



SAINT VINCENT AND THE GRENADINES

ACT NO. 16 OF 2017

I ASSENT

[L.S.]

DR. FREDERICK BALLANTYNE  
Governor-General  
4th August, 2017.

AN ACT to amend the Immigration (Restriction) Act, Chapter 114.

[ 4th August, 2017. ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

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| <p>1. This Act may be cited as the Immigration (Restriction) (Amendment) Act, 2017.</p>  | <p>Short title</p>  |
| <p>2. The Immigration (Restriction) Act, referred to in this Act as the principal Act, is amended by inserting the following sections after section 26—</p> <p>“Interpretation for this section to section 26G 26A. In this section to section 26G —</p> <p>“child” means a person under the age of eighteen years;</p> <p>“commercial carrier” means a person who engages in the transportation of persons or goods for commercial gain;</p> <p>“financial or other material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege or service</p> | <p>Insertion of sections 26A to 26G in Immigration (Restriction) Act Cap. 114</p> |

(including sexual or other services);

“immigration law” means any written law relating to the immigration, exclusion, deportation or expulsion of an immigrant to or from Saint Vincent and the Grenadines;

“organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more offences under sections 26B to 26E;

“public official” means –

(a) a person holding a legislative, executive, administrative or judicial office, whether–

(i) appointed or elected;

(ii) permanent or temporary;

(iii) paid or unpaid;

irrespective of that person’s seniority; or

(b) a person who –

(i) performs a public function, including for a public body; or

(ii) provides a public service;

“smuggled immigrant” means an immigrant who has been the object of conduct criminalised under sections 26B to 26E regardless of whether the perpetrator is identified,

apprehended, prosecuted or convicted;

“travel documents” mean any document that can be used for travel between States such as –

- (a) a passport as defined in section 5(2);
- (b) a visa;
- (c) a tourist card; or
- (d) an airline ticket.

**S m u g g l i n g** 26B. (1) A person who intentionally, in order to obtain directly or indirectly a financial or other material benefit either for himself or for another person, engages in conduct for the purpose of facilitating or enabling a person who is not a national or a resident of Saint Vincent and the Grenadines to enter, transit across or be in Saint Vincent and the Grenadines in breach of this Act or any other immigration law, is guilty of an offence.

immigrant

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for seven years or to both.

(3) Proceedings may be instituted under this section even if the person who is not a national or resident of Saint Vincent and the Grenadines did not enter Saint Vincent and the Grenadines or was not brought into Saint Vincent and the Grenadines.

**A g g r a v a t i n g** 26C. (1) Where a person is convicted of an offence under section 26B, the court before which he is convicted shall determine whether any of the

circumstances

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aggravating circumstances specified in subsection (2) are present in the course of committing the offence and if so, having regard to those circumstances the court may impose, in addition to the penalty prescribed under section 26B (2), an additional term of imprisonment of up to ten years.

(2) The aggravating factors to be taken into account by the court are –

- (a) the offence involved circumstances that endangered or were likely to endanger the life or safety of the smuggled immigrant or a third person;
- (b) the offence involved circumstances that entailed inhuman or degrading treatment, including exploitation of the smuggled immigrant;
- (c) the offence involved serious injury or death of the smuggled immigrant or another person, including death as a result of suicide;
- (d) the convicted person abused a position of vulnerability or dependency of a person for financial or other material benefit;
- (e) the convicted person has been previously convicted of an offence under this section or section 26B, 26D or 26E;
- (f) the offence was committed as part of the activity of an organised criminal group;

- (g) the convicted person used drugs, medications or weapons in committing the offence;
- (h) the convicted person was, at the relevant time, a public official;
- (i) the convicted person abused his position of authority or position as a public official in the commission of the offence;
- (j) the smuggled immigrant is a child;
- (k) the convicted person used a child as an accomplice or participant in committing the offence;
- (l) the smuggled immigrant is pregnant;
- (m) the smuggled immigrant has an intellectual or physical disability;
- (n) the convicted person used or threatened to use any form of violence against the smuggled immigrant or his family; or
- (o) the convicted person confiscated, destroyed or attempted to destroy the travel documents of the smuggled immigrant.

(3) The factors specified in subsection (2) are in addition to any other factors or matters that are required or permitted to be taken into account by the court under any rule of law.

Abuse of  
smuggled  
immigrant

26D. A person who intentionally abuses another person, whose vulnerability or dependence is obvious or known to the

first person, including vulnerability or dependency that arises from –

- (a) having entered or being in Saint Vincent and the Grenadines without proper documentation or in breach of this Act or any other immigration law;
- (b) pregnancy;
- (c) physical or mental disease; or
- (d) disability or reduced capacity to form judgments by virtue of being a child,

for financial or other material benefit, is guilty of an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars or to imprisonment for seven years or to both.

Duty of  
commercial  
carriers

26E. (1) A commercial carrier that fails to verify that every passenger on the carrier possesses the travel documents required to enter Saint Vincent and the Grenadines or any transit State, is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(2) A commercial carrier that fails to notify the Chief Immigration Officer that a person has attempted to or has travelled on that carrier without the travel documents required to enter Saint Vincent and the Grenadines or any transit State knowing that the person was, or reckless as to whether the person was, a smuggled immigrant, is guilty an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(3) A commercial carrier is not guilty of an offence and is not liable to be convicted under this section if –

- (a) there were reasonable grounds to believe that the documents that the transported person has are the travel documents required to enter Saint Vincent and the Grenadines;
- (b) the transported person possessed the travel documents when he boarded, or when he last boarded, the commercial carrier to travel to Saint Vincent and the Grenadines;
- (c) the entry into Saint Vincent and the Grenadines occurred only because of circumstances beyond the control of the commercial carrier; or
- (d) the entry into Saint and the Grenadines resulted from a rescue.

(4) A commercial carrier is not guilty of an offence and is not liable under this section when a person the carrier transported was provided protection against refoulement or granted a permit in accordance with this Act.

Ancillary powers  
of the court

26F. In addition to any penalty imposed under this Act on a person convicted of an offence under sections 26B to 26E and without prejudice to any other power of the court, the court before which the person is convicted may –

- (a) order the person to make restitution to the victim of the offence; or

- (b) order any other non-custodial measure the court thinks appropriate.

Liability of  
smuggled  
immigrant

26G. A smuggled immigrant is not liable to be prosecuted for an offence under sections 26B to 26E for the fact of having been the object of conduct criminalised by those sections.”.

Insertion of new  
section 27A

3. The principal Act is amended by inserting the following section after section 27 –

“Offence by body  
corporate

27A. Where a body corporate is guilty of an offence under this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in such capacity,

he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

Passed in the House of Assembly this 31st day of July, 2017.

Clerk of the House of Assembly.

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