

107TH CONGRESS
1ST SESSION

S. 1161

To amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers; to provide a stable, legal, agricultural workforce; to extend basic legal protections and better working conditions to more workers; to provide for a system of one-time, earned adjustment to legal status for certain agricultural workers; and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2001

Mr. CRAIG (for himself, Mr. McCONNELL, Mr. COCHRAN, Mr. ENZI, Mr. BURNS, Mr. FRIST, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers; to provide a stable, legal, agricultural workforce; to extend basic legal protections and better working conditions to more workers; to provide for a system of one-time, earned adjustment to legal status for certain agricultural workers; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Agricultural Job Opportunity Benefits and Security Act
4 of 2001”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 this division is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADJUSTMENT TO LAWFUL STATUS

Sec. 101. Agricultural workers.

Sec. 102. Correction of Social Security records.

TITLE II—REFORM OF H-2A WORKER PROGRAM

Sec. 201. Amendment to the Immigration and Nationality Act.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Effective date.

7 **SEC. 2. DEFINITIONS.**

8 In this division:

9 (1) **AGRICULTURAL EMPLOYMENT.**—The term
10 “agricultural employment” means any service or ac-
11 tivity that is considered to be agricultural under sec-
12 tion 3(f) of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 203(f)) or agricultural labor under sec-
14 tion 3121(g) of the Internal Revenue Code of 1986
15 (26 U.S.C. 3121(g)). For purposes of this para-
16 graph, agricultural employment includes employment
17 under section 101(a)(15)(H)(ii)(a) of the Immigra-

1 tion and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)(ii)(a)).

3 (2) DISPLACE.—In the case of an application
4 with respect to one or more H–2A workers by an
5 employer, the employer is considered to “displace” a
6 United States worker from a job if the employer lays
7 off the worker from a job for which the H–2A work-
8 er or workers is or are sought.

9 (3) ELIGIBLE.—The term “eligible”, when used
10 with respect to an individual, means an individual
11 who is not an unauthorized alien (as defined in sec-
12 tion 274A(h)(3) of the Immigration and Nationality
13 Act (8 U.S.C. 1324a(h)(3))).

14 (4) EMPLOYER.—The term “employer” means
15 any person or entity, including any farm labor con-
16 tractor and any agricultural association, that em-
17 ploys workers in agricultural employment.

18 (5) H–2A WORKER.—The term “H–2A worker”
19 means a nonimmigrant described in section
20 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

22 (6) JOB OPPORTUNITY.—The term “job oppor-
23 tunity” means a job opening for temporary full-time
24 employment at a place in the United States to which
25 United States workers can be referred.

1 (7) LAYS OFF.—

2 (A) IN GENERAL.—The term “lays off”,
3 with respect to a worker—

4 (i) means to cause the worker’s loss of
5 employment, other than through a dis-
6 charge for inadequate performance, viola-
7 tion of workplace rules, cause, voluntary
8 departure, voluntary retirement, contract
9 impossibility (as described in section
10 218A(b)(4)(D) of the Immigration and
11 Nationality Act, as added by section 201 of
12 this division), temporary layoffs due to
13 weather, markets, or other temporary con-
14 ditions; but

15 (ii) does not include any situation in
16 which the worker is offered, as an alter-
17 native to such loss of employment, a simi-
18 lar employment opportunity with the same
19 employer (or, in the case of a placement of
20 a worker with another employer under sec-
21 tion 218(b)(2)(E) of the Immigration and
22 Nationality Act, as added by section 201 of
23 this division, with either employer de-
24 scribed in such section 218(b)(2)(E)) at
25 equivalent or higher compensation and

1 benefits than the position from which the
2 employee was discharged, regardless of
3 whether or not the employee accepts the
4 offer.

5 (B) STATUTORY CONSTRUCTION.—Nothing
6 in this paragraph is intended to limit an em-
7 ployee’s rights under a collective bargaining
8 agreement or other employment contract.

9 (8) SECRETARY.—The term “Secretary” means
10 the Secretary of Labor.

11 (9) TEMPORARY.—A worker is employed on a
12 “temporary” basis where the employment is in-
13 tended not to exceed 10 months.

14 (10) UNITED STATES WORKER.—The term
15 “United States worker” means any worker, whether
16 a United States citizen or national, a lawfully admit-
17 ted permanent resident alien, or any other alien,
18 who is authorized to work in the job opportunity
19 within the United States, except an alien admitted
20 or otherwise provided status under section
21 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

23 (11) WORK DAY.—The term “work day” means
24 any day in which the individual is employed one or
25 more hours in agriculture.

1 **TITLE I—ADJUSTMENT TO**
2 **LAWFUL STATUS**

3 **SEC. 101. AGRICULTURAL WORKERS.**

4 (a) TEMPORARY RESIDENT STATUS.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of law, the Attorney General shall adjust
7 the status of an alien who qualifies under this sub-
8 section to that of an alien lawfully admitted for tem-
9 porary residence if the Attorney General determines
10 that the following requirements are satisfied with re-
11 spect to the alien:

12 (A) PERFORMANCE OF AGRICULTURAL EM-
13 PLOYMENT IN THE UNITED STATES.—The alien
14 must establish that the alien has performed ag-
15 ricultural employment in the United States for
16 at least 900 hours or 150 work days, whichever
17 is less, during any 12 consecutive months dur-
18 ing the 18-month period ending on July 4,
19 2001.

20 (B) APPLICATION PERIOD.—The alien
21 must apply for such adjustment during the 18-
22 month application period beginning on the 1st
23 day of the 7th month that begins after the date
24 of the enactment of this Act.

1 (C) ADMISSIBLE AS IMMIGRANT.—The
2 alien must establish that the alien is otherwise
3 admissible to the United States under section
4 212 of the Immigration and Nationality Act (8
5 U.S.C. 1182), except as otherwise provided
6 under subsection (e)(2).

7 (2) AUTHORIZED TRAVEL.—During the period
8 an alien is in lawful temporary resident status
9 granted under this subsection, the alien has the
10 right to travel abroad (including commutation from
11 a residence abroad) in the same manner as an alien
12 lawfully admitted for permanent residence.

13 (3) AUTHORIZED EMPLOYMENT.—During the
14 period an alien is in lawful temporary resident sta-
15 tus granted under this subsection, the alien shall be
16 provided an “employment” authorized endorsement
17 or other appropriate work permit, in the same man-
18 ner as an alien lawfully admitted for permanent resi-
19 dence.

20 (4) TERMINATION OF TEMPORARY RESIDENT
21 STATUS.—During the period of temporary resident
22 status granted an alien under this subsection, the
23 Attorney General may terminate such status only
24 upon a determination under this division that the
25 alien is deportable.

1 (5) RECORD OF EMPLOYMENT.—

2 (A) IN GENERAL.—Each employer of a
3 worker whose status is adjusted under this sub-
4 section annually shall—

5 (i) provide a written record of employ-
6 ment to the alien; and

7 (ii) provide a copy of such record to
8 the Immigration and Naturalization Serv-
9 ice.

10 (B) SUNSET.—The obligation under sub-
11 paragraph (A) terminates on October 31, 2008.

12 (b) RIGHTS OF ALIENS GRANTED TEMPORARY RESI-
13 DENT STATUS.—

14 (1) IN GENERAL.—Except as otherwise pro-
15 vided in this subsection, an alien who acquires the
16 status of an alien lawfully admitted for temporary
17 residence under subsection (a), such status not hav-
18 ing changed, shall be considered to be an alien law-
19 fully admitted for permanent residence for purposes
20 of any law other than any provision of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1101 et seq.).

22 (2) TERMS OF EMPLOYMENT RESPECTING
23 ALIENS ADMITTED UNDER THIS SECTION.—

24 (A) PROHIBITION.—No alien whose status
25 is adjusted under subsection (a) may be termi-

1 nated from employment by any employer during
2 the period of temporary resident status except
3 for just cause.

4 (B) TREATMENT OF COMPLAINTS.—

5 (i) ESTABLISHMENT OF PROCESS.—

6 The Attorney General shall establish a
7 process for the receipt, initial review, and
8 disposition in accordance with this sub-
9 paragraph of complaints by aliens granted
10 temporary resident status under subsection
11 (a) who allege that they have been termi-
12 nated without just cause. No proceeding
13 shall be conducted under this subpara-
14 graph with respect to a termination unless
15 the Attorney General determines that the
16 complaint was filed not later than 6
17 months after the date of the termination.

18 (ii) INITIATION OF ARBITRATION.—If

19 the Attorney General finds that a com-
20 plaint has been filed in accordance with
21 clause (i) and there is reasonable cause to
22 believe that the complainant was termi-
23 nated without just cause, the Attorney
24 General shall initiate binding arbitration
25 proceedings by requesting the Federal Me-

1 diation and Conciliation Service to appoint
2 a mutual arbitrator from the roster of ar-
3 bitrators maintained by such Service for
4 the geographical area in which the em-
5 ployer is located. The procedure and rules
6 of such Service shall be applicable to the
7 selection of such arbitrator and to such ar-
8 bitration proceedings. The Attorney Gen-
9 eral shall pay the fee and expenses of the
10 arbitrator.

11 (iii) ARBITRATION PROCEEDINGS.—

12 The arbitrator shall conduct the pro-
13 ceeding in accordance with the policies and
14 procedures promulgated by the American
15 Arbitration Association applicable to pri-
16 vate arbitration of employment disputes.
17 The arbitrator shall make findings respect-
18 ing whether the termination was for just
19 cause. The arbitrator may not find that
20 the termination was for just cause unless
21 the employer so demonstrates by a prepon-
22 derance of the evidence. If the arbitrator
23 finds that the termination was not for just
24 cause, the arbitrator shall make a specific
25 finding of the number of days or hours of

1 work lost by the employee as a result of
2 the termination. The arbitrator shall have
3 no authority to order any other remedy, in-
4 cluding, but not limited to, reinstatement,
5 back pay, or front pay to the affected em-
6 ployee. Within 30 days from the conclusion
7 of the arbitration proceeding, the arbi-
8 trator shall transmit the findings in the
9 form of a written opinion to the parties to
10 the arbitration and the Attorney General.
11 Such findings shall be final and conclusive,
12 and no official or court of the United
13 States shall have the power or jurisdiction
14 to review any such findings.

15 (iv) EFFECT OF ARBITRATION FIND-
16 INGS.—If the Attorney General receives a
17 finding of an arbitrator that an employer
18 has terminated an alien granted temporary
19 resident status under subsection (a) with-
20 out just cause, the Attorney General shall
21 credit the alien for the number of days or
22 hours of work lost for purposes of the re-
23 quirement of subsection (c)(1).

24 (v) TREATMENT OF ATTORNEYS'
25 FEES.—The parties shall bear the cost of

1 their own attorneys' fees involved in the
2 litigation of the complaint.

3 (vi) NONEXCLUSIVE REMEDY.—The
4 complaint process provided for in this sub-
5 paragraph is in addition to any other
6 rights an employee may have in accordance
7 with applicable law.

8 (vii) EFFECT ON OTHER ACTIONS OR
9 PROCEEDINGS.—Any finding of fact or
10 law, judgment, conclusion, or final order
11 made by an arbitrator in the proceeding
12 before the Attorney General shall not be
13 conclusive or binding in any separate or
14 subsequent action or proceeding between
15 the employee and the employee's current or
16 prior employer brought before an arbi-
17 trator, administrative agency, court, or
18 judge of any State or the United States,
19 regardless of whether the prior action was
20 between the same or related parties or in-
21 volved the same facts, except that the arbi-
22 trator's specific finding of the number of
23 days or hours of work lost by the employee
24 as a result of the employment termination

1 may be referred to the Attorney General
2 pursuant to clause (iv).

3 (C) CIVIL PENALTIES.—

4 (i) IN GENERAL.—If the Secretary
5 finds, after notice and opportunity for a
6 hearing, that an employer of a worker
7 whose status has been adjusted under sub-
8 section (a) has failed to provide the record
9 of employment required under subsection
10 (a)(5) or has provided a false statement of
11 material fact in such a record, the em-
12 ployer shall be subject to a civil money
13 penalty in an amount not to exceed \$1,000
14 per violation.

15 (ii) LIMITATION.—The penalty appli-
16 cable under clause (i) for failure to provide
17 records shall not apply unless the alien has
18 provided the employer with evidence of em-
19 ployment authorization granted under this
20 section.

21 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

22 (1) AGRICULTURAL WORKERS.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), the Attorney General shall
25 adjust the status of any alien granted lawful

1 temporary resident status under subsection (a)
2 to that of an alien lawfully admitted for perma-
3 nent residence if the Attorney General deter-
4 mines that the following requirements are satis-
5 fied:

6 (i) QUALIFYING AGRICULTURAL EM-
7 PLOYMENT.—The alien has performed at
8 least 900 hours or 150 work days, which-
9 ever is less, of agricultural employment in
10 the United States in each of 4 years dur-
11 ing the 6-year period beginning on Novem-
12 ber 1, 2001.

13 (ii) ANNUAL RESIDENCY, IN GEN-
14 ERAL.—The alien may not be present in
15 the United States for more than an aggre-
16 gate of 300 days in any calendar year.

17 (iii) EXCEPTIONS.—The 300-day-per-
18 year limitation in clause (ii) shall not apply
19 in the case of any alien who, under regula-
20 tions established as necessary by the Attor-
21 ney General—

22 (I) has established a permanent
23 residence in the United States and
24 has a minor child who was born in the
25 United States prior to the date of en-

1 actment of this Act who resides in the
2 alien's household; or

3 (II) remains in the United States
4 to perform full-time agricultural or
5 nonagricultural employment; or

6 (III) is actively seeking employ-
7 ment; or

8 (IV) is prevented from leaving
9 the United States because of a serious
10 medical condition.

11 (iv) APPLICATION PERIOD.—The alien
12 applies for adjustment of status not later
13 than October 31, 2008.

14 (v) PROOF.—In meeting the require-
15 ments of clauses (i), (ii), and (iii), an alien
16 may submit the record of employment de-
17 scribed in subsection (a)(5) or such docu-
18 mentation as may be submitted under sub-
19 section (d)(3).

20 (vi) DISABILITY.—In determining
21 whether an alien has met the requirements
22 of clauses (i), (ii), and (iii), the Attorney
23 General shall credit the alien with any
24 work days lost because the alien is unable
25 to work due to injury or disease arising out

1 of and in the course of the alien's employ-
2 ment during the qualifying period, if the
3 alien can establish such disabling injury or
4 disease through medical records.

5 (B) GROUNDS FOR DENIAL OF ADJUST-
6 MENT OF STATUS.—The Attorney General may
7 deny an alien adjustment to permanent resident
8 status, and provide for termination of the tem-
9 porary resident status granted such alien under
10 subsection (a), if—

11 (i) the Attorney General finds by a
12 preponderance of the evidence that the ad-
13 justment to temporary resident status was
14 the result of fraud or willful misrepresenta-
15 tion, as described in section
16 212(a)(6)(C)(i) of the Immigration and
17 Nationality Act (8 U.S.C.
18 1182(a)(6)(C)(i)); or

19 (ii) the alien—

20 (I) commits an act that makes
21 the alien inadmissible to the United
22 States under section 212 of the Immi-
23 gration and Nationality Act (8 U.S.C.
24 1182), except as provided under sub-
25 section (e)(2); or

1 (II) is convicted of a felony or 3
2 or more misdemeanors committed in
3 the United States.

4 (C) GROUNDS FOR REMOVAL.—Any alien
5 granted temporary resident status under sub-
6 section (a) who does not apply for adjustment
7 of status under this subsection before the expi-
8 ration of the application period described in
9 subparagraph (A)(iv), or who fails to meet the
10 other requirements of subparagraph (A) by the
11 end of the applicable period, is deportable and
12 may be removed under section 240 of the Immi-
13 gration and Nationality Act (8 U.S.C. 1229a).

14 (d) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

15 (1) TO WHOM MAY BE MADE.—

16 (A) WITHIN THE UNITED STATES.—The
17 Attorney General shall provide that—

18 (i) applications for adjustment of sta-
19 tus under subsection (a) may be filed—

20 (I) with the Attorney General,
21 but only if the applicant is rep-
22 resented by an attorney; or

23 (II) with a qualified designated
24 entity (designated under paragraph
25 (2)), but only if the applicant consents

1 to the forwarding of the application to
2 the Attorney General; and

3 (ii) applications for adjustment of sta-
4 tus under subsection (c) shall be filed di-
5 rectly with the Attorney General.

6 (B) OUTSIDE THE UNITED STATES.—The
7 Attorney General, in cooperation with the Sec-
8 retary of State, shall establish a procedure
9 whereby an alien may apply for adjustment of
10 status under subsection (a) at an appropriate
11 consular office outside the United States.

12 (C) PRELIMINARY APPLICATIONS.—

13 (i) IN GENERAL.—During the applica-
14 tion period described in subsection
15 (a)(1)(B), the Attorney General may grant
16 admission to the United States as a tem-
17 porary resident and provide an “employ-
18 ment authorized” endorsement or other ap-
19 propriate work permit to any alien who
20 presents a preliminary application for ad-
21 justment of status under subsection (a) at
22 a designated port of entry on the southern
23 land border of the United States. An alien
24 who does not enter through a port of entry

1 is subject to deportation and removal as
2 otherwise provided in this division.

3 (ii) DEFINITION.—For purposes of
4 clause (i), the term “preliminary applica-
5 tion” means a fully completed and signed
6 application which contains specific infor-
7 mation concerning the performance of
8 qualifying employment in the United
9 States, together with the payment of the
10 appropriate fee and the submission of pho-
11 tographs and the documentary evidence
12 which the applicant intends to submit as
13 proof of such employment.

14 (iii) ELIGIBILITY.—An applicant
15 under clause (i) must be otherwise admis-
16 sible to the United States under subsection
17 (e)(2) and must establish to the satisfac-
18 tion of the examining officer during an
19 interview that the applicant’s claim to eli-
20 gibility for agricultural worker status is
21 credible.

22 (D) TRAVEL DOCUMENTATION.—The At-
23 torney General shall provide each alien whose
24 status is adjusted under this section with a

1 counterfeited-resistant document of authorization
2 to enter or reenter the United States.

3 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
4 PPLICATIONS.—

5 (A) IN GENERAL.—For purposes of receiv-
6 ing applications under subsection (a), the Attor-
7 ney General—

8 (i) shall designate qualified farm labor
9 organizations and associations of employ-
10 ers; and

11 (ii) may designate such other persons
12 as the Attorney General determines are
13 qualified and have substantial experience,
14 demonstrate competence, and have tradi-
15 tional long-term involvement in the prepa-
16 ration and submittal of applications for ad-
17 justment of status under section 209, 210,
18 or 245 of the Immigration and Nationality
19 Act, Public Law 89–732, Public Law 95–
20 145, or the Immigration Reform and Con-
21 trol Act of 1986.

22 (B) REFERENCES.—Organizations, asso-
23 ciations, and persons designated under subpara-
24 graph (A)0 are referred to in this division as
25 “qualified designated entities”.

1 (3) PROOF OF ELIGIBILITY.—

2 (A) IN GENERAL.—An alien may establish
3 that the alien meets the requirement of sub-
4 section (a)(1)(A) or subsection (c)(1)(A)
5 through government employment records or
6 records supplied by employers or collective bar-
7 gaining organizations, and other reliable docu-
8 mentation as the alien may provide. The Attor-
9 ney General shall establish special procedures to
10 properly credit work in cases in which an alien
11 was employed under an assumed name.

12 (B) DOCUMENTATION OF WORK HIS-
13 TORY.—(i) An alien applying for adjustment of
14 status under subsection (a)(1) or subsection
15 (c)(1) has the burden of proving by a prepon-
16 derance of the evidence that the alien has
17 worked the requisite number of hours or days
18 (as required under subsection (a)(1)(A) or sub-
19 section (c)(1)(A)).

20 (ii) If an employer or farm labor con-
21 tractor employing such an alien has kept proper
22 and adequate records respecting such employ-
23 ment, the alien's burden of proof under clause
24 (i) may be met by securing timely production of

1 those records under regulations to be promul-
2 gated by the Attorney General.

3 (iii) An alien can meet such burden of
4 proof if the alien establishes that the alien has
5 in fact performed the work described in sub-
6 section (a)(1)(A) or subsection (c)(1)(A) by
7 producing sufficient evidence to show the extent
8 of that employment as a matter of just and rea-
9 sonable inference.

10 (4) TREATMENT OF APPLICATIONS BY QUALI-
11 FIED DESIGNATED ENTITIES.—Each qualified des-
12 ignated entity must agree to forward to the Attorney
13 General applications filed with it in accordance with
14 paragraph (1)(A)(ii) but not to forward to the Attor-
15 ney General applications filed with it unless the ap-
16 plicant has consented to such forwarding. No such
17 entity may make a determination required by this
18 section to be made by the Attorney General. Upon
19 the request of the alien, a qualified designated entity
20 shall assist the alien in obtaining documentation of
21 the work history of the alien.

22 (5) LIMITATION ON ACCESS TO INFORMA-
23 TION.—Files and records prepared for purposes of
24 this subsection by qualified designated entities oper-
25 ating under this subsection are confidential and the

1 Attorney General and the Immigration and Natu-
2 ralization Service shall not have access to such files
3 or records relating to an alien without the consent
4 of the alien, except as allowed by a court order
5 issued pursuant to paragraph (6).

6 (6) CONFIDENTIALITY OF INFORMATION.—

7 (A) IN GENERAL.—Except as otherwise
8 provided in this subsection, neither the Attor-
9 ney General, nor any other official or employee
10 of the Department of Justice, or bureau or
11 agency thereof, may—

12 (i) use the information furnished by
13 the applicant pursuant to an application
14 filed under this section, the information
15 provided to the applicant by a person des-
16 ignated under paragraph (2)(A), or any in-
17 formation provided by an employer or
18 former employer, for any purpose other
19 than to make a determination on the appli-
20 cation, or for enforcement of paragraph
21 (7);

22 (ii) make any publication whereby the
23 information furnished by any particular in-
24 dividual can be identified; or

1 (iii) permit anyone other than the
2 sworn officers and employees of the De-
3 partment of Justice, or bureau or agency
4 thereof, or, with respect to applications
5 filed with a qualified designated entity,
6 that qualified designated entity, to examine
7 individual applications.

8 (B) CRIME.—Whoever knowingly uses,
9 publishes, or permits information to be exam-
10 ined in violation of this paragraph shall be fined
11 not more than \$10,000.

12 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
13 PPLICATIONS.—

14 (A) CRIMINAL PENALTY.—Whoever—
15 (i) files an application for adjustment
16 of status under subsection (a) or (c) and
17 knowingly and willfully falsifies, conceals,
18 or covers up a material fact or makes any
19 false, fictitious, or fraudulent statements
20 or representations, or makes or uses any
21 false writing or document knowing the
22 same to contain any false, fictitious, or
23 fraudulent statement or entry; or

1 (ii) creates or supplies a false writing
2 or document for use in making such an ap-
3 plication;

4 shall be fined in accordance with title 18,
5 United States Code, or imprisoned not more
6 than 5 years, or both.

7 (B) INADMISSIBILITY.—An alien who is
8 convicted of a crime under subparagraph (A)
9 shall be considered to be inadmissible to the
10 United States on the ground described in sec-
11 tion 212(a)(6)(C)(i) of the Immigration and
12 Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

13 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-
14 tion 504(a)(11) of Public Law 104–134 (110 Stat.
15 1321–53 et seq.) shall not be construed to prevent
16 a recipient of funds under the Legal Services Cor-
17 poration Act (42 U.S.C. 2996 et seq.) from pro-
18 viding legal assistance directly related to an applica-
19 tion for adjustment of status under this section.

20 (9) APPLICATION FEES.—

21 (A) FEE SCHEDULE.—The Attorney Gen-
22 eral shall provide for a schedule of fees that—

23 (i) shall be charged for the filing of
24 applications for adjustment under sub-
25 sections (a) and (c); and

1 (ii) may be charged by qualified des-
2 ignated entities to help defray the costs of
3 services provided to such applicants.

4 (B) PROHIBITION ON EXCESS FEES BY
5 QUALIFIED DESIGNATED ENTITIES.—A quali-
6 fied designated entity may not charge any fee
7 in excess of, or in addition to, the fees author-
8 ized under subparagraph (A)(ii) for services
9 provided to applicants.

10 (C) DISPOSITION OF FEES.—

11 (i) IN GENERAL.—There is established
12 in the general fund of the Treasury a sepa-
13 rate account, which shall be known as the
14 “Agricultural Worker Immigration Status
15 Adjustment Account”. Notwithstanding
16 any other provision of law, there shall be
17 deposited as offsetting receipts into the ac-
18 count all fees collected under subparagraph
19 (A)(i).

20 (ii) USE OF FEES FOR APPLICATION
21 PROCESSING.—Amounts deposited in the
22 “Agricultural Worker Immigration Status
23 Adjustment Account” shall remain avail-
24 able to the Attorney General until ex-

1 pending for processing applications for ad-
2 justment under subsections (a) and (c).

3 (e) WAIVER OF NUMERICAL LIMITATIONS AND CER-
4 TAIN GROUNDS FOR INADMISSIBILITY.—

5 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

6 The numerical limitations of sections 201 and 202
7 of the Immigration and Nationality Act (8 U.S.C.
8 1151 and 1152) shall not apply to the adjustment
9 of aliens to lawful permanent resident status under
10 this section.

11 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
12 MISSIBILITY.—In the determination of an alien’s ad-
13 missibility under subsection (a)(1)(C) or an alien’s
14 eligibility for adjustment of status under subsection
15 (c)(1)(B)(ii)(I), the following rules shall apply:

16 (A) GROUNDS OF EXCLUSION NOT APPLI-
17 CABLE.—The provisions of paragraphs (5),
18 (6)(A), (7)(A), and (9)(B) of section 212(a) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1182(a)) shall not apply.

21 (B) WAIVER OF OTHER GROUNDS.—

22 (i) IN GENERAL.—Except as provided
23 in clause (ii), the Attorney General may
24 waive any other provision of such section
25 212(a) in the case of individual aliens for

1 humanitarian purposes, to ensure family
2 unity, or when it is otherwise in the public
3 interest.

4 (ii) GROUNDS THAT MAY NOT BE
5 WAIVED.—The following provisions of such
6 section 212(a) may not be waived by the
7 Attorney General under clause (i):

8 (I) Subparagraphs (A) and (B)
9 of paragraph (2) (relating to crimi-
10 nals).

11 (II) Paragraph (4) (relating to
12 aliens likely to become public
13 charges).

14 (III) Paragraph (2)(C) (relating
15 to drug offenses).

16 (IV) Paragraph (3) (relating to
17 security and related grounds), except
18 subparagraph (E).

19 “(iii) CONSTRUCTION.—Nothing in
20 this subparagraph shall be construed as af-
21 fecting the authority of the Attorney Gen-
22 eral other than under this subparagraph to
23 waive provisions of such section 212(a).

24 (C) SPECIAL RULE FOR DETERMINATION
25 OF PUBLIC CHARGE.—An alien is not ineligible

1 for adjustment of status under this section by
2 reason of a ground of inadmissibility under sec-
3 tion 212(a)(4) of the Immigration and Nation-
4 ality Act if the alien demonstrates a history of
5 employment in the United States evidencing
6 self-support without reliance on public cash as-
7 sistance.

8 (f) TEMPORARY STAY OF REMOVAL AND WORK AU-
9 THORIZATION FOR CERTAIN APPLICANTS.—

10 (1) BEFORE APPLICATION PERIOD.—Effective
11 on the date of the enactment of this Act, the Attor-
12 ney General shall provide that, in the case of an
13 alien who is apprehended before the beginning of the
14 application period described in subsection (a)(1)(B)
15 and who can establish a nonfrivolous case of eligi-
16 bility to have the alien’s status adjusted under sub-
17 section (a) (but for the fact that the alien may not
18 apply for such adjustment until the beginning of
19 such period), until the alien has had the opportunity
20 during the first 30 days of the application period to
21 complete the filing of an application for adjustment,
22 the alien—

23 (A) may not be removed; and

24 (B) shall be granted authorization to en-
25 gage in employment in the United States and

1 be provided an “employment authorized” en-
2 dorsement or other appropriate work permit for
3 such purpose.

4 (2) DURING APPLICATION PERIOD.—The Attor-
5 ney General shall provide that, in the case of an
6 alien who presents a nonfrivolous application for ad-
7 justment of status under subsection (a) during the
8 application period described in subsection (a)(1)(B),
9 including an alien who files such an application
10 within 30 days of the alien’s apprehension, and until
11 a final determination on the application has been
12 made in accordance with this section, the alien—

13 (A) may not be removed; and

14 (B) shall be granted authorization to en-
15 gage in employment in the United States and
16 be provided an “employment authorized” en-
17 dorsement or other appropriate work permit for
18 such purpose.

19 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

20 (1) IN GENERAL.—There shall be no adminis-
21 trative or judicial review of a determination respect-
22 ing an application for adjustment of status under
23 subsection (a) or (c) except in accordance with this
24 subsection.

25 (2) ADMINISTRATIVE REVIEW.—

1 (A) SINGLE LEVEL OF ADMINISTRATIVE
2 APPELLATE REVIEW.—The Attorney General
3 shall establish an appellate authority to provide
4 for a single level of administrative appellate re-
5 view of such a determination.

6 (B) STANDARD FOR REVIEW.—Such ad-
7 ministrative appellate review shall be based
8 solely upon the administrative record estab-
9 lished at the time of the determination on the
10 application and upon such additional or newly
11 discovered evidence as may not have been avail-
12 able at the time of the determination.

13 (3) JUDICIAL REVIEW.—

14 (A) LIMITATION TO REVIEW OF RE-
15 MOVAL.—There shall be judicial review of such
16 a denial only in the judicial review of an order
17 of removal under section 242 of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1252).

19 (B) STANDARD FOR JUDICIAL REVIEW.—
20 Such judicial review shall be based solely upon
21 the administrative record established at the
22 time of the review by the appellate authority
23 and the findings of fact and determinations
24 contained in such record shall be conclusive un-
25 less the applicant can establish abuse of discre-

1 tion or that the findings are directly contrary to
2 clear and convincing facts contained in the
3 record considered as a whole.

4 (h) DISSEMINATION OF INFORMATION ON ADJUST-
5 MENT PROGRAM.—Beginning not later than the 1st day
6 of the application period described in subsection (a)(1)(B),
7 the Attorney General, in cooperation with qualified des-
8 ignated entities, shall broadly disseminate information re-
9 specting the benefits that aliens may receive under this
10 section and the requirements to be satisfied to obtain such
11 benefits.

12 (i) REGULATIONS.—The Attorney General shall issue
13 regulations to implement this section not later than the
14 1st day of the 7th month that begins after the date of
15 the enactment of this Act.

16 (j) EFFECTIVE DATE.—This section shall take effect
17 on the date that regulations are issued implementing this
18 section on an interim or other basis.

19 **SEC. 102. CORRECTION OF SOCIAL SECURITY RECORDS.**

20 (a) IN GENERAL.—Section 208(d)(1) of the Social
21 Security Act (42 U.S.C. 408(d)(1)) is amended—

22 (1) in subparagraph (B), by striking “or” at
23 the end of clause (ii);

24 (2) in subparagraph (C), by inserting “or” at
25 the end;

1 (3) by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) whose status is adjusted to that of lawful
4 temporary resident under the Agricultural Job Op-
5 portunity, Benefits, and Security Act of 2001,”; and

6 (4) by striking “1990.” and inserting “1990, or
7 in the case of an alien described in subparagraph
8 (D), if such conduct is alleged to have occurred prior
9 to the date on which the alien became lawfully ad-
10 mitted for temporary residence.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on the 1st day of the 7th
13 month that begins after the date of the enactment of this
14 Act.

15 **TITLE II—REFORM OF H-2A**
16 **WORKER PROGRAM**

17 **SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATION-**
18 **ALITY ACT.**

19 (a) IN GENERAL.—The Immigration and Nationality
20 Act is amended by striking section 218 (8 U.S.C. 1188)
21 and inserting the following:

22 “H-2A EMPLOYER APPLICATIONS

23 “SEC. 218. (a) APPLICATIONS TO THE SEC-
24 RETARY.—

25 “(1) IN GENERAL.—No alien may be admitted
26 to the United States as an H-2A worker, or other-

1 wise provided status as an H-2A worker, unless the
2 employer has filed with the Secretary an application
3 containing—

4 “(A) the assurances described in sub-
5 section (b);

6 “(B) a description of the nature and loca-
7 tion of the work to be performed;

8 “(C) the anticipated period (expected be-
9 ginning and ending dates) for which workers
10 will be needed; and

11 “(D) the number of job opportunities in
12 which the employer seeks to employ workers.

13 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
14 plication filed under paragraph (1) shall be accom-
15 panied by a copy of the job offer describing the
16 wages and other terms and conditions of employ-
17 ment and the bona fide occupational qualifications
18 that must be possessed by a worker to be employed
19 in the job opportunity in question.

20 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
21 TIONS.—The assurances referred to in subsection (a)(1)
22 are the following:

23 “(1) JOB OPPORTUNITIES COVERED BY COL-
24 LECTIVE BARGAINING AGREEMENTS.—With respect

1 to a job opportunity that is covered under a collec-
2 tive bargaining agreement:

3 “(A) UNION CONTRACT DESCRIBED.—The
4 job opportunity is covered by a union contract
5 which was negotiated at arm’s length between a
6 bona fide union and the employer.

7 “(B) NO STRIKE OR LOCKOUT.—The spe-
8 cific job opportunity for which the employer is
9 requesting H-2A workers is not vacant because
10 the former occupant is on strike or being locked
11 out in the course of a labor dispute.

12 “(C) NOTIFICATION OF BARGAINING REP-
13 RESENTATIVES.—The employer, at the time of
14 filing the application, has provided notice of the
15 filing under this paragraph to the bargaining
16 representative of the employer’s employees in
17 the occupational classification at the place or
18 places of employment for which aliens are
19 sought.

20 “(D) TEMPORARY OR SEASONAL JOB OP-
21 PORTUNITIES.—The job opportunity is tem-
22 porary or seasonal.

23 “(E) OFFERS TO UNITED STATES WORK-
24 ERS.—The employer has offered or will offer
25 the job to any eligible United States worker

1 who applies and is equally or better qualified
2 for the job for which the nonimmigrant is, or
3 the nonimmigrants are, sought and who will be
4 available at the time and place of need.

5 “(F) PROVISION OF INSURANCE.—If the
6 job opportunity is not covered by the State
7 workers’ compensation law, the employer will
8 provide, at no cost to the worker, insurance cov-
9 ering injury and disease arising out of, and in
10 the course of, the worker’s employment which
11 will provide benefits at least equal to those pro-
12 vided under the State’s workers’ compensation
13 law for comparable employment.

14 “(2) JOB OPPORTUNITIES NOT COVERED BY
15 COLLECTIVE BARGAINING AGREEMENTS.—With re-
16 spect to a job opportunity that is not covered under
17 a collective bargaining agreement:

18 “(A) NO STRIKE OR LOCKOUT.—The spe-
19 cific job opportunity for which the employer is
20 requesting H-2A workers is not vacant because
21 the former occupant is on strike or being locked
22 out in the course of a labor dispute.

23 “(B) TEMPORARY OR SEASONAL JOB OP-
24 PORTUNITIES.—The job opportunity is tem-
25 porary or seasonal.

1 “(C) BENEFIT, WAGE, AND WORKING CON-
2 DITIONS.—The employer will provide, at a min-
3 imum, the benefits, wages, and working condi-
4 tions required by section 218A to all workers
5 employed in the job opportunities for which the
6 employer has applied under subsection (a) and
7 to all other workers in the same occupation at
8 the place of employment.

9 “(D) NONDISPLACEMENT OF UNITED
10 STATES WORKERS.—The employer did not dis-
11 place and will not displace a United States
12 worker employed by the employer during the
13 period of employment and for a period of 30
14 days preceding the period of employment in the
15 occupation at the place of employment for
16 which the employer seeks approval to employ
17 H-2A workers.

18 “(E) REQUIREMENTS FOR PLACEMENT OF
19 NONIMMIGRANT WITH OTHER EMPLOYERS.—
20 The employer will not place the nonimmigrant
21 with another employer unless—

22 “(i) the nonimmigrant performs du-
23 ties in whole or in part at one or more
24 work sites owned, operated, or controlled
25 by such other employer;

1 “(ii) there are indicia of an employ-
2 ment relationship between the non-
3 immigrant and such other employer; and

4 “(iii) the employer has inquired of the
5 other employer as to whether, and has no
6 actual knowledge or notice that, during the
7 period of employment and for a period of
8 30 days preceding the period of employ-
9 ment, the other employer has displaced or
10 intends to displace a United States worker
11 employed by the other employer in the oc-
12 cupation at the place of employment for
13 which the employer seeks approval to em-
14 ploy H-2A workers; however, nothing in
15 this paragraph shall limit the rights of a
16 joint employer association under section
17 201(e).

18 “(F) STATEMENT OF LIABILITY.—The ap-
19 plication form shall include a clear statement
20 explaining the liability under subparagraph (E)
21 of an employer if the other employer described
22 in such subparagraph displaces a United States
23 worker as described in such subparagraph.

24 “(G) PROVISION OF INSURANCE.—If the
25 job opportunity is not covered by the State

1 workers' compensation law, the employer will
2 provide, at no cost to the worker, insurance cov-
3 ering injury and disease arising out of and in
4 the course of the worker's employment which
5 will provide benefits at least equal to those pro-
6 vided under the State's workers' compensation
7 law for comparable employment.

8 "(H) EMPLOYMENT OF UNITED STATES
9 WORKERS.—

10 "(i) RECRUITMENT.—The employer
11 has taken or will take the following steps
12 to recruit United States workers for the
13 job opportunities for which the H-2A non-
14 immigrant is, or H-2A nonimmigrants are,
15 sought:

16 "(I) CONTACTING FORMER
17 WORKERS.—The employer shall make
18 reasonable efforts through the sending
19 of a letter by United States Postal
20 Service mail, or otherwise, to contact
21 any United States worker the em-
22 ployer employed during the previous
23 season in the occupation at the place
24 of intended employment for which the
25 employer is applying for workers and

1 has made the availability of the em-
2 ployer’s job opportunities in the occu-
3 pation at the place of intended em-
4 ployment known to such previous
5 workers, unless the worker was termi-
6 nated from employment by the em-
7 ployer for a lawful job-related reason
8 or abandoned the job before the work-
9 er completed the period of employ-
10 ment of the job opportunity for which
11 the worker was hired.

12 “(II) FILING A JOB OFFER WITH
13 THE LOCAL OFFICE OF THE STATE
14 EMPLOYMENT SECURITY AGENCY.—
15 Not later than 28 days prior to the
16 date on which the employer desires to
17 employ an H-2A worker in a tem-
18 porary or seasonal agricultural job op-
19 portunity, the employer shall submit a
20 copy of the job offer described in sub-
21 section (a)(2) to the local office of the
22 State employment security agency
23 which serves the area of intended em-
24 ployment and authorize the posting of
25 the job opportunity on ‘America’s Job

1 Bank' or other electronic job registry,
2 except that nothing in this subclause
3 shall require the employer to file an
4 interstate job order under section 653
5 of title 20, Code of Federal Regula-
6 tions.

7 “(III) ADVERTISING OF JOB OP-
8 PORTUNITIES.—Not later than 14
9 days prior to the date on which the
10 employer desires to employ an H-2A
11 worker in a temporary or seasonal ag-
12 ricultural job opportunity, the em-
13 ployer shall advertise the availability
14 of the job opportunities for which the
15 employer is seeking workers in a pub-
16 lication in the local labor market that
17 is likely to be patronized by potential
18 farm workers.

19 “(IV) EMERGENCY PROCE-
20 DURES.—The Secretary shall, by reg-
21 ulation, provide a procedure for ac-
22 ceptance and approval of applications
23 in which the employer has not com-
24 plied with the provisions of this sub-
25 paragraph because the employer's

1 need for H-2A workers could not rea-
2 sonably have been foreseen.

3 “(ii) JOB OFFERS.—The employer has
4 offered or will offer the job to eligible
5 United States workers who apply and are
6 equally or better qualified for the job for
7 which nonimmigrants are sought, and who
8 will be available at the time and place of
9 need.

10 “(iii) PERIOD OF EMPLOYMENT.—The
11 employer will continue to offer the job to
12 eligible United States workers who are
13 equally or better qualified for the jobs for
14 which nonimmigrants are sought during
15 the period beginning on the date on which
16 the foreign worker departs for the employ-
17 er’s place of employment and ending on
18 the date on which 50 percent of the period
19 of employment for which the foreign work-
20 er who is in the job was hired has elapsed,
21 subject to the following requirements:

22 “(I) PROHIBITION.—No person
23 or entity shall willfully and knowingly
24 withhold United States workers prior
25 to the arrival of H-2A workers in

1 order to force the hiring of United
2 States workers under this clause.

3 “(II) COMPLAINTS.—Upon re-
4 ceipt of a complaint by an employer
5 that a violation of subclause (I) has
6 occurred, the Secretary shall imme-
7 diately investigate. The Secretary
8 shall, within 36 hours of the receipt of
9 the complaint, issue findings con-
10 cerning the alleged violation. If the
11 Secretary finds that a violation has
12 occurred, the Secretary shall imme-
13 diately suspend the application of this
14 clause with respect to that certifi-
15 cation for that date of need.

16 “(III) PLACEMENT OF UNITED
17 STATES WORKERS.—Prior to referring
18 a United States worker to an em-
19 ployer during the period described in
20 the matter preceding subclause (I),
21 the Secretary shall make all reason-
22 able efforts to place the United States
23 worker in an open job acceptable to
24 the worker, if there are similarr job
25 opportunities pending with the job

1 service in the area of intended em-
2 ployment.

3 “(iv) STATUTORY CONSTRUCTION.—

4 Nothing in this subparagraph shall be con-
5 strued to prohibit an employer from using
6 such legitimate selection criteria relevant
7 to the type of job that are normal or cus-
8 tomary to the type of job involved so long
9 as such criteria are not applied in a dis-
10 criminatory manner.

11 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
12 OF EMPLOYER MEMBERS.—

13 “(1) IN GENERAL.—An agricultural association
14 may file an application under subsection (a) on be-
15 half of one or more of its employer members that
16 the association certifies in its application has or have
17 agreed in writing to comply with the requirements of
18 this section and sections 218A through 218C.

19 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
20 EMPLOYERS.—If an association filing an application
21 under paragraph (1) is a joint or sole employer of
22 the temporary or seasonal agricultural workers re-
23 quested on the application, the certifications granted
24 under subsection (e)(2)(B) to the association may be
25 used for the certified job opportunities of any of its

1 producer members named on the application, and
2 such workers may be transferred among such pro-
3 ducer members to perform the agricultural services
4 of a temporary or seasonal nature for which the cer-
5 tifications were granted.

6 “(d) WITHDRAWAL OF APPLICATIONS.—

7 “(1) IN GENERAL.—An employer may withdraw
8 an application under subsection (a), except that if
9 the employer is an agricultural association, the asso-
10 ciation may withdraw an application under sub-
11 section (a) with respect to one or more of its mem-
12 bers. To withdraw an application, the employer or
13 association shall notify the Secretary in writing, and
14 the Secretary shall acknowledge in writing the re-
15 ceipt of such withdrawal notice. An employer who
16 withdraws an application under subsection (a), or on
17 whose behalf an application is withdrawn, is relieved
18 of the obligations undertaken in the application.

19 “(2) LIMITATION.—An application may not be
20 withdrawn while any alien provided status under sec-
21 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
22 tion is employed by the employer.

23 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
24 Any obligation incurred by an employer under any
25 other law or regulation as a result of the recruit-

1 ment of United States workers or H-2A workers
2 under an offer of terms and conditions of employ-
3 ment required as a result of making an application
4 under subsection (a) is unaffected by withdrawal of
5 such application.

6 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

7 “(1) RESPONSIBILITY OF EMPLOYERS.—The
8 employer shall make available for public examina-
9 tion, within 1 working day after the date on which
10 an application under subsection (a) is filed, at the
11 employer’s principal place of business or work site,
12 a copy of each such application (and such accom-
13 panying documents as are necessary).

14 “(2) RESPONSIBILITY OF THE SECRETARY.—

15 “(A) COMPILATION OF LIST.—The Sec-
16 retary shall compile, on a current basis, a list
17 (by employer and by occupational classification)
18 of the applications filed under this subsection.
19 Such list shall include the wage rate, number
20 of workers sought, period of intended employ-
21 ment, and date of need. The Secretary shall
22 make such list available for examination in the
23 District of Columbia.

24 “(B) REVIEW OF APPLICATIONS.—The
25 Secretary shall review such an application only

1 for completeness and obvious inaccuracies. Un-
2 less the Secretary finds that the application is
3 incomplete or obviously inaccurate, the Sec-
4 retary shall certify that the intending employer
5 has filed with the Secretary an application as
6 described in subsection (a). Such certification
7 shall be provided within 7 days of the filing of
8 the application.

9 “H-2A EMPLOYMENT REQUIREMENTS
10 “SEC. 218A. (a) PREFERENTIAL TREATMENT OF
11 ALIENS PROHIBITED.—Employers seeking to hire United
12 States workers shall offer the United States workers no
13 less than the same benefits, wages, and working conditions
14 that the employer is offering, intends to offer, or will pro-
15 vide to H-2A workers. Conversely, no job offer may im-
16 pose on United States workers any restrictions or obliga-
17 tions which will not be imposed on the employer’s H-2A
18 workers.

19 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
20 CONDITIONS.—Except in cases where higher benefits,
21 wages, or working conditions are required by the provi-
22 sions of subsection (a), in order to protect similarly em-
23 ployed United States workers from adverse effects with
24 respect to benefits, wages, and working conditions, every
25 job offer which must accompany an application under sec-

1 tion 218 shall include each of the following benefit, wage,
2 and working condition provisions:

3 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
4 HOUSING ALLOWANCE.—

5 “(A) IN GENERAL.—An employer applying
6 under section 218(a) for H-2A workers shall
7 offer to provide housing at no cost to all work-
8 ers in job opportunities for which the employer
9 has applied under that section and to all other
10 workers in the same occupation at the place of
11 employment, whose place of residence is beyond
12 normal commuting distance.

13 “(B) TYPE OF HOUSING.—In complying
14 with subparagraph (A), an employer may, at
15 the employer’s election, provide housing that
16 meets applicable Federal standards for tem-
17 porary labor camps or secure housing that
18 meets applicable local standards for rental or
19 public accommodation housing or other sub-
20 stantially similar class of habitation, or in the
21 absence of applicable local standards, State
22 standards for rental or public accommodation
23 housing or other substantially similar class of
24 habitation. In the absence of applicable local or

1 State standards, Federal temporary labor camp
2 standards shall apply.

3 “(C) FAMILY HOUSING.—When it is the
4 prevailing practice in the occupation and area
5 of intended employment to provide family hous-
6 ing, family housing shall be provided to workers
7 with families who request it.

8 “(D) WORKERS ENGAGED IN THE RANGE
9 PRODUCTION OF LIVESTOCK.—The Secretary
10 shall issue regulations that address the specific
11 requirements for the provision of housing to
12 workers engaged in the range production of
13 livestock.

14 “(E) LIMITATION.—Nothing in this para-
15 graph shall be construed to require an employer
16 to provide or secure housing for persons who
17 were not entitled to such housing under the
18 temporary labor certification regulations in ef-
19 fect on June 1, 1986.

20 “(F) CHARGES FOR HOUSING.—

21 “(i) CHARGES FOR PUBLIC HOUS-
22 ING.—If public housing provided for mi-
23 grant agricultural workers under the aus-
24 pices of a local, county, or State govern-
25 ment is secured by an employer, and use of

1 the public housing unit normally requires
2 charges from migrant workers, such
3 charges shall be paid by the employer di-
4 rectly to the appropriate individual or enti-
5 ty affiliated with the housing's manage-
6 ment.

7 “(ii) DEPOSIT CHARGES.—Charges in
8 the form of deposits for bedding or other
9 similar incidentals related to housing shall
10 not be levied upon workers by employers
11 who provide housing for their workers.
12 However, an employer may require a work-
13 er found to have been responsible for dam-
14 age to such housing which is not the result
15 of normal wear and tear related to habi-
16 tation to reimburse the employer for the
17 reasonable cost of repair of such damage.

18 “(G) HOUSING ALLOWANCE AS ALTER-
19 NATIVE.—

20 “(i) IN GENERAL.—In lieu of offering
21 housing pursuant to subparagraph (A), the
22 employer may provide a reasonable housing
23 allowance, but only if the requirement of
24 clause (ii) is satisfied. Upon the request of
25 a worker seeking assistance in locating

1 housing, the employer shall make a good
2 faith effort to assist the worker in identi-
3 fying and locating housing in the area of
4 intended employment. An employer who of-
5 fers a housing allowance to a worker, or
6 assists a worker in locating housing which
7 the worker occupies, pursuant to this
8 clause shall not be deemed a housing pro-
9 vider under section 203 of the Migrant and
10 Seasonal Agricultural Worker Protection
11 Act (29 U.S.C. 1823) solely by virtue of
12 providing such housing allowance. How-
13 ever, no housing allowance may be used for
14 housing which is owned or controlled by
15 the employer.

16 “(ii) CERTIFICATION.—The require-
17 ment of this clause is satisfied if the Gov-
18 ernor of the State certifies to the Secretary
19 that there is adequate housing available in
20 the area of intended employment for mi-
21 grant farm workers, and H-2A workers,
22 who are seeking temporary housing while
23 employed at farm work. Such certification
24 shall expire after 3 years unless renewed
25 by the Governor of the State.

1 “(iii) AMOUNT OF ALLOWANCE.—

2 “(I) NONMETROPOLITAN COUN-
3 TIES.—If the place of employment of
4 the workers provided an allowance
5 under this subparagraph is a non-
6 metropolitan county, the amount of
7 the housing allowance under this sub-
8 paragraph shall be equal to the state-
9 wide average fair market rental for
10 existing housing for nonmetropolitan
11 counties for the State, as established
12 by the Secretary of Housing and
13 Urban Development pursuant to sec-
14 tion 8(c) of the United States Hous-
15 ing Act of 1937 (42 U.S.C. 1437f(c)),
16 based on a 2-bedroom dwelling unit
17 and an assumption of 2 persons per
18 bedroom.

19 “(II) METROPOLITAN COUN-
20 TIES.—If the place of employment of
21 the workers provided an allowance
22 under this paragraph is in a metro-
23 politan county, the amount of the
24 housing allowance under this subpara-
25 graph shall be equal to the statewide

1 average fair market rental for existing
2 housing for metropolitan counties for
3 the State, as established by the Sec-
4 retary of Housing and Urban Devel-
5 opment pursuant to section 8(c) of
6 the United States Housing Act of
7 1937 (42 U.S.C. 1437f(c)), based on
8 a 2-bedroom dwelling unit and an as-
9 sumption of 2 persons per bedroom.

10 “(2) REIMBURSEMENT OF TRANSPORTATION.—

11 “(A) TO PLACE OF EMPLOYMENT.—A
12 worker who completes 50 percent of the period
13 of employment of the job opportunity for which
14 the worker was hired shall be reimbursed by the
15 employer for the cost of the worker’s transpor-
16 tation and subsistence from the place from
17 which the worker came to work for the em-
18 ployer (or place of last employment, if the
19 worker traveled from such place) to the place of
20 employment.

21 “(B) FROM PLACE OF EMPLOYMENT.—A
22 worker who completes the period of employment
23 for the job opportunity involved shall be reim-
24 bursed by the employer for the cost of the
25 worker’s transportation and subsistence from

1 the place of employment to the place from
2 which the worker, disregarding intervening em-
3 ployment, came to work for the employer, or to
4 the place of next employment, if the worker has
5 contracted with a subsequent employer who has
6 not agreed to provide or pay for the worker's
7 transportation and subsistence to such subse-
8 quent employer's place of employment.

9 “(C) LIMITATION.—

10 “(i) AMOUNT OF REIMBURSEMENT.—

11 Except as provided in clause (ii), the
12 amount of reimbursement provided under
13 subparagraph (A) or (B) to a worker or
14 alien shall not exceed the lesser of—

15 “(I) the actual cost to the worker

16 or alien of the transportation and sub-
17 sistence involved; or

18 “(II) the most economical and

19 reasonable common carrier transpor-
20 tation charges and subsistence costs
21 for the distance involved.

22 “(ii) DISTANCE TRAVELED.—No reim-

23 bursement under subparagraph (A) or (B)
24 shall be required if the distance traveled is
25 100 miles or less, or the worker is not re-

1 siding in employer-provided housing or
2 housing secured through an allowance as
3 provided in paragraph (1)(G).

4 “(D) EARLY TERMINATION.—If the worker
5 is laid off or employment is terminated for con-
6 tract impossibility (as described in paragraph
7 (4)(D)) before the anticipated ending date of
8 employment, the employer shall provide the
9 transportation and subsistence required by sub-
10 paragraph (B) and, notwithstanding whether
11 the worker has completed 50 percent of the pe-
12 riod of employment, shall provide the transpor-
13 tation reimbursement required by subparagraph
14 (A).

15 “(E) TRANSPORTATION BETWEEN LIVING
16 QUARTERS AND WORK SITE.—The employer
17 shall offer to provide transportation between
18 the worker’s living quarters (i.e., housing pro-
19 vided by the employer pursuant to paragraph
20 (1), including housing provided through a hous-
21 ing allowance) and the employer’s work site
22 without cost to the worker, and such transpor-
23 tation will be in accordance with applicable laws
24 and regulations.

25 “(3) REQUIRED WAGES.—

1 “(A) IN GENERAL.—An employer applying
2 for workers under section 218(a) shall offer to
3 pay, and shall pay, all workers in the occupa-
4 tion for which the employer has applied for
5 workers, not less (and is not required to pay
6 more) than the greater of the prevailing wage
7 for seasonal agricultural workers in the occupa-
8 tion in the area of intended employment or the
9 greater of the hourly wage prescribed under
10 section 6(a)(1) of the Fair Labor Standards
11 Act of 1938 (29 U.S.C. 206(a)(1)) or the appli-
12 cable State minimum wage.

13 “(B) In complying with the requirement of
14 subparagraph (A), an employer or the employ-
15 er’s agent may request and obtain a prevailing
16 wage determination from the State employment
17 security agency. An employer who obtains such
18 a determination and pays the wage determined
19 to be prevailing, shall be considered to have met
20 the requirement of subparagraph (A).

21 “(C) In lieu of the procedure of paragraph
22 (B), an employer may rely on other wage infor-
23 mation, including a survey of the prevailing
24 wages of workers in the occupation in the area
25 of intended employment that has been con-

1 ducted or funded by the employer or a group of
2 employers, that meet criteria specified by the
3 Secretary in regulations.

4 “(D) If the prevailing wage described in
5 subparagraph (A)(i) is an hourly wage, the em-
6 ployer may pay workers in the occupation by an
7 incentive method of pay such as a piece rate,
8 task rate, group incentive rate, or other incen-
9 tive method: *Provided*, That the average hourly
10 earnings of the employer’s workers paid by such
11 incentive method, taken as a group, are at least
12 equal to the prevailing hourly wage required by
13 subparagraph (A)(i) for the hours worked at
14 the incentive payment method, after making
15 any additions to any workers pay required to
16 comply with the requirement of subparagraph
17 (A)(ii).

18 “(E) DEDUCTIONS.—The employer shall
19 make only those deductions from the worker’s
20 paycheck which are authorized by law or are
21 reasonable and customary in the occupation and
22 area of employment. The job offer shall specify
23 all deductions not required by law which the
24 employer will make from the worker’s paycheck.

25 “(4) GUARANTEE OF EMPLOYMENT.—

1 “(A) OFFER TO WORKER.—The employer
2 shall guarantee to offer the worker employment
3 for the hourly equivalent of at least three-
4 fourths of the work days of the total period of
5 employment, beginning with the first work day
6 after the arrival of the worker at the place of
7 employment and ending on the expiration date
8 specified in the job offer. For purposes of this
9 subparagraph, the hourly equivalent means the
10 number of hours in the work days as stated in
11 the job offer and shall exclude the worker’s
12 Sabbath and Federal holidays. If the employer
13 affords the United States or H-2A worker less
14 employment than that required under this para-
15 graph, the employer shall pay such worker the
16 amount which the worker would have earned
17 had the worker, in fact, worked for the guaran-
18 teed number of hours.

19 “(B) FAILURE TO WORK.—Any hours
20 which the worker fails to work, up to a max-
21 imum of the number of hours specified in the
22 job offer for a work day, when the worker has
23 been offered an opportunity to do so, and all
24 hours of work actually performed (including vol-
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the
2 worker's Sabbath, or on Federal holidays) may
3 be counted by the employer in calculating
4 whether the period of guaranteed employment
5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,
7 TERMINATION FOR CAUSE.—If the worker vol-
8 untarily abandons employment before the end
9 of the contract period, or is terminated for
10 cause, the worker is not entitled to the ‘three-
11 fourths guarantee’ described in subparagraph
12 (A).

13 “(D) CONTRACT IMPOSSIBILITY.—If, be-
14 fore the expiration of the period of employment
15 specified in the job offer, the services of the
16 worker are no longer required for reasons be-
17 yond the control of the employer due to any
18 form of natural disaster, including but not lim-
19 ited to a flood, hurricane, freeze, earthquake,
20 fire, drought, plant or animal disease or pest in-
21 festation, or regulatory drought, before the
22 guarantee in subparagraph (A) is fulfilled, the
23 employer may terminate the worker's employ-
24 ment. In the event of such termination, the em-
25 ployer shall fulfill the employment guarantee in

1 “(b) EXPEDITED ADJUDICATION BY THE ATTORNEY
2 GENERAL.—The Attorney General shall establish a proce-
3 dure for expedited adjudication of petitions filed under
4 subsection (a) and within 7 working days shall, by fax,
5 cable, or other means assuring expedited delivery, trans-
6 mit a copy of notice of action on the petition to the peti-
7 tioner and, in the case of approved petitions, to the appro-
8 priate immigration officer at the port of entry or United
9 States consulate (as the case may be) where the petitioner
10 has indicated that the alien beneficiary (or beneficiaries)
11 will apply for a visa or admission to the United States.

12 “(c) CRITERIA FOR ADMISSIBILITY.—

13 “(1) IN GENERAL.—An H-2A worker shall be
14 considered admissible to the United States if the
15 alien is otherwise admissible under this section, sec-
16 tion 218, and section 218A, and the alien is not in-
17 eligible under paragraph (2).

18 “(2) DISQUALIFICATION.—An alien shall be
19 considered inadmissible to the United States and in-
20 eligible for nonimmigrant status under section
21 101(a)(15)(H)(ii)(a) if the alien has, at any time
22 during the past 5 years—

23 “(A) violated a material provision of this
24 section, including the requirement to promptly
25 depart the United States when the alien’s au-

1 thorized period of admission under this section
2 has expired; or

3 “(B) otherwise violated a term or condition
4 of admission into the United States as a non-
5 immigrant, including overstaying the period of
6 authorized admission as such a nonimmigrant.

7 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
8 FUL PRESENCE.—

9 “(A) IN GENERAL.—An alien who has not
10 previously been admitted into the United States
11 pursuant to this section, and who is otherwise
12 eligible for admission in accordance with para-
13 graphs (1) and (2), shall not be deemed inad-
14 missible by virtue of section 212(a)(9)(B). If an
15 alien described in the preceding sentence is
16 present in the United States, the alien may
17 apply from abroad for H-2A worker status, but
18 may not be granted that status by adjustment
19 in the United States.

20 “(B) MAINTENANCE OF WAIVER.—An
21 alien provided an initial waiver of ineligibility
22 pursuant to subparagraph (A) shall remain eli-
23 gible for such waiver unless the alien violates
24 the terms of this section or again becomes ineli-
25 gible under section 212(a)(9)(B) by virtue of

1 unlawful presence in the United States after
2 the date of the initial waiver of ineligibility pur-
3 suant to subparagraph (A).

4 “(d) PERIOD OF ADMISSION.—

5 “(1) IN GENERAL.—The alien shall be admitted
6 for the period of employment in the application, cer-
7 tified by the Secretary pursuant to section
8 218(e)(2)(B), not to exceed 10 months, supple-
9 mented by a period of up to 1 week before the begin-
10 ning of the period of employment (to be granted for
11 the purpose of travel to the work site) and a period
12 of 14 days following the period of employment (to be
13 granted for the purpose of departure or extension
14 based on a subsequent offer of employment), except
15 that—

16 “(A) the alien is not authorized to be em-
17 ployed during such 14-day period except in the
18 employment for which the alien was previously
19 authorized; and

20 “(B) the total period of employment, in-
21 cluding such 14-day period, may not exceed 10
22 months.

23 “(2) CONSTRUCTION.—Nothing in this sub-
24 section shall limit the Attorney General’s authority

1 to extend the stay of the alien under any other pro-
2 vision of this Act.

3 “(e) ABANDONMENT OF EMPLOYMENT.—

4 “(1) IN GENERAL.—An alien admitted or pro-
5 vided status under section 101(a)(15)(H)(ii)(a) who
6 abandons the employment which was the basis for
7 such admission or status shall be considered to have
8 failed to maintain nonimmigrant status as an H-2A
9 worker and shall depart the United States or be sub-
10 ject to removal under section 237(a)(1)(C)(i).

11 “(2) REPORT BY EMPLOYER.—The employer
12 (or association acting as agent for the employer)
13 shall notify the Attorney General within 7 days of an
14 H-2A worker’s having prematurely abandoned em-
15 ployment.

16 “(3) REMOVAL BY THE ATTORNEY GENERAL.—
17 The Attorney General shall promptly remove from
18 the United States any H-2A worker who violates
19 any term or condition of the worker’s nonimmigrant
20 status.

21 “(4) VOLUNTARY TERMINATION.—Notwith-
22 standing paragraph (1), an alien may voluntarily
23 terminate his or her employment if the alien prompt-
24 ly departs the United States upon termination of
25 such employment.

1 “(f) REPLACEMENT OF ALIEN.—

2 “(1) IN GENERAL.—Upon presentation of the
3 notice to the Attorney General required by sub-
4 section (e)(2), the Secretary of State shall promptly
5 issue a visa to, and the Attorney General shall admit
6 into the United States, an eligible alien designated
7 by the employer to replace an H-2A worker—

8 “(A) who abandons or prematurely termi-
9 nates employment; or

10 “(B) whose employment is terminated
11 after a United States worker is employed pur-
12 suant to section 218(b)(2)(H)(iii), if the United
13 States worker voluntarily departs before the
14 end of the period of intended employment or if
15 the employment termination is for a lawful job-
16 related reason.

17 “(2) CONSTRUCTION.—Nothing in this sub-
18 section is intended to limit any preference required
19 to be accorded United States workers under any
20 other provision of this Act.

21 “(g) IDENTIFICATION DOCUMENT.—

22 “(1) IN GENERAL.—Each alien authorized to be
23 admitted under section 101(a)(15)(H)(ii)(a) shall,
24 upon receipt of a visa, be given an identification and
25 employment eligibility document to verify eligibility

1 for employment in the United States and verify such
2 person's proper identity.

3 “(2) REQUIREMENTS.—No identification and
4 employment eligibility document may be issued
5 which does not meet the following requirements:

6 “(A) The document shall be capable of re-
7 liably determining whether—

8 “(i) the individual with the identifica-
9 tion and employment eligibility document
10 whose eligibility is being verified is in fact
11 eligible for employment;

12 “(ii) the individual whose eligibility is
13 being verified is claiming the identity of
14 another person; and

15 “(iii) the individual whose eligibility is
16 being verified is authorized to be admitted
17 into, and employed in, the United States
18 as an H-2A worker.

19 “(B) The document shall be in a form that
20 is resistant to counterfeiting and to tampering.

21 “(C) The document shall—

22 “(i) be compatible with other data-
23 bases of the Attorney General for the pur-
24 pose of excluding aliens from benefits for
25 which they are not eligible and determining

1 whether the alien is unlawfully present in
2 the United States; and

3 “(ii) be compatible with law enforce-
4 ment databases to determine if the alien
5 has been convicted of criminal offenses.

6 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
7 UNITED STATES.—

8 “(1) EXTENSION OF STAY.—If an employer
9 seeks approval to employ an alien in H-2A status
10 who is lawfully present in the United States pursu-
11 ant to this division of pursuant to sec.
12 101(a)(15)(H)(ii) of the Immigration and Natu-
13 ralization Act (8 U.S.C. 1101(a)), the petition filed
14 by the employer or an association pursuant to sub-
15 section (a), shall request an extension of the alien’s
16 stay and a change in the alien’s employment.

17 “(2) LIMITATION ON FILING A PETITION FOR
18 EXTENSION OF STAY.—A petition may not be filed
19 for an extension of the alien’s stay—

20 “(A) for a period of more than 10 months;

21 or

22 “(B) to a date that is more than 3 years
23 after the date of the alien’s last admission to
24 the United States under this section.

1 “(3) WORK AUTHORIZATION UPON FILING A
2 PETITION FOR EXTENSION OF STAY.—In the case of
3 an alien who is lawfully present in the United
4 States, the alien is authorized to commence the em-
5 ployment described in a petition under paragraph
6 (1) on the date on which the petition is filed. For
7 purposes of the preceding sentence, the term ‘file’
8 means sending the petition by certified mail via the
9 United States Postal Service, return receipt re-
10 quested, by guaranteed commercial delivery which
11 will provide the employer with a documented ac-
12 knowledgment of the date of sending the petition.
13 The employer shall provide a copy of the employer’s
14 petition to the alien, who shall keep the petition with
15 the alien’s identification and employment eligibility
16 document as evidence that the petition has been filed
17 and that the alien is authorized to work in the
18 United States. Upon approval of a petition for an
19 extension of stay or change in the alien’s authorized
20 employment, the Attorney General shall provide a
21 new or updated employment eligibility document to
22 the alien indicating the new validity date, after
23 which the alien is not required to retain a copy of
24 the petition.

1 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
2 TION OF ALIENS WITHOUT VALID IDENTIFICATION
3 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
4 pired identification and employment eligibility docu-
5 ment, together with a copy of an petition for exten-
6 sion of stay or change in the alien’s authorized em-
7 ployment that complies with the requirements of
8 paragraph (1), shall constitute a valid work author-
9 ization document for a period of not more than 60
10 days beginning on the date on which such petition
11 is filed, after which time only a currently valid iden-
12 tification and employment eligibility document shall
13 be acceptable.

14 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
15 STATUS.—

16 “(A) MAXIMUM PERIOD.—The maximum
17 continuous period of authorized status as an
18 H–2A worker (including any extensions) is 3
19 years.

20 “(B) REQUIREMENT TO REMAIN OUTSIDE
21 UNITED STATES.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii), in the case of an alien outside the
24 United States whose period of authorized
25 status as an H–2A worker (including any

1 extensions) has expired, the alien may not
2 again apply for admission to the United
3 States as an H-2A worker unless the alien
4 has remained outside the United States for
5 a continuous period equal to at least $\frac{1}{5}$
6 the duration of the alien's previous period
7 of authorized status as an H-2A worker
8 (including any extensions).

9 “(ii) EXCEPTION.—Clause (i) shall
10 not apply in the case of an alien if the
11 alien's period of authorized status as an
12 H-2A worker (including any extensions)
13 was for a period of not more than 10
14 months and such alien has been outside
15 the United States for at least 2 months
16 during the 12 months preceding the date
17 the alien again is applying for admission to
18 the United States as an H-2A worker.

19 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
20 SHEEPHERDERS.—Notwithstanding any other provision
21 of this section, aliens admitted under section
22 101(a)(15)(H)(ii)(a) for employment as shepherders—

23 “(1) may be admitted for a period of 12
24 months;

1 “(2) may be extended for a continuous period
2 of up to 3 years; and

3 “(3) shall not be subject to the requirements of
4 subsection (h)(5) relating to periods of absence from
5 the United States.

6 “WORKER PROTECTIONS AND LABOR STANDARDS

7 ENFORCEMENT

8 “SEC. 218C. (a) ENFORCEMENT AUTHORITY.—

9 “(1) INVESTIGATION OF COMPLAINTS.—

10 “(A) AGGRIEVED PERSON OR THIRD-PARTY
11 COMPLAINTS.—The Secretary shall establish a
12 process for the receipt, investigation, and dis-
13 position of complaints respecting a petitioner’s
14 failure to meet a condition specified in section
15 218(b), or an employer’s misrepresentation of
16 material facts in an application under section
17 218(a). Complaints may be filed by any ag-
18 grieved person or organization (including bar-
19 gaining representatives). No investigation or
20 hearing shall be conducted on a complaint con-
21 cerning such a failure or misrepresentation un-
22 less the complaint was filed not later than 12
23 months after the date of the failure, or mis-
24 representation, respectively. The Secretary shall
25 conduct an investigation under this subpara-
26 graph if there is reasonable cause to believe

1 that such a failure or misrepresentation has oc-
2 curred.

3 “(B) DETERMINATION ON COMPLAINT.—
4 Under such process, the Secretary shall provide,
5 within 30 days after the date such a complaint
6 is filed, for a determination as to whether or
7 not a reasonable basis exists to make a finding
8 described in subparagraph (C), (D), (E), or
9 (F). If the Secretary determines that such a
10 reasonable basis exists, the Secretary shall pro-
11 vide for notice of such determination to the in-
12 terested parties and an opportunity for a hear-
13 ing on the complaint, in accordance with section
14 556 of title 5, United States Code, within 60
15 days after the date of the determination. If
16 such a hearing is requested, the Secretary shall
17 make a finding concerning the matter not later
18 than 60 days after the date of the hearing. In
19 the case of similar complaints respecting the
20 same applicant, the Secretary may consolidate
21 the hearings under this subparagraph on such
22 complaints.

23 “(C) FAILURES TO MEET CONDITIONS.—If
24 the Secretary finds, after notice and oppor-
25 tunity for a hearing, a failure to meet a condi-

1 tion of paragraph (1)(A), (1)(B), (1)(D),
2 (1)(F), (2)(A), (2)(B), or (2)(G) of section
3 218(b), a substantial failure to meet a condition
4 of paragraph (1)(C) or (E), or paragraph
5 (2)(C), (2)(D), (2)(E), or (2)(H) of section
6 218(b), or a material misrepresentation of fact
7 in an application under section 218(a)—

8 “(i) the Secretary shall notify the At-
9 torney General of such finding and may, in
10 addition, impose such other administrative
11 remedies (including civil money penalties in
12 an amount not to exceed \$1,000 per viola-
13 tion) as the Secretary determines to be ap-
14 propriate; and

15 “(ii) the Attorney General may dis-
16 qualify the employer from the employment
17 of aliens described in section
18 101(A)(15)(H)(ii)(a) for a period of 1
19 year.

20 “(D) WILLFUL FAILURES AND WILLFUL
21 MISREPRESENTATIONS.—If the Secretary finds,
22 after notice and opportunity for hearing, a will-
23 ful failure to meet a condition of section 218(b),
24 a willful misrepresentation of a material fact in

1 an application under section 218(a), or a viola-
2 tion of subsection (b)—

3 “(i) the Secretary shall notify the At-
4 torney General of such finding and may, in
5 addition, impose such other administrative
6 remedies (including civil money penalties in
7 an amount not to exceed \$5,000 per viola-
8 tion) as the Secretary determines to be ap-
9 propriate; and

10 “(ii) the Attorney General may dis-
11 qualify the employer from the employment
12 of H-2A workers for a period of 2 years.

13 “(E) DISPLACEMENT OF UNITED STATES
14 WORKERS.—If the Secretary finds, after notice
15 and opportunity for hearing, a willful failure to
16 meet a condition of section 218(b) or a willful
17 misrepresentation of a material fact in an appli-
18 cation under section 218(a), in the course of
19 which failure or misrepresentation the employer
20 displaced a United States worker employed by
21 the employer during the period of employment
22 on the employer’s application under section
23 218(a) or during the period of 30 days pre-
24 ceding such period of employment—

1 “(i) the Secretary shall notify the At-
2 torney General of such finding and may, in
3 addition, impose such other administrative
4 remedies (including civil money penalties in
5 an amount not to exceed \$15,000 per vio-
6 lation) as the Secretary determines to be
7 appropriate; and

8 “(ii) the Attorney General may dis-
9 qualify the employer from the employment
10 of H-2A workers for a period of 3 years.

11 “(F) LIMITATIONS ON CIVIL MONEY PEN-
12 ALTIES.—The Secretary shall not impose total
13 civil money penalties with respect to an applica-
14 tion under section 218(a) in excess of \$90,000.

15 “(G) FAILURES TO PAY WAGES OR RE-
16 QUIRED BENEFITS.—If the Secretary finds,
17 after notice and opportunity for a hearing, that
18 the employer has failed to pay the wages, or
19 provide the housing allowance, transportation,
20 subsistence reimbursement, or guarantee of em-
21 ployment, required under section 218A(b), the
22 Secretary shall assess payment of back wages,
23 or other required benefits, due any United
24 States worker or H-2A worker employed by the
25 employer in the specific employment in ques-

1 tion. The back wages or other required benefits
2 under section 218A(b) shall be equal to the dif-
3 ference between the amount that should have
4 been paid and the amount that actually was
5 paid to such worker.

6 “(2) STATUTORY CONSTRUCTION.—Nothing in
7 this section shall be construed as limiting the au-
8 thority of the Secretary to conduct any compliance
9 investigation under any other labor law, including
10 any law affecting migrant and seasonal agricultural
11 workers, or, in the absence of a complaint under this
12 section, under section 218 or 218A.

13 “(b) DISCRIMINATION PROHIBITED.—It is a violation
14 of this subsection for an employer who has filed an appli-
15 cation under section 218(a), to intimidate, threaten, re-
16 strain, coerce, blacklist, discharge, or in any other manner
17 discriminate against an employee (which term, for pur-
18 poses of this subsection, includes a former employee and
19 an applicant for employment) because the employee has
20 disclosed information to the employer, or to any other per-
21 son, that the employee reasonably believes evidences a vio-
22 lation of section 218 or 218A or any rule or regulation
23 pertaining to section 218 or 218A, or because the em-
24 ployee cooperates or seeks to cooperate in an investigation
25 or other proceeding concerning the employer’s compliance

1 with the requirements of section 218 or 218A or any rule
2 or regulation pertaining to either of such sections.

3 “(c) AUTHORIZATION TO SEEK OTHER APPRO-
4 PRIATE EMPLOYMENT.—The Secretary and the Attorney
5 General shall establish a process under which an H-2A
6 worker who files a complaint regarding a violation of sub-
7 section (b) and is otherwise eligible to remain and work
8 in the United States may be allowed to seek other appro-
9 priate employment in the United States for a period not
10 to exceed the maximum period of stay authorized for such
11 nonimmigrant classification.

12 “(d) ROLE OF ASSOCIATIONS.—

13 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
14 TION.—An employer on whose behalf an application
15 is filed by an association acting as its agent is fully
16 responsible for such application, and for complying
17 with the terms and conditions of sections 218 and
18 218A, as though the employer had filed the applica-
19 tion itself. If such an employer is determined, under
20 this section, to have committed a violation, the pen-
21 alty for such violation shall apply only to that mem-
22 ber of the association unless the Secretary deter-
23 mines that the association or other member partici-
24 pated in, had knowledge, or reason to know of the
25 violation, in which case the penalty shall be invoked

1 against the association or other association member
2 as well.

3 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
4 AS AN EMPLOYER.—If an association filing an appli-
5 cation as a sole or joint employer is determined to
6 have committed a violation under this section, the
7 penalty for such violation shall apply only to the as-
8 sociation unless the Secretary determines that an as-
9 sociation member or members participated in or had
10 knowledge, or reason to know of the violation, in
11 which case the penalty shall be invoked against the
12 association member or members as well.

13 “DEFINITIONS

14 “SEC. 218D. For purposes of sections 218 through
15 218C:

16 “(1) AGRICULTURAL EMPLOYMENT.—The term
17 ‘agricultural employment’ means any service or ac-
18 tivity that is considered to be agricultural under sec-
19 tion 3(f) of the Fair Labor Standards Act of 1938
20 (29 U.S.C. 203(f)) or agricultural labor under sec-
21 tion 3121(g) of the Internal Revenue Code of 1986
22 (26 U.S.C. 3121(g)). For purposes of this para-
23 graph, agricultural employment includes employment
24 under section 101(a)(15)(H)(ii)(a).

25 “(2) BONA FIDE UNION.—The term ‘bona fide
26 union’ means any organization in which employees

1 participate and which exists for the purpose of deal-
2 ing with employers concerning grievances, labor dis-
3 putes, wages, rates of pay, hours of employment, or
4 other terms and conditions of work for agricultural
5 employees. Such term does not include an organiza-
6 tion formed, created, administered, supported, domi-
7 nated, financed, or controlled by an employer or em-
8 ployer association or its agents or representatives.

9 “(3) DISPLACE.—In the case of an application
10 with respect to one or more H-2A workers by an
11 employer, the employer is considered to ‘displace’ a
12 United States worker from a job if the employer lays
13 off the worker from a job for which the H-2A work-
14 er or workers is or are sought.

15 “(4) ELIGIBLE.—The term ‘eligible’, when used
16 with respect to an individual, means an individual
17 who is not an unauthorized alien (as defined in sec-
18 tion 274A(h)(3)).

19 “(5) EMPLOYER.—The term ‘employer’ means
20 any person or entity, including any farm labor con-
21 tractor and any agricultural association, that em-
22 ploys workers in agricultural employment.

23 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
24 ployer’ means an employer who seeks to hire one or

1 more nonimmigrant aliens described in section
2 101(a)(15)(H)(ii)(a).

3 “(7) H-2A WORKER.—The term ‘H-2A worker’
4 means a nonimmigrant described in section
5 101(a)(15)(H)(ii)(a).

6 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
7 tunity’ means a job opening for temporary full-time
8 employment at a place in the United States to which
9 United States workers can be referred.

10 “(9) LAYS OFF.—

11 “(A) IN GENERAL.—The term ‘lays off’,
12 with respect to a worker—

13 “(i) means to cause the worker’s loss
14 of employment, other than through a dis-
15 charge for inadequate performance, viola-
16 tion of workplace rules, cause, voluntary
17 departure, voluntary retirement, contract
18 impossibility (as described in section
19 218A(b)(4)(D)), or temporary layoffs due
20 to weather, markets, or other temporary
21 conditions; but

22 “(ii) does not include any situation in
23 which the worker is offered, as an alter-
24 native to such loss of employment, a simi-
25 lar employment opportunity with the same

1 employer (or, in the case of a placement of
2 a worker with another employer under sec-
3 tion 218(b)(2)(E), with either employer de-
4 scribed in such section) at equivalent or
5 higher compensation and benefits than the
6 position from which the employee was dis-
7 charged, regardless of whether or not the
8 employee accepts the offer.

9 “(B) STATUTORY CONSTRUCTION.—Noth-
10 ing in this paragraph is intended to limit an
11 employee’s rights under a collective bargaining
12 agreement or other employment contract.

13 “(10) PREVAILING WAGE.—The term ‘pre-
14 vailing wage’ means, with respect to an agricultural
15 occupation in an area of intended employment, the
16 rate of wages that includes the 51st percentile of
17 employees with similar experience and qualifications
18 in the agricultural occupation in the area of in-
19 tended employment, expressed in terms of the pre-
20 vailing method of pay for the occupation in the area
21 of intended employment.

22 “(11) REGULATORY DROUGHT.—The term ‘reg-
23 ulatory drought’ means a decision subsequent to the
24 filing of the application under section 218 by an en-
25 tity not under the control of the employer making

1 such filing which restricts the employer's access to
2 water for irrigation purposes and reduces or limits
3 the employer's ability to product an agricultural
4 commodity, thereby reducing the need for labor.

5 “(12) SEASONAL.—Labor is performed on a
6 ‘seasonal’ basis if—

7 (A) ordinarily, it pertains to or is of the
8 kind exclusively performed at certain seasons or
9 periods of the year; and

10 (B) from its nature, it may not be contin-
11 uous or carried on throughout the year.

12 “(13) SECRETARY.—The term ‘Secretary’
13 means the Secretary of Labor.

14 “(14) TEMPORARY.—A worker is employed on a
15 ‘temporary’ basis where the employment is intended
16 not to exceed 10 months.

17 “(15) UNITED STATES WORKER.—The term
18 ‘United States worker’ means any worker, whether
19 a United States citizen or national, a lawfully admit-
20 ted permanent resident alien, or any other alien,
21 who is authorized to work in the job opportunity
22 within the United States, except an alien admitted
23 or otherwise provided status under section
24 101(a)(15)(H)(ii)(a).”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 the Immigration and Nationality Act (8 U.S.C. 1101 et
 3 seq.) is amended by striking the item relating to section
 4 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

5 **TITLE III—MISCELLANEOUS**
 6 **PROVISIONS**

7 **SEC. 301. DETERMINATION AND USE OF USER FEES.**

8 (a) SCHEDULE OF FEES.—The Secretary shall estab-
 9 lish and periodically adjust a schedule of fees for the em-
 10 ployment of aliens under this division, and a collection
 11 process for such fees from employers participating in the
 12 program provided under this division. Such fees shall be
 13 the only fees chargeable to employers for services provided
 14 under this division.

15 (b) DETERMINATION OF SCHEDULE.—

16 (1) IN GENERAL.—The schedule under sub-
 17 section (a) shall reflect a fee rate based on the num-
 18 ber of job opportunities indicated in the employer’s
 19 application under section 218 of the Immigration
 20 and Nationality Act, as added by section 201 of this
 21 division, and sufficient to provide for the direct costs
 22 of providing services related to an employer’s au-
 23 thorization to employ eligible aliens pursuant to this

1 division, to include the certification of eligible em-
2 ployers, the issuance of documentation, and the ad-
3 mission of eligible aliens.

4 (2) PROCEDURE.—

5 (A) IN GENERAL.—In establishing and ad-
6 justing such a schedule, the Secretary shall
7 comply with Federal cost accounting and fee
8 setting standards.

9 (B) PUBLICATION AND COMMENT.—The
10 Secretary shall publish in the Federal Register
11 an initial fee schedule and associated collection
12 process and the cost data or estimates upon
13 which such fee schedule is based, and any sub-
14 sequent amendments thereto, pursuant to which
15 public comment shall be sought and a final rule
16 issued.

17 (c) USE OF PROCEEDS.—Notwithstanding any other
18 provision of law, all proceeds resulting from the payment
19 of the alien employment user fees shall be available with-
20 out further appropriation and shall remain available with-
21 out fiscal year limitation to reimburse the Secretary, the
22 Secretary of State, and the Attorney General for the costs
23 of carrying out section 218 of the Immigration and Na-
24 tionality Act, as added by section 201 of this division, and
25 the provisions of this division.

1 **SEC. 302. REGULATIONS.**

2 (a) REGULATIONS OF THE ATTORNEY GENERAL.—

3 The Attorney General shall consult with the Secretary of
4 Labor and the Secretary of Agriculture on all regulations
5 to implement the duties of the Attorney General under
6 this division.

7 (b) REGULATIONS OF THE SECRETARY OF STATE.—

8 The Secretary of State shall consult with the Attorney
9 General, the Secretary of Labor, and the Secretary of Ag-
10 riculture on all regulations to implement the duties of the
11 Secretary of State under this division.

12 (c) REGULATIONS OF THE SECRETARY OF LABOR.—

13 The Secretary of Labor shall consult with the Secretary
14 of Agriculture and the Attorney General on all regulations
15 to implement the duties of the Secretary of Labor under
16 this division.

17 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—

18 All regulations to implement the duties of the Attorney
19 General, the Secretary of State, and the Secretary of
20 Labor under this title and the amendments made by sec-
21 tions 201 and 301 shall take effect on the effective date
22 of such title and amendments and shall be issued not later
23 than 1 year after the date of the enactment of this Act.

24 **SEC. 303. EFFECTIVE DATE.**

25 (a) IN GENERAL.—Except as otherwise provided, this
26 title and the amendments made by sections 201 and 301

1 shall take effect on the date that is 1 year after the date
2 of the enactment of this Act.

3 (b) REPORT.—Not later than 180 days after the date
4 of the enactment of this Act, the Secretary shall prepare
5 and submit to the appropriate committees of the Congress
6 a report that describes the measures being taken and the
7 progress made in implementing this division.

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