

111TH CONGRESS
2D SESSION

S. 3912

To amend the Immigration and Nationality Act to provide for the temporary employment of foreign agricultural workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. CHAMBLISS 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 provide for the temporary employment of foreign 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Agriculture
5 Receive Verifiable Employees Securely and Temporarily
6 Act of 2010” or the “HARVEST Act of 2010”.

7 **SEC. 2. SENSE OF THE SENATE.**

8 It is the sense of the Senate that—

1 (1) farmers and ranchers in the United States
2 produce the highest quality food and fiber in the
3 world;

4 (2) abundant harvests in the United States
5 allow this Nation to provide over $\frac{1}{2}$ of the world's
6 food aid donations to help our international neigh-
7 bors in need;

8 (3) it is in the best interest of the American
9 people for their agricultural goods to be produced in
10 the United States;

11 (4) the United States is the world's largest ag-
12 ricultural exporter and is one of the few sectors of
13 the United States economy that produces a trade
14 surplus;

15 (5) the Secretary of Agriculture announced that
16 the United States exported \$107,600,000,000 worth
17 of agricultural exports during fiscal year 2009;

18 (6) Americans enjoy the highest quality food at
19 the lowest cost compared to any industrialized na-
20 tion in the world, spending less than 10 percent of
21 our household income on food;

22 (7) the continued safety of the agricultural
23 goods produced in the United States is an issue of
24 national security;

1 (8) the agricultural labor force of the United
2 States is overwhelmingly composed of immigrant
3 labor;

4 (9) due to the importance of food safety, it is
5 critical to know who is handling our Nation's food
6 supply and who is working on our Nation's farms
7 and ranches;

8 (10) there could be detrimental effects on the
9 United States economy for farms to downsize or
10 close operations due to labor shortages;

11 (11) decreased agricultural production could
12 have ramifications throughout the farm support in-
13 dustries, such as food processing, fertilizers, and
14 equipment manufacturers;

15 (12) a shortage of agriculture labor could lead
16 to decreased supply and increased prices for food
17 and fiber; and

18 (13) this Nation needs both secure borders and
19 an immigration system that allows those who seek
20 legal immigrant status through the proper channels
21 to work in the diverse sectors of the agriculture in-
22 dustry.

1 **SEC. 3. ADMISSION OF TEMPORARY AGRICULTURAL WORK-**
 2 **ERS.**

3 (a) DEFINITION.—Section 101(a)(15)(H)(ii)(a) of
 4 the Immigration and Nationality Act (8 U.S.C.
 5 1101(a)(15)(H)(ii)(a)) is amended by striking “, of a tem-
 6 porary or seasonal nature”.

7 (b) PROCEDURE FOR ADMISSION.—

8 (1) IN GENERAL.—Section 218 of the Immigra-
 9 tion and Nationality Act (8 U.S.C. 1188) is amend-
 10 ed to read as follows:

11 **“SEC. 218. ADMISSION OF TEMPORARY H-2A WORKERS.**

12 “(a) DEFINITIONS.—In this section and in section
 13 218A:

14 “(1) ADVERSE EFFECT WAGE RATE.—The term
 15 ‘adverse effect wage rate’ means 115 percent of the
 16 greater of—

17 “(A) the State minimum wage; or

18 “(B) the hourly wage prescribed under sec-
 19 tion 6(a)(1) of the Fair Labor Standards Act of
 20 1938 (29 U.S.C. 206(a)(1)).

21 “(2) AREA OF EMPLOYMENT.—The term ‘area
 22 of employment’ means the area within normal com-
 23 muting distance of the work site or physical location
 24 at which the work of the H-2A worker is or will be
 25 performed. If such work site or location is within a
 26 Metropolitan Statistical Area, any place within such

1 area shall be considered to be within the area of em-
2 ployment.

3 “(3) DISPLACE.—In the case of a petition with
4 respect to an H-2A worker filed by an employer, an
5 employer ‘displaces’ a United States worker from a
6 job if the employer lays off the worker from a job
7 that is essentially equivalent to the job for which the
8 H-2A worker is sought. A job shall be considered
9 essentially equivalent to another job if the job—

10 “(A) involves essentially the same respon-
11 sibilities as the other job;

12 “(B) was held by a United States worker
13 with substantially equivalent qualifications and
14 experience; and

15 “(C) is located in the same area of employ-
16 ment as the other job.

17 “(4) ELIGIBLE INDIVIDUAL.—The term ‘eligible
18 individual’ means an alien who is not ineligible for
19 an H-2A visa pursuant to subsection (l).

20 “(5) EMPLOYER.—The term ‘employer’ means
21 an employer who hires workers to perform—

22 “(A) animal agriculture or agricultural
23 processing;

24 “(B) agricultural work included within the
25 provisions of section 3(f) of the Fair Labor

1 Standards Act of 1938 (29 U.S.C. 203(f)) or
2 section 3121(g) of the Internal Revenue Code
3 of 1986;

4 “(C) drying, packing, packaging, proc-
5 essing, freezing, or grading prior to delivery for
6 storage of any agricultural or horticultural com-
7 modity in its unmanufactured state; or

8 “(D) dairy or feedyard work.

9 “(6) H-2A WORKER.—The term ‘H-2A worker’
10 means a nonimmigrant who—

11 “(A) continuously maintains a residence
12 and place of abode outside of the United States
13 which the alien has no intention of abandoning;
14 and

15 “(B)(i) is seeking to work for an employer
16 performing agricultural labor in the United
17 States for not more than 10 months during
18 each calendar year in a job for which United
19 States workers are not available and willing to
20 perform such service or labor; or

21 “(ii)(I) is seeking to work for an employer
22 performing agricultural labor in the United
23 States in a job for which United States workers
24 are not available and willing to perform such
25 service or labor;

1 “(II) commutes each business day across
2 the United States international border to work
3 for a qualified United States employer; and

4 “(III) returns across the United States
5 international border to his or her foreign resi-
6 dence and place of abode at the end of each
7 business day.

8 “(7) LAY OFF.—

9 “(A) IN GENERAL.—The term ‘lay off’—

10 “(i) means to cause a worker’s loss of
11 employment, other than through a dis-
12 charge for inadequate performance, viola-
13 tion of workplace rules, cause, voluntary
14 departure, voluntary retirement, or the ex-
15 piration of a grant or contract (other than
16 a temporary employment contract entered
17 into in order to evade a condition described
18 in paragraph (3) or (7) of subsection (b));
19 and

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

1 section (h), with either employer described
2 in such subsection) at equivalent or higher
3 compensation and benefits than the posi-
4 tion from which the employee was dis-
5 charged, regardless of whether or not the
6 employee accepts the offer.

7 “(B) CONSTRUCTION.—Nothing in this
8 paragraph may be construed to limit an em-
9 ployee’s rights under a collective bargaining
10 agreement or other employment contract.

11 “(8) LEVEL 2 H-2A WORKER.—

12 “(A) IN GENERAL.—The term ‘Level 2 H-
13 2A worker’ means an H-2A worker who—

14 “(i) has been employed as an H-2A
15 worker for a cumulative total of at least 30
16 months;

17 “(ii) has not violated a material term
18 or condition of employment as an H-2A
19 worker; and

20 “(iii) works in a supervisory capacity.

21 “(B) LIMITATION.—An agricultural em-
22 ployer may employ not more than 1 Level 2 H-
23 2A worker for every 25 H-2A workers.

24 “(9) UNITED STATES WORKER.—The term
25 ‘United States worker’ means any worker who is a

1 national of the United States, an alien lawfully ad-
2 mitted for permanent residence, or an alien author-
3 ized to work in the relevant job opportunity within
4 the United States, except an alien admitted or other-
5 wise provided status under section
6 101(a)(15)(H)(ii)(a).

7 “(b) LABOR ATTESTATION PROCESS.—The Secretary
8 of Labor shall utilize the labor attestation process de-
9 scribed in this subsection until the Secretary of Labor cer-
10 tifies that, based on State workforce agency data, there
11 is an adequate domestic workforce in the United States
12 to fill agricultural jobs in the State in which the agricul-
13 tural employer is seeking H–2A workers. Once the Sec-
14 retary of Labor certifies that there are adequate author-
15 ized workers in a State to fill agricultural jobs (excluding
16 H–2A workers), the Secretary of Labor, in conjunction
17 with the Secretary of Agriculture, shall issue regulations
18 describing a labor certification process for agricultural em-
19 ployers seeking H–2A workers. An alien may not be ad-
20 mitted as an H–2A worker unless the employer has filed
21 a petition with the Secretary of Labor in which the em-
22 ployer attests to the following:

23 “(1) TEMPORARY WORK OR SERVICES.—

24 “(A) IN GENERAL.—The employer is seek-
25 ing to employ a specific number of agricultural

1 workers on a temporary basis and will provide
2 compensation to such workers at a specified
3 wage rate and under specified conditions.

4 “(B) SKILLED WORKERS.—If the worker is
5 a Level 2 H–2A worker, the employer will re-
6 cruit the worker separately and the petition will
7 delineate separate wage rate and conditions of
8 employment for such worker.

9 “(C) DEFINED TERM.—In this paragraph
10 and in subsection (h)(6)(B), a worker is consid-
11 ered to be ‘employed on a temporary basis’ if
12 the employer employs the worker for not longer
13 than 10 months in a calendar year.

14 “(2) BENEFITS, WAGES, AND WORKING CONDI-
15 TIONS.—The employer will provide, at a minimum,
16 the benefits, wages, and working conditions required
17 under subsection (k) to—

18 “(A) all workers employed in the jobs for
19 which the H–2A worker is sought; and

20 “(B) all other temporary workers in the
21 same occupation at the same place of employ-
22 ment.

23 “(3) NONDISPLACEMENT OF UNITED STATES
24 WORKERS.—The employer did not and will not dis-
25 place a United States worker employed by the em-

1 ployer during the period of employment of the H–
2 2A worker and during the 30-day period imme-
3 diately preceding such period of employment in the
4 occupation at the place of employment for which the
5 employer seeks approval to employ H–2A workers.

6 “(4) RECRUITMENT.—

7 “(A) IN GENERAL.—The employer will—

8 “(i) describe previous recruitment ef-
9 forts made before the filing of the petition;
10 and

11 “(ii) complete adequate recruitment
12 requirements before H–2A workers are
13 issued a visa at an American consulate.

14 “(B) ADEQUATE RECRUITMENT.—The
15 adequate recruitment requirements under sub-
16 paragraph (A)(ii) are satisfied if the em-
17 ployer—

18 “(i) submits a copy of the job offer to
19 the local office of the State workforce
20 agency serving the area of intended em-
21 ployment and authorizes the posting of the
22 job opportunity on the Department of La-
23 bor’s electronic job registry for all other
24 occupations in the same manner as other
25 United States employers, except that noth-

1 ing in this clause shall require the em-
2 ployer to file an interstate job order under
3 section 653 of title 20, Code of Federal
4 Regulations;

5 “(ii) advertises the availability of the
6 job opportunities for which the employer is
7 seeking workers in a publication in the
8 local market that is likely to be patronized
9 by potential farm workers; and

10 “(iii) mails a letter through the
11 United States Postal Service or otherwise
12 contacts any United States worker the em-
13 ployer employed within the past year in the
14 occupation at the place of intended employ-
15 ment for which the employer is seeking H-
16 2A workers that describes available job op-
17 portunities, unless the worker was termi-
18 nated from employment by the employer
19 for a lawful job-related reason or aban-
20 doned the job before the worker completed
21 the period of employment of the job oppor-
22 tunity for which the worker was hired.

23 “(C) ADVERTISEMENT REQUIREMENT.—

24 The advertisement requirement under subpara-

1 graph (B)(ii) is satisfied if the employer runs
2 an advertisement for 2 consecutive days that—

3 “(i) names the employer;

4 “(ii) describes the job or jobs;

5 “(iii) provides instructions on how to
6 contact the employer to apply for the job;

7 “(iv) states the duration of employ-
8 ment;

9 “(v) describes the geographic area
10 with enough specificity to apprise appli-
11 cants of any travel requirements and where
12 applicants will likely have to reside to per-
13 form the job;

14 “(vi) states the rate of pay; and

15 “(vii) describes working conditions
16 and the availability of housing or the
17 amount of housing allowances.

18 “(D) END OF RECRUITMENT REQUIRE-
19 MENT.—The requirement to recruit and hire
20 United States workers for the contract period
21 for which H-2A workers have been hired shall
22 terminate on the first day of such contract pe-
23 riod.

24 “(5) OFFERS TO UNITED STATES WORKERS.—

25 The employer has offered or will offer the job for

1 which the nonimmigrant is sought to any eligible
2 United States worker who—

3 “(A) applies;

4 “(B) will be available at the time and place
5 of need; and

6 “(C) is able and willing to complete the pe-
7 riod of employment.

8 “(6) PROVISION OF INSURANCE.—If the job for
9 which the H-2A worker is sought is not covered by
10 State workers’ compensation law, the employer will
11 provide, at no cost to the worker, insurance covering
12 injury and disease arising out of, and in the course
13 of, the worker’s employment, which will provide ben-
14 efits at least equal to those provided under the State
15 workers’ compensation law for comparable employ-
16 ment. No employer shall be liable for the provision
17 of health insurance for any H-2A worker.

18 “(7) STRIKE OR LOCKOUT.—There is not a
19 strike or lockout in the course of a labor dispute
20 which, under regulations promulgated by the Sec-
21 retary of Labor, precludes the hiring of H-2A work-
22 ers.

23 “(8) PREVIOUS VIOLATIONS.—The employer
24 has not, during the previous 5-year period, employed
25 H-2A workers and knowingly violated a material

1 term or condition of approval with respect to the
2 employment of domestic or nonimmigrant workers,
3 as determined by the Secretary of Labor after notice
4 and opportunity for a hearing.

5 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
6 ing day after the date on which a petition is filed under
7 this section, the employer shall make a copy of each such
8 petition (and any necessary accompanying documents)
9 available for public examination, at the employer’s work
10 site or principal place of business.

11 “(d) LIST.—

12 “(1) IN GENERAL.—The Secretary of Labor
13 shall maintain a list of the petitions filed under sub-
14 section (b), sorted by employer, which shall in-
15 clude—

16 “(A) the number of H-2A workers sought;

17 “(B) the wage rate;

18 “(C) the date work is scheduled to begin;

19 and

20 “(D) the period of intended employment.

21 “(2) AVAILABILITY.—The Secretary of Labor
22 shall make the list described in paragraph (1) avail-
23 able for public examination.

24 “(e) PETITIONING FOR ADMISSION.—

1 “(1) IN GENERAL.—An employer, or an asso-
2 ciation acting as an agent or joint employer for its
3 members, that seeks the admission into the United
4 States of an H-2A worker shall file a petition that
5 includes the attestations described in subsection (b)
6 with the Secretary of Labor.

7 “(2) CONSIDERATION OF PETITIONS.—For each
8 petition filed under this subsection—

9 “(A) the Secretary of Labor may not re-
10 quire such petition to be filed more than 60
11 days before the first date on which the em-
12 ployer requires the labor or services of the H-
13 2A worker; and

14 “(B) unless the Secretary of Labor deter-
15 mines that the petition is incomplete or obvi-
16 ously inaccurate, or the Secretary has probable
17 cause to suspect the petition was fraudulently
18 made, the Secretary shall either approve or
19 deny the petition not later than 15 days after
20 the date on which such petition was filed.

21 “(3) PETITION AGREEMENTS.—By filing an H-
22 2A petition, a petitioner and each employer consents
23 to allow the Department of Labor access to the site
24 where labor is being performed for the purpose of
25 determining compliance with H-2A requirements.

1 “(4) MULTISTATE EMPLOYERS.—Employers
2 with multiple operations may use H–2A workers in
3 the occupations for which they are sought in all
4 places in which the employer has operations if the
5 employer—

6 “(A) designates on the petition each loca-
7 tion at which such workers will be used; and

8 “(B) performs adequate recruitment ef-
9 forts in each State in which such workers will
10 be used.

11 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

12 “(1) PERMITTING FILING BY AGRICULTURAL
13 ASSOCIATIONS.—A petition to hire an H–2A worker
14 may be filed by an association of agricultural em-
15 ployers which use agricultural labor.

16 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
17 EMPLOYERS.—If an association is a joint or sole em-
18 ployer of H–2A workers, such H–2A workers may be
19 transferred among its members to perform agricul-
20 tural labor of the same nature for which the petition
21 was approved.

22 “(3) TREATMENT OF VIOLATIONS.—

23 “(A) INDIVIDUAL MEMBER.—If an indi-
24 vidual member of a joint employer association
25 violates any condition for approval with respect

1 to the member's petition, the Secretary of
2 Labor shall deny such petition only with respect
3 to that member of the association unless the
4 Secretary of Labor determines that the associa-
5 tion or other member participated in, had
6 knowledge of, or had reason to know of the vio-
7 lation.

8 “(B) ASSOCIATION OF AGRICULTURAL EM-
9 PLOYERS.—

10 “(i) JOINT EMPLOYER.—If an associa-
11 tion representing agricultural employers as
12 a joint employer violates any condition for
13 approval with respect to the association's
14 petition, the Secretary of Labor shall deny
15 such petition only with respect to the asso-
16 ciation and may not apply the denial to
17 any individual member of the association,
18 unless the Secretary of Labor determines
19 that the member participated in, had
20 knowledge of, or had reason to know of the
21 violation.

22 “(ii) SOLE EMPLOYER.—If an associa-
23 tion of agricultural employers approved as
24 a sole employer violates any condition for
25 approval with respect to the association's

1 petition, no individual member of the asso-
2 ciation may be the beneficiary of the serv-
3 ices of H-2A workers admitted under this
4 section in the occupation in which such H-
5 2A workers were employed by the associa-
6 tion which was denied approval during the
7 period such denial is in force.

8 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
9 Secretary of Labor, in conjunction with the Secretary of
10 State and the Secretary of Homeland Security, shall issue
11 regulations to provide for an expedited procedure—

12 “(1) for the review of a denial of a petition
13 under this section by any of the Secretaries; or

14 “(2) at the applicant’s request, for a de novo
15 administrative hearing of the denial.

16 “(h) MISCELLANEOUS PROVISIONS.—

17 “(1) REQUIREMENTS FOR PLACEMENT OF H-2A
18 WORKERS WITH OTHER EMPLOYERS.—An H-2A
19 worker may be transferred to another employer that
20 has had a petition approved under this section. The
21 Secretary of Homeland Security and the Secretary
22 of State shall issue regulations to establish a process
23 for the approval and reissuance of visas for trans-
24 ferred H-2A workers.

1 “(2) ENDORSEMENT OF DOCUMENTS.—The
2 Secretary of Homeland Security shall provide for the
3 endorsement of entry and exit documents of H–2A
4 workers to carry out this section and to provide no-
5 tice under section 274A.

6 “(3) PREEMPTION OF STATE LAWS.—This sec-
7 tion and subsections (a) and (c) of section 214 pre-
8 empt any State or local law regulating admissibility
9 of nonimmigrant workers.

10 “(4) FEES.—The Secretary of Labor may
11 charge a reasonable fee to recover the costs of proc-
12 essing petitions under this section. In determining
13 the amount of the fee to be charged under this para-
14 graph, the Secretary shall consider whether the em-
15 ployer is a single employer or an association and the
16 number of H–2A workers intended to be employed.

17 “(5) E-VERIFY PARTICIPATION BY EMPLOY-
18 ERS.—The Secretary shall require employers partici-
19 pating in the H–2A program to register with and
20 participate in E–Verify, as established under title IV
21 of the Illegal Immigration Reform and Immigrant
22 Responsibility Act of 1996 (division C of Public Law
23 104–208).

24 “(i) FAILURE TO MEET CONDITIONS.—

1 “(1) IN GENERAL.—The Secretary of Labor
2 shall conduct investigations and random audits of
3 employer work sites to ensure employer compliance
4 with the requirements under this section. All mone-
5 tary fines assessed under this section shall be paid
6 by the violating employer to the Department of
7 Labor and used by the Secretary to conduct audits,
8 investigations, and housing inspections.

9 “(2) PENALTIES FOR FAILURE TO MEET CONDI-
10 TIONS.—If the Secretary of Labor finds, after notice
11 and opportunity for a hearing, a failure to meet a
12 material condition under subsection (b), or a mate-
13 rial misrepresentation of fact in a petition filed
14 under subsection (b), the Secretary of Labor—

15 “(A) shall notify the Secretary of Home-
16 land Security of such finding;

17 “(B) may impose such other administrative
18 remedies, including civil money penalties in an
19 amount not to exceed \$1,000 per violation, as
20 the Secretary of Labor determines to be appro-
21 priate; and

22 “(C) may disqualify the employer from the
23 employment of H-2A workers for a period of 1
24 year.

1 “(3) PENALTIES FOR WILLFUL FAILURE.—If
2 the Secretary of Labor finds, after notice and oppor-
3 tunity for a hearing, a willful failure to meet a mate-
4 rial condition under subsection (b) or a willful mis-
5 representation of a material fact in a petition filed
6 under subsection (b), the Secretary of Labor—

7 “(A) shall notify the Secretary of Home-
8 land Security of such finding;

9 “(B) may impose such other administrative
10 remedies, including civil money penalties in an
11 amount not to exceed \$5,000 per violation, as
12 the Secretary of Labor determines to be appro-
13 priate;

14 “(C) may disqualify the employer from the
15 employment of H-2A workers for a period of 2
16 years;

17 “(D) for a second violation, may disqualify
18 the employer from the employment of H-2A
19 workers for a period of 5 years; and

20 “(E) for a third violation, may perma-
21 nently disqualify the employer from the employ-
22 ment of H-2A workers.

23 “(4) PENALTIES FOR DISPLACEMENT OF
24 UNITED STATES WORKERS.—If the Secretary of
25 Labor finds, after notice and opportunity for a hear-

1 ing, a willful failure to meet a material condition of
2 subsection (b) or a willful misrepresentation of a
3 material fact in a petition filed under subsection (b),
4 and the employer displaced a United States worker
5 employed by the employer during the period of em-
6 ployment on the employer's petition, or during the
7 30-day period preceding such period of employment,
8 the Secretary of Labor—

9 “(A) shall notify the Secretary of Home-
10 land Security of such finding;

11 “(B) may impose such other administrative
12 remedies, including civil money penalties in an
13 amount not to exceed \$15,000 per violation, as
14 the Secretary of Labor determines to be appro-
15 priate;

16 “(C) may disqualify the employer from the
17 employment of H-2A workers for a period of 5
18 years; and

19 “(D) for a second violation, may perma-
20 nently disqualify the employer from the employ-
21 ment of H-2A workers.

22 “(5) LIMITATIONS ON CIVIL MONEY PEN-
23 ALTIES.—The Secretary of Labor may not impose
24 total civil money penalties with respect to a petition
25 filed under subsection (b) in excess of \$100,000.

1 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
2 FITS.—

3 “(1) IN GENERAL.—The Secretary of Labor
4 shall conduct investigations and random audits of
5 employer work sites to ensure employer compliance
6 with the requirements under this section.

7 “(2) ASSESSMENT.—If the Secretary of Labor
8 finds, after notice and opportunity for a hearing,
9 that the employer has failed to pay the wages or
10 provide the housing allowance, transportation, sub-
11 sistence requirement, or guarantee of employment
12 attested in the petition filed by the employer under
13 subsection (b)(2), the Secretary of Labor shall as-
14 sess payment of back wages, or other required bene-
15 fits, due any United States worker or H-2A worker
16 employed by the employer in the specific employment
17 in question.

18 “(3) AMOUNT.—The back wages or other re-
19 quired benefits described in paragraph (2)—

20 “(A) shall be equal to the difference be-
21 tween the amount that should have been paid
22 and the amount that was paid to such worker;
23 and

24 “(B) shall be distributed to the worker to
25 whom such wages are due.

1 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
2 CONDITIONS.—

3 “(1) PREFERENTIAL TREATMENT OF ALIENS
4 PROHIBITED.—

5 “(A) IN GENERAL.—Each employer seek-
6 ing to hire United States workers shall offer
7 such workers not less than the same benefits,
8 wages, and working conditions that the em-
9 ployer is offering, intends to offer, or will pro-
10 vide to H-2A workers in the same occupation.
11 No job offer may impose any restriction or obli-
12 gation on United States workers which will not
13 be imposed on the employer’s H-2A workers.
14 The benefits, wages, and other terms and condi-
15 tions of employment described in this sub-
16 section shall be provided in connection with em-
17 ployment under this section.

18 “(B) INTERPRETATION.—Every interpreta-
19 tion and determination made under this section
20 or under any other law, regulation, or interpre-
21 tative provision regarding the nature, scope,
22 and timing of the provision of these and any
23 other benefits, wages, and other terms and con-
24 ditions of employment shall be made so that—

1 “(i) the services of workers to their
2 employers and the employment opportuni-
3 ties afforded to workers by the employers,
4 including those employment opportunities
5 that require United States workers or H-
6 2A workers to travel or relocated in order
7 to accept or perform employment—

8 “(I) mutually benefit such work-
9 ers, as well as their families, and em-
10 ployers;

11 “(II) principally benefit neither
12 employer nor employee; and

13 “(III) employment opportunities
14 within the United States benefit the
15 United States economy.

16 “(2) REQUIRED WAGES.—

17 “(A) IN GENERAL.—Each employer apply-
18 ing for workers under subsection (b) shall pay
19 not less (and is not required to pay more) than
20 the greater of—

21 “(i) the hourly wage prescribed under
22 section 6(a)(1) of the Fair Labor Stand-
23 ards Act of 1938 (29 U.S.C. 206(a)(1)) or
24 the applicable State minimum wage;

25 “(ii) the adverse effect wage rate.

1 “(B) WAGES FOR LEVEL 2 H-2A WORK-
2 ERS.—

3 “(i) IN GENERAL.—Each employer
4 applying for Level 2 H-2A workers under
5 subsection (b) shall pay such workers not
6 less than 140 percent of the adverse effect
7 wage rate for H-2A workers, excluding
8 piece-rate wages.

9 “(ii) WAGE RATE DATA.—The Sec-
10 retary of Agriculture shall expand and
11 disaggregate the source of wage rate data
12 used in the survey conducted by the Na-
13 tional Agricultural Statistics Service to in-
14 clude—

15 “(I) first line farming super-
16 visors/managers (code 45-1011);

17 “(II) graders and sorters of agri-
18 cultural products (code 45-2041);

19 “(III) agricultural equipment op-
20 erators (code 45-2091);

21 “(IV) crop and nursery farm-
22 workers and laborers (code 45-2092);

23 “(V) ranch and farm animal
24 farmworkers (code 45-2093); and

1 “(VI) all other agricultural work-
2 ers (code 45–2099).

3 “(iii) STUDY AND REPORT.—

4 “(I) STUDY.—After the Sec-
5 retary of Agriculture collects wage
6 rate data for 2 years using the meth-
7 od described in clause (ii), the Sec-
8 retary of Agriculture, in conjunction
9 with the Secretary of Labor, shall
10 conduct a study to determine if—

11 “(aa) the wages accurately
12 reflect prevailing wages for simi-
13 lar occupations in the area of em-
14 ployment; and

15 “(bb) it is necessary to es-
16 tablish a new wage methodology
17 to prevent the depression of
18 United States farmworker wages.

19 “(II) REPORT.—Not later than 3
20 years after the date of the enactment
21 of the HARVEST Act of 2010, the
22 Secretary of Agriculture shall submit
23 a final report reflecting the findings
24 of the study conducted under sub-
25 clause (I) to—

1 “(aa) the Committee on Ag-
2 riculture, Nutrition, and Forestry
3 of the Senate;

4 “(bb) the Committee on the
5 Judiciary of the Senate;

6 “(cc) the Committee on Ag-
7 riculture of the House of Rep-
8 resentatives; and

9 “(dd) the Committee on the
10 Judiciary of the House of Rep-
11 resentatives.

12 “(3) HOUSING REQUIREMENT.—

13 “(A) IN GENERAL.—Except as provided
14 under subparagraph (F), each employer apply-
15 ing for workers under subsection (b) shall offer
16 to provide housing at no cost to—

17 “(i) all workers in job opportunities
18 for which the employer has applied under
19 subsection (b); and

20 “(ii) all other workers in the same oc-
21 cupation at the same place of employment
22 whose place of residence is beyond normal
23 commuting distance.

1 “(B) COMPLIANCE.—An employer meets
2 the requirement under subparagraph (A) if the
3 employer—

4 “(i) provides the workers with housing
5 that meets applicable Federal standards
6 for temporary labor camps; or

7 “(ii) secures housing for the workers
8 that—

9 “(I) meets applicable local stand-
10 ards for rental or public accommoda-
11 tion housing, or other substantially
12 similar class of habitation; or

13 “(II) in the absence of applicable
14 local standards, meets State stand-
15 ards for rental or public accommoda-
16 tion housing or other substantially
17 similar class of habitation.

18 “(C) INSPECTION.—

19 “(i) REQUEST.—At the time an em-
20 ployer that plans to provide housing de-
21 scribed in subparagraph (B) to H-2A
22 workers files a petition for H-2A workers
23 with the Secretary of Labor, the employer
24 shall request a certificate of inspection by
25 an approved Federal or State agency.

1 “(ii) INSPECTION; FOLLOW UP.—Not
2 later than 28 days after the receipt of a re-
3 quest under clause (i), the Secretary of
4 Labor shall ensure that—

5 “(I) such an inspection has been
6 conducted; and

7 “(II) any necessary follow up has
8 been scheduled to ensure compliance
9 with the requirements under this
10 paragraph.

11 “(iii) DELAY PROHIBITED.—The Sec-
12 retary of Labor may not delay the approval
13 of a petition for failing to comply with the
14 deadlines set forth in clause (iii).

15 “(D) RULEMAKING.—The Secretary of
16 Labor shall issue regulations that address the
17 specific requirements for the provision of hous-
18 ing to workers engaged in the range production
19 of livestock.

20 “(E) HOUSING ALLOWANCE.—

21 “(i) AUTHORITY.—If the Governor of
22 a State certifies to the Secretary of Labor
23 that there is adequate housing available in
24 the area of intended employment for mi-
25 grant farm workers and H-2A workers

1 who are seeking temporary housing while
2 employed in agricultural work, an employer
3 in such State may provide a reasonable
4 housing allowance instead of offering hous-
5 ing pursuant to subparagraph (A). An em-
6 ployer who provides a housing allowance to
7 a worker shall not be required to reserve
8 housing accommodations for the worker.

9 “(ii) ASSISTANCE IN LOCATING HOUS-
10 ING.—Upon the request of a worker seek-
11 ing assistance in locating housing, an em-
12 ployer providing a housing allowance under
13 clause (i) shall make a good faith effort to
14 assist the worker in identifying and locat-
15 ing housing in the area of intended em-
16 ployment.

17 “(iii) LIMITATION.—A housing allow-
18 ance may not be used for housing that is
19 owned or controlled by the employer. An
20 employer who offers a housing allowance to
21 a worker, or assists a worker in locating
22 housing which the worker occupies under
23 this subparagraph shall not be deemed a
24 housing provider under section 203 of the
25 Migrant and Seasonal Agricultural Worker

1 Protect Act (29 U.S.C. 1823) solely by vir-
2 tue of providing such housing allowance.

3 “(iv) OTHER REQUIREMENTS.—

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

21 “(II) METROPOLITAN COUNTY.—

22 If the place of employment of the
23 workers provided an allowance under
24 this subparagraph is in a metropolitan
25 county, the amount of the housing al-

1 lowance under this subparagraph shall
2 be equal to the statewide average fair
3 market rental for existing housing for
4 metropolitan counties for the State, as
5 established by the Secretary of Hous-
6 ing and Urban Development pursuant
7 to section 8(c) of the United States
8 Housing Act of 1937 (42 U.S.C.
9 1437f(c)), based on a 2-bedroom
10 dwelling unit and an assumption of 2
11 persons per bedroom.

12 “(v) INFORMATION.—If the employer
13 provides a housing allowance to H-2A em-
14 ployees, the employer shall provide a list of
15 the names and local addresses of such
16 workers to the Secretary of Homeland Se-
17 curity and the Secretary of Labor once per
18 contract period.

19 “(4) REIMBURSEMENT OF TRANSPORTATION
20 COSTS.—

21 “(A) REQUIREMENT FOR REIMBURSE-
22 MENT.—A worker who completes 50 percent of
23 the period of employment of the job for which
24 the worker was hired shall be reimbursed by the
25 employer, beginning on the first day of such

1 employment, for the cost of the worker's trans-
2 portation and subsistence from—

3 “(i) the place from which the worker
4 was approved to enter the United States to
5 the location at which the work for the em-
6 ployer is performed; or

7 “(ii) if the worker traveled from a
8 place in the United States at which the
9 worker was last employed, from such place
10 of last employment to the location at which
11 the work for the employer is being per-
12 formed.

13 “(B) TIMING OF REIMBURSEMENT.—Reim-
14 bursement to the worker of expenses for the
15 cost of the worker's transportation and subsist-
16 ence to the place of employment under subpara-
17 graph (A) shall be considered timely if such re-
18 imbursement is made not later than the work-
19 er's first regular payday after a worker com-
20 pletes 50 percent of the period of employment
21 of the job opportunity as provided under this
22 paragraph.

23 “(C) ADDITIONAL REIMBURSEMENT.—A
24 worker who completes the period of employment
25 for the job opportunity involved shall be reim-

1 bursed by the employer for the cost of the
2 worker's transportation and subsistence from
3 the work site to the place where the worker was
4 approved to enter the United States to work for
5 the employer. If the worker has contracted with
6 a subsequent employer, the previous and subse-
7 quent employer shall share the cost of the work-
8 er's transportation and subsistence from work
9 site to work site.

10 “(D) AMOUNT OF REIMBURSEMENT.—The
11 amount of reimbursement provided to a worker
12 under this paragraph shall be equal to the less-
13 er of—

14 “(i) the actual cost to the worker of
15 the transportation and subsistence in-
16 volved; or

17 “(ii) the most economical and reason-
18 able common carrier transportation and
19 subsistence costs for the distance involved.

20 “(E) REIMBURSEMENT FOR LAID OFF
21 WORKERS.—If the worker is laid off or employ-
22 ment is terminated for contract impossibility
23 (as described in paragraph (5)(D)) before the
24 anticipated ending date of employment, the em-
25 ployer shall provide—

1 “(i) the transportation and subsist-
2 ence required under subparagraph (C); and

3 “(ii) notwithstanding whether the
4 worker has completed 50 percent of the pe-
5 riod of employment, the transportation re-
6 imbursement required under subparagraph
7 (A).

8 “(F) TRANSPORTATION.—The employer
9 shall provide transportation between the work-
10 er’s living quarters and the employer’s work site
11 without cost to the worker in accordance with
12 applicable laws and regulations.

13 “(G) CONSTRUCTION.—Nothing in this
14 paragraph may be construed to require an em-
15 ployer to reimburse visa, passport, consular, or
16 international border-crossing fees incurred by
17 the worker or any other fees associated with the
18 worker’s lawful admission into the United
19 States to perform employment.

20 “(5) EMPLOYMENT GUARANTEE.—

21 “(A) IN GENERAL.—

22 “(i) REQUIREMENT.—Each employer
23 applying for workers under subsection (b)
24 shall guarantee to offer each such worker
25 employment for the hourly equivalent of

1 not less than 75 percent of the work hours
2 during the total anticipated period of em-
3 ployment beginning with the first work day
4 after the arrival of the worker at the place
5 of employment and ending on the expira-
6 tion date specified in the job offer.

7 “(ii) FAILURE TO MEET GUAR-
8 ANTEE.—If the employer affords the
9 United States worker or the H-2A workers
10 less employment than that required under
11 this subparagraph, the employer shall pay
12 such worker the amount which the worker
13 would have earned if the worker had
14 worked for the guaranteed number of
15 hours.

16 “(iii) PERIOD OF EMPLOYMENT.—In
17 this subparagraph, the term ‘period of em-
18 ployment’ means the total number of an-
19 ticipated work hours and work days de-
20 scribed in the job offer and shall exclude
21 the worker’s Sabbath and Federal holi-
22 days.

23 “(B) CALCULATION OF HOURS.—Any
24 hours which the worker fails to work, up to a
25 maximum number of hours specified in the job

1 offer for a work day, when the worker has been
2 offered an opportunity to do so, and all hours
3 of work actually performed (including voluntary
4 work in excess of the number of hours specified
5 in the job offer in a work day, on the worker's
6 Sabbath, or on Federal holidays) may be count-
7 ed by the employer in calculating whether the
8 period of guaranteed employment has been met.

9 “(C) LIMITATION.—If the worker volun-
10 tarily abandons employment before the end of
11 the contract period, or is terminated for cause,
12 the worker is not entitled to the 75 percent
13 guarantee described in subparagraph (A).

14 “(D) TERMINATION OF EMPLOYMENT.—

15 “(i) IN GENERAL.—If, before the expi-
16 ration of the period of employment speci-
17 fied in the job offer, the services of the
18 worker are no longer required due to any
19 form of natural disaster, including flood,
20 hurricane, freeze, earthquake, fire,
21 drought, plant or animal disease, pest in-
22 festation, regulatory action, or any other
23 reason beyond the control of the employer
24 before the employment guarantee in sub-

1 paragraph (A) is fulfilled, the employer
2 may terminate the worker's employment.

3 “(ii) REQUIREMENTS.—If a worker's
4 employment is terminated under clause (i),
5 the employer shall—

6 “(I) fulfill the employment guar-
7 antee in subparagraph (A) for the
8 work days that have elapsed during
9 the period beginning on the first work
10 day after the arrival of the worker
11 and ending on the date on which such
12 employment is terminated; and

13 “(II) make efforts to transfer the
14 United States worker to other com-
15 parable employment acceptable to the
16 worker.

17 “(1) DISQUALIFICATION.—

18 “(1) GROUNDS OF INELIGIBILITY.—

19 “(A) IN GENERAL.—An alien is ineligible
20 for an H-2A visa if the alien—

21 “(i) is inadmissible to the United
22 States under section 212(a), except as pro-
23 vided under paragraph (2);

1 “(ii) is subject to the execution of an
2 outstanding administratively final order of
3 removal, deportation, or exclusion;

4 “(iii) is described in, or is subject to,
5 section 241(a)(5);

6 “(iv) has ordered, incited, assisted, or
7 otherwise participated in the persecution of
8 any person on account of race, religion, na-
9 tionality, membership in a particular social
10 group, or political opinion; or

11 “(v) has a felony or misdemeanor con-
12 viction, an element of which involves bodily
13 injury, threat of serious bodily injury, or
14 harm to property in excess of \$500.

15 “(B) APPLICABILITY TO GROUNDS OF IN-
16 ADMISSIBILITY.—Nothing in this subsection
17 may be construed to limit the applicability of
18 any ground of inadmissibility under section
19 212.

20 “(2) GROUNDS OF INADMISSIBILITY.—

21 “(A) IN GENERAL.—In determining an
22 alien’s admissibility—

23 “(i) paragraphs (5)(A), (6)(A)(i)
24 (with respect to an alien present in the
25 United States without being admitted or

1 paroled), (6)(B), (6)(C), (6)(D), (6)(F),
2 (6)(G), (7), (9)(B), and (9)(C)(i)(I) of sec-
3 tion 212(a) shall not apply with respect to
4 conduct occurring or arising before the
5 date of the alien’s application for an H–2A
6 visa if associated with obtaining employ-
7 ment;

8 “(ii) the Secretary of Homeland Secu-
9 rity may not waive—

10 “(I) paragraph (1) or (2) of sec-
11 tions 212(a) (relating to health and
12 safety and criminals);

13 “(II) section 212(a)(3) (relating
14 to security and related grounds);

15 “(III) section 212(a)(9)(C)(i)(II);

16 or

17 “(IV) subparagraph (A), (C), or
18 (D) of section 212(a)(10) (relating to
19 polygamists, child abductors, and un-
20 lawful voters).

21 “(B) CONSTRUCTION.—Nothing in this
22 paragraph may be construed as affecting the
23 authority of the Secretary of Homeland Secu-
24 rity, other than under this paragraph, to waive
25 the provisions of section 212(a).

1 “(3) BARS TO EXTENSION OR ADMISSION.—An
2 alien may not be granted an H–2A visa if—

3 “(A) the alien has violated any material
4 term or condition of such status granted pre-
5 viously, unless the alien has had such violation
6 waived under paragraph (2)(A);

7 “(B) the alien is inadmissible as a non-
8 immigrant, except for those grounds previously
9 waived under paragraph (2)(A); or

10 “(C) the granting of such status would
11 allow the alien to exceed limitations on stay in
12 the United States in H–2A status described in
13 subsection (m).

14 “(4) PROMPT REMOVAL PROCEEDINGS.—The
15 Secretary of Homeland Security shall promptly iden-
16 tify, investigate, detain, and initiate removal pro-
17 ceedings against every alien admitted into the
18 United States on an H–2A visa who exceeds the
19 alien’s period of authorized admission or otherwise
20 violates any terms of the alien’s nonimmigrant sta-
21 tus. In conducting such removal proceedings, the
22 Secretary shall give priority to aliens who may pose
23 a threat to the national security, and those convicted
24 of criminal offenses.

1 “(5) NUMERICAL LIMITATIONS ON WAIVERS.—
2 The Secretary may waive any ground of inadmis-
3 sibility, as authorized under this section, only once
4 for each beneficiary of a petition for an H-2A visa
5 filed by an employer after the date of the enactment
6 of the HARVEST Act of 2010. Such waiver author-
7 ity for the Secretary shall expire 24 months after
8 such date of enactment.

9 “(6) FINE.—Each alien applying for an H-2A
10 visa under this section who would be inadmissible
11 under section 212(a)(6), if such provision had not
12 been made inapplicable under subsection (l)(2)(A)(i),
13 shall be required to pay a fine in an amount equal
14 to \$500 before being granted such visa.

15 “(m) PERIOD OF ADMISSION.—

16 “(1) IN GENERAL.—An H-2A worker approved
17 to enter the United States may not remain in the
18 United States for more than 10 months during any
19 12-month period, excluding—

20 “(A) a period of not more than 7 days be-
21 fore the beginning of the period of employment
22 for the purpose of travel to the work site; and

23 “(B) a period of not more than 14 days
24 after the period of employment for the purpose

1 of departure or extension based on a subse-
2 quent offer of employment.

3 “(2) EMPLOYMENT LIMITATION.—An H–2A
4 worker may not be employed during the 14-day pe-
5 riod described in paragraph (1)(B) except in the em-
6 ployment for which the alien was previously author-
7 ized.

8 “(3) CONSTRUCTION.—Nothing in this sub-
9 section shall limit the authority of the Secretary of
10 Homeland Security to extend the stay of an alien
11 under any other provision of this Act.

12 “(n) ABANDONMENT OF EMPLOYMENT.—

13 “(1) IN GENERAL.—An alien admitted or pro-
14 vided status under section 101(a)(15)(H)(ii)(a) who
15 abandons the employment, which was the basis for
16 such admission or status—

17 “(A) has failed to maintain nonimmigrant
18 status as an H–2A worker; and

19 “(B) shall depart the United States or be
20 subject to removal under section
21 237(a)(1)(C)(i).

22 “(2) REPORT BY EMPLOYER.—Not later than
23 36 hours after the premature abandonment of em-
24 ployment by an H–2A worker, the employer or asso-
25 ciation acting as an agent for the employer shall no-

1 tify the Secretary of Homeland Security of such
2 abandonment.

3 “(3) REMOVAL.—The Secretary of Homeland
4 Security shall ensure the prompt removal from the
5 United States of any H–2A worker who violates any
6 term or condition of the worker’s nonimmigrant sta-
7 tus.

8 “(4) VOLUNTARY TERMINATION.—Notwith-
9 standing paragraph (1), an alien may voluntarily
10 terminate the alien’s employment if the alien
11 promptly departs the United States upon termi-
12 nation of such employment.

13 “(o) REPLACEMENT OF WORKERS.—

14 “(1) IN GENERAL.—Upon receiving notification
15 under subsection (n)(2) or being notified that a
16 United States worker referred by the Department of
17 Labor or a United States worker recruited by the
18 employer during the recruitment period has pre-
19 maturely abandoned employment or has failed to ap-
20 pear for employment—

21 “(A) the Secretary of State shall promptly
22 issue a visa to an eligible alien designated by
23 the employer to replace a worker who abandons
24 or prematurely terminates employment; and

1 “(B) the Secretary of Homeland Security
2 shall expeditiously admit such alien into the
3 United States.

4 “(2) CONSTRUCTION.—Nothing in this sub-
5 section may be construed to limit any preference for
6 which United States workers are eligible under this
7 Act.

8 “(p) IDENTIFICATION DOCUMENT.—

9 “(1) IN GENERAL.—The Secretary of Homeland
10 Security shall provide each alien authorized to be an
11 H-2A worker with a single machine-readable, tam-
12 per-resistant, and counterfeit-resistant document
13 that—

14 “(A) authorizes the alien’s entry into the
15 United States;

16 “(B) serves, for the appropriate period, as
17 an employment eligibility document; and

18 “(C) verifies the identity of the alien
19 through the use of at least 1 biometric identi-
20 fier.

21 “(2) REQUIREMENTS.—The document required
22 for all aliens authorized to be an H-2A worker—

23 “(A) shall be capable of reliably deter-
24 mining whether the individual with the docu-
25 ment—

1 “(i) is eligible for employment as an
2 H–2A worker;

3 “(ii) is not claiming the identity of
4 another person; and

5 “(iii) is authorized to be admitted into
6 the United States; and

7 “(B) shall be compatible with—

8 “(i) other databases of the Depart-
9 ment of Homeland Security to prevent an
10 alien from obtaining benefits for which the
11 alien is not eligible and determining wheth-
12 er the alien is unlawfully present in the
13 United States; and

14 “(ii) law enforcement databases to de-
15 termine if the alien has been convicted of
16 criminal offenses.

17 **“SEC. 218A. ADMISSION OF CROSS-BORDER H-2A WORKERS.**

18 “(a) DEFINITION.—In this section, the term ‘cross-
19 border H–2A worker’ means a nonimmigrant described in
20 section 101(a)(15)(H)(ii)(a) who participates in the cross-
21 border worker program established under this section.

22 “(b) INCORPORATION BY REFERENCE.—

23 “(1) IN GENERAL.—Except as specifically pro-
24 vided under paragraph (2), the provisions under sec-
25 tion 218 shall apply to cross-border H–2A workers.

1 “(2) EXCEPTIONS.—Subsections (k)(3), (k)(4),
2 and (m) of section 218 shall not apply to cross-bor-
3 der H–2A workers.

4 “(c) MANDATORY ENTRY AND EXIT.—A cross-border
5 H–2A worker who complies with the provisions of this sec-
6 tion—

7 “(1) may enter the United States each sched-
8 uled work day, in accordance with regulations pro-
9 mulgated by the Secretary of Homeland Security;
10 and

11 “(2) shall exit the United States before the end
12 of each day of such entrance.

13 “(d) RECRUITMENT.—Each employer that employs a
14 cross-border H–2A worker under this section shall conduct
15 a recruitment for each position occupied by such H–2A
16 worker that complies with the requirements under section
17 218(b)(4) at least once every 10 months.”.

18 (2) CLERICAL AMENDMENT.—The table of con-
19 tents of the Immigration and Nationality Act (8
20 U.S.C. 1101 et seq.) is amended by striking the item
21 relating to section 218 and inserting the following:

“Sec. 218. Admission of temporary H–2A workers.

“Sec. 218A. Admission of cross-border H–2A workers.”.

22 (c) RULEMAKING.—

23 (1) ISSUANCE OF VISAS.—Not later than 180
24 days after the date of the enactment of this Act, the

1 Secretary of State shall promulgate regulations, in
2 accordance with the notice and comment provisions
3 of section 553 of title 5, United States Code, to pro-
4 vide for uniform procedures for the issuance of H-
5 2A visas by United States consulates and consular
6 officials to nonimmigrants described in section
7 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

9 (2) BORDER CROSSINGS.—The Secretary of
10 State shall promulgate regulations to establish a
11 process for cross-border H-2A workers authorized to
12 work in the United States under section 218A of the
13 Immigration and Nationality Act, as added by sub-
14 section (b), to ensure that such workers expedi-
15 tiously enter and exit the United States during each
16 work day.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the date that is 180 days
19 after the date of the enactment of this Act.

20 **SEC. 4. LEGAL ASSISTANCE FROM THE LEGAL SERVICES**
21 **CORPORATION.**

22 Section 504 of the Migrant and Seasonal Agricultural
23 Worker Protection Act (29 U.S.C. 1854) is amended—

24 (1) by striking subsection (b) and inserting the
25 following:

1 “(b)(1) Upon application by a complainant and in
2 such circumstances as the court determines just, the court
3 may appoint an attorney for such complainant and may
4 authorize the commencement of the action.

5 “(2) The Legal Services Corporation may not provide
6 legal assistance for, or on behalf of, any alien, and may
7 not provide financial assistance to any person or entity
8 that provides legal assistance for, or on behalf of, any
9 alien, unless the alien—

10 “(A) is described in subsection (a); and

11 “(B) is present in the United States at the time
12 the legal assistance is provided.

13 “(3)(A) No party may bring a civil action for dam-
14 ages or another complaint on behalf of a nonimmigrant
15 described in section 101(a)(15)(H)(ii)(a) of the Immigra-
16 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))
17 (referred to in this subsection as an ‘H-2A worker’) un-
18 less—

19 “(i) the party makes a request to the Federal
20 Mediation and Conciliation Service or an equivalent
21 State program (as defined by the Secretary of
22 Labor) not later than 90 days before bringing the
23 action to assist the parties in reaching a satisfactory
24 resolution of all issues involving parties to the dis-
25 pute;

1 “(ii) the party provides written notification of
2 the alleged violation to the agricultural employer, ag-
3 ricultural association, or farm labor contractor; and

4 “(iii) the parties to the dispute have attempted,
5 in good faith, mediation or other non-binding dis-
6 pute resolution of all issues involving all such par-
7 ties.

8 “(B) If the mediator finds that an agricultural em-
9 ployer, agricultural association, or farm labor contractor
10 has corrected a violation of this Act or a regulation under
11 this Act not later than 14 days after the date on which
12 such agricultural employer, agricultural association, or
13 farm labor contractor received written notification of such
14 violation, no action may be brought under this section with
15 respect to such violation.

16 “(C) Any settlement reached through the mediation
17 process described in subparagraph (A) shall preclude any
18 right of action arising out of the same facts between the
19 parties in any Federal or State court or administrative
20 proceeding.

21 “(D) If no settlement is reached through the medi-
22 ation process described in subparagraph (A), any offer of
23 settlement or attempts to remedy alleged grievances shall
24 be admissible as evidence.

1 “(4) An employer of an H-2A worker shall not be
2 required to waive any requirements of any food safety pro-
3 grams, such as sign in requirements, for any recipient of
4 grants or contracts under section 1007 of the Legal Serv-
5 ices Corporation Act (42 U.S.C. 1996f), or any employee
6 of such recipient.

7 “(5) The employer of an H-2A worker shall post the
8 contact information of the Legal Services Corporation in
9 the dwelling and at the work site of each nonimmigrant
10 employee in a language in which all employees can under-
11 stand.

12 “(6) There are authorized to be appropriated to the
13 Federal Mediation and Conciliation Service for each fiscal
14 year such sums as may be necessary to carry out the medi-
15 ation process described in this subsection.”; and

16 (2) by adding at the end the following:

17 “(g)(1) If a defendant prevails in an action under this
18 section in which the plaintiff is represented by an attorney
19 who is employed by the Legal Services Corporation or any
20 entity receiving funds from the Legal Services Corpora-
21 tion, such entity or the Legal Services Corporation shall
22 award to the prevailing defendant fees and other expenses
23 incurred by the defendant in connection with the action.

1 “(2) In this subsection, the term ‘fees and other ex-
2 penses’ has the meaning given the term in section
3 514(b)(1)(A) of title 5, United States Code.

4 “(3) The court shall take whatever steps necessary,
5 including the imposition of sanctions, to ensure compli-
6 ance with this subsection.”.

7 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated to the De-
9 partment of Homeland Security and the Department of
10 State such sums as may be necessary to adjudicate H-
11 2A petitions.

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