

No. of 2020

VIRGIN ISLANDS

ADVANCE PASSENGER INFORMATION ACT, 2020

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I Assent

Governor
, 2020

VIRGIN ISLANDS

No. of 2020

A Bill for

An Act to provide for advance passenger information relating to passengers and crew members of an aircraft or vessel and to share the information with other States with a view to identifying the persons who may pose risks to security and to provide for connected matters.

[Gazetted , 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. (1) This Act may be cited as the Advance Passenger Information Act, 2020.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“advance passenger information” or “API” means the information or data concerning a crew member, passenger or any other person travelling in an aircraft or vessel as set out in Schedule 1;

Schedule 1

“advance passenger information system” or “APIS” means the automated electronic data interchange of API; and the screening of API by the competent authority, IMPACS and JRCC against a Watch List for any API hit;

“aircraft” includes an aeroplane or a helicopter or other means of airborne navigation by means of which persons can travel across international borders;

“API hit” means a name present in the Watch List Systems;

“commercial aircraft” means an aircraft which engage in transporting passengers or goods for monetary gain;

“competent authority” means the Chief Immigration Officer or the Chief Immigration Officer’s designate;

“IMPACS” means the Implementing Agency for Crime and Security established under the 2006 Agreement establishing the CARICOM Implementing Agency for Crime and Security;

“Joint Regional Communication Centre” or “JRCC” is a sub-agency of IMPACS;

“Minister” means the Minister to whom responsibility for the subject of Immigration is assigned;

“passenger” means any person not being a bona fide member of the crew, travelling or seeking to travel on an aircraft or vessel;

“private aircraft” means any aircraft which is not a commercial or an aircraft owned or leased by the Government;

“technical stop” or “stop for non-traffic purposes” means an aircraft or vessel arriving for purposes of refuelling, repairs, emergency or a similar purpose other than taking on or discharging passengers, baggage, cargo or mail;

“vessel” means any ship, boat, yacht or other floating or submersible transportation by means of which persons can travel across international borders; and

“Watch List” means a list that is used to watch or track the current activity or movements of criminals, including terrorists and persons who have been found guilty of an offence involving stolen and lost travel documents, criminal deportees and other persons of interest to the intelligence community.

- 3. (1)** This section applies to an aircraft or vessel which
- (a) is expected to arrive in the Virgin Islands; or
 - (b) is expected to leave the Virgin Islands.

Duty to provide advance passenger information.

Schedule 1

(2) The captain or master of every aircraft or vessel shall provide to the competent authority and IMPACS, the relevant API and data relating to the flight or voyage as set out in Schedule 1.

(3) A captain or master who

(a) fails to provide API in accordance with subsection (2); or

(b) intentionally or recklessly

(i) provides erroneous, faulty, misleading, incomplete or false API; or

(ii) transmits the API in an incorrect format,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

(4) Where the API provided is inaccurate and the captain or master of the aircraft or vessel satisfies the competent authority that the error was not made knowingly or recklessly then notwithstanding any other provision of this Act the captain or master may not be charged for an offence.

(5) The Minister may, in consultation with the National Security Council, waive the requirements of subsection (2) in such circumstances and subject to such conditions as the Minister may prescribe where the aircraft or vessel is

(a) a military or law enforcement aircraft or vessel; or

(b) on official Government business.

Timeframe.
Schedule 2

4. The API shall be submitted to the competent authority in accordance with the timeframe specified in Schedule 2.

Powers of the
competent
authority to
verify.

5. (1) The API provided pursuant to section 3 shall be verified by the competent authority during physical processing at any port of entry or exit by using the travel documents provided by the crew member or passenger.

(2) The competent authority shall, if any discrepancy is found in the API, correct the data at the port of entry or exit and update the information in APIS after verifying it from the travel or other relevant documents of the crew member or passenger.

(3) The competent authority may require the captain or master and any crew member or passenger thereof to

- (a) answer any question relating to the aircraft or vessel and its crew, passengers, voyage or flight and any persons that are carried by the vessel; and
- (b) forthwith produce any documents within that person's possession or control relating to the questions put to that person.

(4) A person who

- (a) refuses to answer any question put to that person by the competent authority pursuant to subsection (3)(a) or knowingly gives a false answer to the question put to him or her; or
- (b) fails to comply with any request made under subsection (3)(b),

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

6. (1) Nothing in section 3 applies to an aircraft or vessel which makes a technical stop or lands, berths, anchors, or otherwise arrives or stops for non-traffic purposes if the arrival is

Vessel or aircraft arriving for non-traffic purposes or making a technical stop.

- (a) required by any statutory or other requirement relating to navigation;
- (b) compelled by any emergency, accident, unfavourable weather conditions, or other necessity; or
- (c) authorised by the competent authority.

(2) Where an aircraft or vessel arrives or stops for any of the reasons outlined in subsection (1) the captain or master shall

- (a) forthwith report to the competent authority;
- (b) with the consent of the competent authority, permit any of the crew members or passengers to disembark from the aircraft or vessel; and

- (c) comply with any directions given by the competent authority in respect of any crew, or passengers carried on the aircraft or vessel.

(3) Subject to any authorisation granted by the competent authority, no member of the crew and no passenger on the aircraft or vessel shall without the consent of that authority disembark from the aircraft or vessel, and all such persons shall comply with any directions given by the competent authority.

(4) A captain or master who fails to comply with or acts in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

(5) Notwithstanding subsection (4), the disembarkation of crew members or passengers from the aircraft or vessel shall not constitute an offence, where the disembarkation is necessary for reasons of health, safety or the preservation of life.

Powers and duties of the competent authority.

7. (1) The competent authority shall,

- (a) co-ordinate with IMPACS on all matters relating to the APIS;
- (b) if requested, allow the crew member or passenger from an aircraft or vessel access to his or her personal identifiable information maintained in the APIS to ensure its correctness, but no crew member nor passenger shall have access to any information provided by IMPACS or JRCC through the screening of API by IMPACS and JRCC against a Watch List for any API hit;
- (c) determine, after consultation with IMPACS, the admissibility or otherwise of any crew member or passengers into the Virgin Islands;
- (d) withhold clearance for the departure of an aircraft whose captain has not provided the API required pursuant to section 3, pending submission of the API; and
- (e) assess the sufficiency, and error rates in review of API transmissions for each journey.

(2) Notwithstanding section 7(a) and (c), any decision with respect to the admissibility or inadmissibility of crew members or passengers from an aircraft or vessel shall be made solely by the competent authority.

8. (1) IMPACS shall use the APIS to conduct screening against Watch Lists of crew members and passengers on aircraft and vessels that enter into, depart from and travel within the regional space in order to provide information to assist participating countries.

Use and sharing of API with regional and international security agencies.

(2) IMPACS may share the information contained within APIS with the International Criminal Police Organization (INTERPOL) and any other national, regional or international intelligence, law enforcement or security agencies or centres approved by CARICOM Council for Security and Law Enforcement (CONSLE) in order to further national, regional or international security.

(3) API shall only be used for the purposes of this Act.

9. (1) The API collected under this Act for entry screening purposes shall be retained for a period not exceeding three years from the date of travel of the crew member or the passenger.

Retention of APIS.

(2) Nothing contained in subsection (1) applies to the data copied from the APIS into any other security database system to which a different data retention schedule applies.

10. (1) The Minister may, with the approval of the Cabinet, make Regulations to give effect to the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations may provide for procedures for collaboration and coordination of information gathering and sharing under this Act.

11. (1) The Minister may, by Order published in the *Gazette* amend Schedule 1 or 2 in consultation with CONSLE with respect to API.

Amendment of the Schedules.
Schedule 1
Schedule 2

(2) An Order made pursuant to subsection (1) shall be subject to a Negative Resolution of the House of Assembly.

SCHEDULE 1

[Section 3(2)]

ADVANCE PASSENGER INFORMATION

- (a) Data relating to the flight or voyage (Header Data)
 - (i) Flight Identification
(IATA Airline code and flight number)
 - (ii) Vessel Identification
(Vessel name and voyage number)
 - (iii) Country of Registration
(Country where vessel is registered)
 - (iv) Agent/Owner (Where applicable)
(Name of Agent for the vessel or where no Agent, Name of Owner)
 - (v) Call Sign (If applicable)
 - (vi) Schedule Departure Date
(Date of Scheduled departure of vessel based on local time of departure location)
 - (vii) Scheduled Departure Time
(Time of scheduled departure of vessel based on local time of arrival location)
 - (viii) Scheduled Arrival Date
(Date of scheduled arrival of vessel based on local time of arrival location)
 - (ix) Scheduled Arrival Time
(Time of scheduled arrival of vessel based on local time of arrival location)
 - (x) Last Place or Port of Call of Vessel or Aircraft
(Vessel departed from this last foreign place or port of call to go to “place or port of vessel initial arrival”)
 - (xi) Place or Port of Vessel or Aircraft Initial Arrival
(Place or port in the country of destination where the vessel arrives from the “last place or port of call of vessel or aircraft”)
 - (xii) Subsequent Place or Port of call within the country or regional space
 - (xiii) Number of Passengers on board

(Total number of passengers on board)

(xiv) Number of crew on board

(b) Data relating to each individual on board

- (i) Official Travel Document Number
(Passport, or other Government approved travel documents)
- (ii) Issuing State or Organisation of the Official Travel Document
(Name State or Organisation responsible for the issuance of the official document)
- (iii) Official Travel Document Type
(Indicator to identify type of official travel document)
- (iv) Expiration Date of Official Travel Document
(Expiration date of the official travel document)
- (v) Surname or Given Name(s)
(Family name and given name(s) of the holder as it appears on the travel document)
- (vi) Nationality
(Nationality of the holder of the travel document)
- (vii) Date of Birth
(Date of birth of the holder)
- (viii) Gender
(Gender of the holder)
- (ix) Place of Birth
(Please give city and country of birth)
- (x) Traveller's Status
(Passenger, crew, in-transit)
- (xi) Place or Port of Original Embarkation
(Place or Port on that journey where traveller first boarded for foreign travel)
- (xii) Port or Place of Clearance
(Place or Port where the traveller is cleared by the border control agencies)
- (xiii) Place or Port of Onward Foreign Destination
(Foreign place or port where the traveller is transiting)
- (ix) Passenger Name Record (PNR) Data

(As available in the traveller's Passenger Name Record in the carrier's reservation system including all historical changes to the PNR listed) which shall include:

- (1) PNR record locator
- (2) Date of reservation or issue of ticket
- (3) Date(s) of intended travel
- (4) Name(s)
- (5) Address and contact information (telephone number, email address)
- (6) All forms of payment information, including billing address
- (7) Complete travel itinerary for specific PNR
- (8) Frequent flyer information
- (9) Travel agency or Travel agent
- (10) Travel status of passenger, including confirmations, check-in status, no show or go show information
- (11) Split or divided PNR information
- (12) General remarks (including all available information on unaccompanied minors under 18 years, such as name and gender of the minor, language(s) spoken, name and contact details of guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent)
- (13) Ticketing field information, including ticket number, date of ticket issuance and one way tickets, Automated Ticket Fare Quote fields
- (14) Seat number and other seat information
- (15) Code share information
- (16) All baggage information
- (17) Number and other names of travellers on PNR
- (18) Any data collected
- (19) All historical changes to the PNR listed in numbers 1 to 18

- (c) Additional Data Elements
 - (i) Visa Number (if applicable)
 - (ii) Issue Date of Visa
(Place where Visa issued)
 - (ii) Place of Issuance of the Visa
(Place where Visa was issued)
 - (iii) Other Document Number used for Travel (if applicable)
(The other document number used for travel when the official travel document is not required)
 - (iv) Type of Other Document used for Travel (supporting travel document)
(Indicator to identify type of other document used for travel)
 - (v) Primary Residence
 - (aa) Country of Primary Residence
(Country where Passenger resides most of the year)
 - (bb) Address
(location identification such as: street name and number)
 - (cc) City
 - (dd) State or Province or County
 - (ee) Postal Code
- (d) Destination Address
 - (i) Address where Passenger will be staying in territory of Disembarkation
 - (ii) City
 - (iii) State or Province or County
 - (iv) Postal Code
- (e) Date relating to the Reporting Party
 - (i) Reporting Party Name
 - (ii) Reporting Party Telephone Number
 - (iii) Reporting Party Facsimile Number
 - (iv) Reporting Party Electronic Mail Address

SCHEDULE 2

[Section 4]

TIMEFRAME

1. In case of commercial aircraft, no later than forty minutes prior to departure from the last port of call;
2. In case of a private aircraft, no later than forty minutes prior to the departure from the last port of call;
3. In case of a vessel arriving from outside the regional space, no later than twenty-four hours prior to arrival;
4. In case of a vessel arriving from a destination within the regional space, no later than one hour prior to the arrival of the vessel from the last port of call.
5. In the event of any changes to the flight or vessel header data or data relating to an individual on board, an updated API file is required prior to departure of the aircraft or vessel.

Passed by the House of Assembly this day of , 2020.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to provide for advanced passenger information relating to crew members and passengers of an aircraft or vessel and to make provision for the sharing of that information with other States.

This Bill is one that is recommended by CARICOM in order to ensure that throughout the region we have uniform legislation which provides for the type of information that the captains and masters of aircrafts and vessels are required to provide in relation to the crew members and passengers expected to enter or leave the Territory, the time within which the information is to be provided and the sharing of information which will facilitate advance passenger screening and enhance border security.

Clause 1 sets out the short title and commencement.

Clause 2 defines certain key terms used including Advance Passenger Information, API hit, distinction between aircraft and vessel, IMPACS, JRCC.

Clause 3 would require the captain or master of every aircraft or vessel to provide advance passenger information.

Clause 4 would provide for the timeframe that apply in relation to the information to be submitted to the competent authority.

Clause 5 would provide for the competent authority to verify API data.

Clause 6 would provide for the arrival of vessels or aircraft making a technical stop and the conditions under which crew members and passengers would be allowed to disembark the vessels or aircrafts.

Clause 7 would provide for the powers and duties of a competent authority.

Clause 8 would provide for the sharing of API with regional and international security agencies.

Clause 9 would provide for the retention of API information collected.

Clause 10 would provide for Regulations to be made under the Act.

Clause 11 would provide for the Schedules to be amended by Order and for the any such Orders to be subject to a negative resolution.

Minister for Natural Resources, Labour and Immigration.