane, (3) afflicted with psychopathic personality, or with sexual deviation, (4) a chronic alcoholic, (5) afflicted with any dangerous contagious disease, or (6) a narcotic drug addict” and “the excluding condition” for “such disease or disability”.

Pub. L. 101-649, §543(a)(9)(A), substituted "Commissioner" for "collector of customs of the customs district in which the place of arrival is located" and "\$3,000" for "\$1,000".

Subsec. (b). Pub. L. 101-649, §603(a)(15)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: "Any person who shall bring to the United States an alien (other than an alien crewman) afflicted with any mental defect other than those enumerated in subsection (a) of this section, or any physical defect of a nature which may affect his ability to earn a living, as provided in section 1182(a)(7) of this title, shall pay to the Commissioner for each and every alien so afflicted, the sum of \$3,000, unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of such disease or disability could not have been detected by the exercise of due diligence prior to the alien's embarkation."

Pub. L. 101-649, §543(a)(9)(B), substituted "Commissioner" for "collector of customs of the customs district in which the place of arrival is located" and "\$3,000" for "\$250".

Subsec. (c). Pub. L. 101-649, §603(a)(15)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 101-649, §543(a)(9)(C), substituted "Commissioner" for "collector of customs".

Subsecs. (d), (e). Pub. L. 101-649, §603(a)(15)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1965—Subsec. (a). Pub. L. 89-236 substituted "mentally retarded" for "feeble-minded", struck out references to epileptics and persons afflicted with tuberculosis and leprosy, and inserted reference to persons afflicted with sexual deviation.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(l) of Pub. L. 102-232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-649.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(a)(9) 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.

Amendment by section 603(a)(15) of Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-236 effective, except as otherwise provided, on first day of first month after expiration of thirty days following date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 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.

### § 1323. Unlawful bringing of aliens into United States

#### (a) Persons liable

(1) It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this chapter or regulations issued thereunder.

(2) It is unlawful for an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft who is bringing an alien (except an alien crewmember) to the United States to take any consideration to be kept or returned contingent on whether an alien is admitted to, or ordered removed from, the United States.

#### (b) Evidence

If it appears to the satisfaction of the Attorney General that any alien has been so brought, such person, or transportation company, or the master, commanding officer, agent, owner, charterer, or consignee of any such vessel or aircraft, shall pay to the Commissioner a fine of \$3,000 for each alien so brought and, except in the case of any such alien who is admitted, or permitted to land temporarily, in addition, an amount equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter fine to be delivered by the Commissioner to the alien on whose account the assessment is made. No vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine or while such fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner.

#### (c) Remission or refund

Except as provided in subsection (e) of this section, such fine shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the