

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to authorize the establishment of guest worker programs, to provide for the adjustment of status of certain aliens unlawfully present in the United States to the status of a non-immigrant guest worker, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Border Security and Immigration Reform Act of 2003”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—AUTHORIZATION FOR ESTABLISHMENT OF GUEST
WORKER PROGRAMS

- Sec. 101. Guest worker programs.
Sec. 102. Employer applications and petitions for guest workers.
Sec. 103. New nonimmigrant guest worker categories.
Sec. 104. Prohibition on adjustment of status to permanent resident status.
Sec. 105. Guest worker investment accounts.
Sec. 106. Funding.

TITLE II—ADJUSTMENT OF STATUS OF CERTAIN UNLAWFULLY
PRESENT ALIENS TO NONIMMIGRANT GUEST WORKER STATUS

- Sec. 201. Adjustment of status.
Sec. 202. Enhanced civil penalties for employment of unauthorized aliens after
termination date for adjustment of status.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) GUEST WORKER.—The term “guest work-
4 er” means an alien described in section
5 101(a)(15)(W) of the Immigration and Nationality
6 Act, as added by section 103 of this Act.

7 (2) GUEST WORKER PROGRAM.—The term
8 “guest worker program” or the “program” means,
9 with respect to a particular country or the workers
10 of that country, the guest worker program estab-
11 lished with that country.

12 (3) GUEST WORKER PROGRAM COUNTRY.—The
13 term “guest worker program country” means a for-
14 eign country that participates in a guest worker pro-
15 gram.

1 **TITLE I—AUTHORIZATION FOR**
2 **ESTABLISHMENT OF GUEST**
3 **WORKER PROGRAMS**

4 **SEC. 101. GUEST WORKER PROGRAMS.**

5 The Immigration and Nationality Act (8 U.S.C. 1101
6 et seq.) is amended by inserting after section 218 the fol-
7 lowing:

8 **“SEC. 218A. GUEST WORKER PROGRAMS.**

9 “(a) ESTABLISHMENT.—The Secretary of Homeland
10 Security and the Secretary of State shall jointly establish
11 and administer a guest worker program with any eligible
12 foreign country. A foreign country is eligible to participate
13 in the program if the country has entered into an agree-
14 ment with the United States in which the country
15 undertakes—

16 “(1) to develop standards of eligibility for the
17 enrollment in the program of workers who are na-
18 tives of that country, subject to the grounds of ineli-
19 gibility described in subsection (c);

20 “(2) to establish a procedure for the enrollment
21 in the program of eligible workers;

22 “(3) to establish, in cooperation with United
23 States employers, a training program in the country
24 for such workers;

1 “(4) to establish procedures for providing
2 health care;

3 “(5) to monitor, and share information with the
4 United States regarding, the departure from, and re-
5 turn to, the country of workers enrolled in the pro-
6 gram of that country; and

7 “(6) to accept the return of those workers from
8 the United States.

9 “(b) PROGRAM DESCRIPTION.—Each guest worker
10 program with a foreign country shall consist of—

11 “(1) the placement of guest workers who are
12 enrolled in the program by that country in job op-
13 portunities in the United States;

14 “(2) the admission to the United States of the
15 guest workers to fill those job opportunities, subject
16 to the procedures described in section 218B;

17 “(3) the performance of work in the United
18 States in those job opportunities on a seasonal or
19 nonseasonal basis; and

20 “(4) the return of the guest worker to the guest
21 worker program country before the expiration of the
22 worker’s period of authorized stay in the United
23 States.

24 “(c) INELIGIBILITY OF CERTAIN ALIENS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), and notwithstanding subsection (a)(1),
3 the following aliens are not eligible to participate in
4 a guest worker program:

5 “(A) Any alien under 18 years of age, ex-
6 cept accompanying, or following to join, an
7 alien who is a nonseasonal guest worker.

8 “(B) Any alien who has been convicted of
9 a felony or 3 or more misdemeanors committed
10 in the United States.

11 “(C) Any alien who was unlawfully present
12 in the United States.

13 “(2) EXCEPTION.—Notwithstanding paragraph
14 (1), an alien may apply for admission to the United
15 States under section 101(a)(15)(W) without regard
16 to any previous period of unlawful presence in the
17 United States if the alien applies for such admission
18 not later than 1 year after the date of enactment of
19 the Border Security and Immigration Reform Act of
20 2003.

21 “(d) PERIODS OF AUTHORIZED STAY.—

22 “(1) SEASONAL GUEST WORKERS.—The period
23 of authorized stay in the United States for a sea-
24 sonal guest worker shall not exceed 270 days in any
25 calendar year. The seasonal guest worker may re-

1 apply for admission to the United States in any sub-
2 sequent calendar year.

3 “(2) NONSEASONAL GUEST WORKERS.—The pe-
4 riod of authorized stay in the United States for a
5 nonseasonal guest worker shall not exceed 12
6 months, except that the period may, upon applica-
7 tion, be extended by an additional period or periods
8 of 12 months each and except that the total period
9 of authorized stay may not exceed 36 months unless
10 the alien returns to the guest worker program coun-
11 try for a period of at least 6 months before readmis-
12 sion to the United States.

13 “(e) WORK PERMITS.—During the period in which
14 an alien is in lawful status under a guest worker program,
15 the alien shall be granted authorization to engage in em-
16 ployment in the United States in the job opportunity ap-
17 proved under the program and be provided an appropriate
18 work permit that includes a photograph of the guest work-
19 er.

20 “(f) UNDOCUMENTED GUEST WORKERS.—An alien
21 employed in the United States on the date of enactment
22 of the Border Security and Immigration Reform Act of
23 2003 who does not have proper documentation of author-
24 ization to enter the United States shall be required to
25 show evidence that the alien—

1 “(1) was in the United States on the date of
2 enactment of the Border Security and Immigration
3 Reform Act of 2003; and

4 “(2) is employed on the date on which the guest
5 worker registers to participate in the guest worker
6 program.

7 “(g) AUTHORIZED TRAVEL.—During the period an
8 alien is in lawful nonimmigrant status granted under this
9 section, the alien has the right to travel abroad.

10 “(h) ENTRY-EXIT INFORMATION.—The Secretary of
11 Homeland Security, in cooperation with the Secretary of
12 State and the governments of participating countries, shall
13 establish and maintain a computer database to—

14 “(1) monitor the entry into, and exit from, the
15 United States of guest workers;

16 “(2) track employer compliance under the guest
17 worker program; and

18 “(3) store past employment records of guest
19 workers to facilitate the return of those workers to
20 the same employer each year, if the employer and
21 guest worker so chooses.

22 “(i) ABSOLUTION FOR PAST ILLEGAL BEHAVIOR.—
23 An alien who participates in a guest worker program shall
24 be absolved of all liability for illegal behavior, as such be-
25 havior pertains to the immigration status of the alien, that

1 occurred before the alien's participation in the guest work-
2 er program.

3 “(j) LEGAL PERMANENT RESIDENT STATUS PRI-
4 ORITY.—

5 “(1) IN GENERAL.—The Secretary of Homeland
6 Security shall establish an evaluation system in ac-
7 cordance with paragraph (2), that gives priority for
8 adjustment of status to aliens who are applying for
9 legal permanent residency, if the alien has partici-
10 pated in the guest worker program and has worked
11 in the United States for a continuous 3-year period.
12 An alien guest worker can only apply for legal per-
13 manent residency when that alien returns to the
14 guest worker program country.

15 “(2) REQUIREMENTS.—The evaluation system
16 established under paragraph (1) shall be a point sys-
17 tem that rates an alien based on—

18 “(A) whether the alien has an employer
19 sponsor;

20 “(B) whether the alien received promotions
21 or pay increases during the alien's employment
22 periods;

23 “(C) whether the alien paid taxes;

24 “(D) the proficiency of the alien in speak-
25 ing English;

1 “(E) the education of the alien; and

2 “(F) whether the alien has refrained from
3 illegal activity.

4 “(k) DEFINITIONS.—In this section:

5 “(1) EMPLOYER.—The term ‘employer’ means
6 any person or entity, including any farm labor con-
7 tractor and any agricultural association, that em-
8 ploys workers.

9 “(2) GUEST WORKER.—The term ‘guest work-
10 er’ means an alien described in section
11 101(a)(15)(W).

12 “(3) GUEST WORKER PROGRAM.—The term
13 ‘guest worker program’ or the ‘program’ means,
14 with respect to a particular country or the workers
15 of that country, the guest worker program estab-
16 lished with that country.

17 “(4) GUEST WORKER PROGRAM COUNTRY.—
18 The term ‘guest worker program country’ means a
19 foreign country that participates in a guest worker
20 program.

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

1 “(6) NONSEASONAL GUEST WORKER.—The
2 term ‘nonseasonal guest worker’ means an alien de-
3 scribed in section 101(a)(15)(W)(ii).

4 “(7) SEASONAL GUEST WORKER.—The term
5 ‘seasonal guest worker’ means an alien described in
6 section 101(a)(15)(W)(i).”.

7 **SEC. 102. EMPLOYER APPLICATIONS AND PETITIONS FOR**
8 **GUEST WORKERS.**

9 (a) APPLICATIONS.—The Immigration and Nation-
10 ality Act is amended by inserting after section 218A, as
11 added by section 101, the following:

12 **“SEC. 218B. EMPLOYER APPLICATIONS FOR GUEST WORK-**
13 **ERS.**

14 “(a) APPLICATIONS TO THE SECRETARY.—

15 “(1) IN GENERAL.—No alien may be admitted
16 to the United States as a guest worker, or otherwise
17 provided status as a guest worker, unless the em-
18 ployer has filed with the Secretary of Labor an ap-
19 plication containing—

20 “(A) in the case of nonseasonal guest
21 workers, a request for an attestation under
22 paragraph (2);

23 “(B) the assurances described in sub-
24 section (b);

1 “(C) a description of the nature and loca-
2 tion of the work to be performed;

3 “(D) the anticipated period (expected be-
4 ginning and ending dates) for which workers
5 will be needed;

6 “(E) the wages to be paid; and

7 “(F) the method of transportation, if nec-
8 essary.

9 “(2) LABOR ATTESTATION REQUIRED FOR
10 GUEST WORKERS.—In the case of the employment of
11 any guest worker, the United States employer shall
12 apply to the Secretary of Labor for an attestation
13 that—

14 “(A) there are not sufficient workers who
15 are able, willing, and qualified, and who will be
16 available at the time and place needed, to per-
17 form the labor or services involved in the em-
18 ployer’s petition to the Secretary of Homeland
19 Security; and

20 “(B) the employment of the alien in such
21 labor or services will not adversely affect the
22 wages and working conditions of workers in the
23 United States similarly employed.

24 “(3) ACCOMPANIED BY JOB OFFER.—Each ap-
25 plication filed under paragraph (1) shall be accom-

1 panied by a copy of the job offer describing the
2 wages and other terms and conditions of employ-
3 ment and the bona fide occupational qualifications
4 that must be possessed by a worker to be employed
5 in the job opportunity in question.

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

9 “(1) OFFERS TO UNITED STATES WORKERS.—
10 The employer has offered or will offer the job to any
11 eligible United States worker who applies and is
12 equally or better qualified for the job for which the
13 nonimmigrant is, or the nonimmigrants are, sought
14 and who will be available at the time and place of
15 need.

16 “(2) ADVERTISING OF JOB OPPORTUNITIES.—
17 Not later than 14 days prior to the date on which
18 the employer desires to employ a guest worker in a
19 temporary or seasonal job opportunity, the employer
20 shall advertise the availability of the job opportuni-
21 ties for which the employer is seeking workers in a
22 publication in the local labor market that is likely to
23 be patronized by potential workers seeking such
24 jobs.

1 “(3) WAGE RATE.—No worker shall be paid
2 less than the greater of the hourly wage prescribed
3 under section 6(a)(1) of the Fair Labor Standards
4 Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable
5 State minimum wage. All wages will be paid in a
6 timely manner and all payroll records will be main-
7 tained accurately.

8 “(4) PROVISION OF INSURANCE.—If the job op-
9 portunity is not covered by the State workers’ com-
10 pensation law, the employer will provide, at no cost
11 to the worker, insurance covering injury and disease
12 arising out of, and in the course of, the worker’s em-
13 ployment which will provide benefits at least equal to
14 those provided under the State’s workers’ compensa-
15 tion law for comparable employment.

16 “(5) VEHICLE OPERATIONS.—The employer will
17 comply with all general vehicle safety obligations and
18 provide vehicle insurance coverage for the guest
19 worker.

20 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
21 OF EMPLOYER MEMBERS.—An association may file an ap-
22 plication under subsection (a) on behalf of 1 or more of
23 its employer members that the association certifies in its
24 application has or have agreed in writing to comply with
25 the requirements of this section and section 218A.

1 “(d) REVIEW AND APPROVAL OF APPLICATIONS.—

2 “(1) RESPONSIBILITY OF EMPLOYERS.—The
3 employer shall make available for public examina-
4 tion, within 1 working day after the date on which
5 an application under subsection (a) is filed, at the
6 principal place of business or work site of the em-
7 ployer, a copy of each such application (and such ac-
8 companying documents as are necessary).

9 “(2) RESPONSIBILITY OF THE SECRETARY.—

10 “(A) COMPILATION OF LIST.—The Sec-
11 retary of Labor shall compile, on a current
12 basis, a list (by employer and by occupational
13 classification) of the applications filed under
14 this subsection. Such list shall include the wage
15 rate, number of workers sought, period of in-
16 tended employment, and date of need. The Sec-
17 retary of Labor shall make such list available
18 for examination in the District of Columbia.

19 “(B) REVIEW OF APPLICATIONS.—The
20 Secretary of Labor shall review such an applica-
21 tion only for completeness and obvious inac-
22 curacies. Unless the Secretary of Labor finds
23 that the application is incomplete or obviously
24 inaccurate, the Secretary of Labor shall certify
25 that the intending employer has filed with the

1 Secretary of Labor an application as described
2 in subsection (a). Such certification shall be
3 provided within 14 days of the filing of the ap-
4 plication.

5 “(C) REPORT TO EMPLOYER.—Not later
6 than 7 days before the employer requires work
7 to commence, the Secretary of Labor shall
8 transmit a report to the employer containing
9 the name, contact information, and specific
10 work permit information of each guest worker
11 who has been authorized to perform the work
12 sought by the employer. Upon receipt of a re-
13 port, the employer shall present a work contract
14 to the guest worker for signature. By signing a
15 work contract under the guest worker program,
16 a guest worker undertakes to comply with all
17 United States laws, and the employer under-
18 takes to permit access to the workplace by ap-
19 propriate officials of the Department of Labor.

20 “(e) VIOLATIONS OF EMPLOYER ATTESTATION.—

21 “(1) IN GENERAL.—

22 “(A) RESPONSIBILITY OF THE SECRETARY
23 OF LABOR.—The Secretary of Labor shall be
24 responsible for applying United States wage
25 and hour laws within the guest worker program

1 and normal requirements for safe working con-
2 ditions.

3 “(B) PENALTIES.—Any United States em-
4 ployer who violates any law or regulation relat-
5 ing to the matters described in subparagraph
6 (A) shall be subject to—

7 “(i) the same penalties that would
8 apply if the employees of the employer
9 were United States citizens; and

10 “(ii) debarment from the guest worker
11 program for up to 10 years.

12 “(C) APPLICATION OF DEBARMENT PEN-
13 ALTY.—A 10-year debarment shall be imposed
14 for employers found to be in violation on 3
15 counts within 3 consecutive years, excluding
16 multiple employee complaints filed at one time,
17 except that, if multiple employee violations are
18 found and the practice continues into the next
19 30 days, resulting in additional employee com-
20 plaints, such a violation shall be counted toward
21 the 3-count limitation. For purposes of this
22 paragraph, violations include unfair wages, un-
23 reasonable work hours and blacklisting.

24 “(2) PROCESS FOR COMPLAINANTS TO OBTAIN
25 OTHER EMPLOYMENT.—The Secretary of Labor and

1 the Secretary of Homeland Security shall establish a
2 process under which a guest worker who files a com-
3 plaint regarding an employer who intimidates,
4 threatens, restrains, coerces, blacklists, discharges,
5 or in any other manner discriminates against an em-
6 ployee because the employee has disclosed informa-
7 tion indicating an employer violation of the guest
8 worker program to enable the employee to seek other
9 appropriate employment in the United States for a
10 period not to exceed the maximum period of stay au-
11 thorized by the original permit.

12 “(3) ADJUDICATION PROCESS FOR DISPUTE
13 CLAIMS.—The Secretary of Homeland Security shall
14 develop a streamlined adjudication process for proc-
15 essing dispute claims. The guest worker shall imme-
16 diately be reassigned, and the adjudication process
17 shall be limited to 30 days. If the United States em-
18 ployer is not found in violation of the program re-
19 quirements, a new guest worker shall be assigned to
20 the employer not later than 15 days after the end
21 of the adjudication proceedings.

22 “(f) ABSOLUTION FOR PAST ILLEGAL BEHAVIOR.—
23 An employer who participates in a guest worker program
24 shall be absolved of all liability for illegal behavior, as such
25 behavior pertains to the immigration status of employees,

1 that occurred before the employer's participation in the
2 guest worker program.

3 “(g) DEFINITIONS.—In this section:

4 “(1) EMPLOYER.—The term ‘employer’ means
5 any person or entity, including any farm labor con-
6 tractor and any agricultural association, that em-
7 ploys workers.

8 “(2) GUEST WORKER.—The term ‘guest work-
9 er’ means an alien described in section
10 101(a)(15)(W).

11 “(3) GUEST WORKER PROGRAM.—The term
12 ‘guest worker program’ or the ‘program’ means,
13 with respect to a particular country or the workers
14 of that country, the guest worker program estab-
15 lished with that country.

16 “(4) GUEST WORKER PROGRAM COUNTRY.—
17 The term ‘guest worker program country’ means a
18 foreign country that participates in a guest worker
19 program.

20 “(5) JOB OPPORTUNITY.—The term ‘job oppor-
21 tunity’ means a job opening for temporary full-time
22 employment at a place in the United States to which
23 United States workers can be referred.

1 “(6) NONSEASONAL GUEST WORKER.—The
2 term ‘nonseasonal guest worker’ means an alien de-
3 scribed in section 101(a)(15)(W)(ii).

4 “(7) SEASONAL GUEST WORKER.—The term
5 ‘seasonal guest worker’ means an alien described in
6 section 101(a)(15)(W)(i).”.

7 (b) PETITIONS.—Section 214(c)(1) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1184(c)(1)) is amend-
9 ed in the first sentence by striking “or (P)(i)” and insert-
10 ing “(P)(i), or (W)”.

11 **SEC. 103. NEW NONIMMIGRANT GUEST WORKER CAT-**
12 **EGORIES.**

13 Section 101(a)(15) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1101(a)(15)) is amended by adding
15 at the end the following:

16 “(W)(i) an alien having a residence in a guest
17 worker program country who is coming temporarily
18 to the United States as a seasonal guest worker
19 under section 218A, and with respect to whom the
20 Secretary of Labor determines and certifies to the
21 Secretary of Homeland Security that the intending
22 employer has filed with the Secretary of Labor an
23 application under section 218B(b); or

24 “(ii) an alien having a residence in a guest
25 worker program country who is coming temporarily

1 to the United States as a nonseasonal guest worker
2 under section 218A with respect to whom the Sec-
3 retary of Labor has approved a certification under
4 section 218B(a), and the alien spouse and minor
5 children of any such alien specified in this clause if
6 accompanying or following to join the principal alien
7 and if the principal alien has a level of income equal
8 to or greater than 125 percent of the Federal pov-
9 erty line (as defined in section 213A(h)).”.

10 **SEC. 104. PROHIBITION ON ADJUSTMENT OF STATUS TO**
11 **PERMANENT RESIDENT STATUS.**

12 (a) ADJUSTMENT OF STATUS.—Section 245(c) of the
13 Immigration and Nationality Act (8 U.S.C. 1255(c)) is
14 amended—

15 (1) by striking “or” at the end of paragraph
16 (7); and

17 (2) by striking the period at the end of para-
18 graph (8) and inserting the following: “; or (9) any
19 alien who is employed in a guest worker program
20 under section 218A for less than 3 years or who has
21 violated the terms of such a program.”.

22 (b) TOTAL NUMBER OF LEGAL PERMANENT RESI-
23 DENT APPLICANTS.—The Secretary of Homeland Security
24 may annually adjust the total number of aliens whose sta-
25 tus may be adjusted to that of an alien lawfully admitted

1 for permanent residence based on economic determina-
2 tions made by the Secretary of Labor and the number of
3 participants in the guest worker program established by
4 this title.

5 **SEC. 105. GUEST WORKER INVESTMENT ACCOUNTS.**

6 (a) IN GENERAL.—Section 201 of the Social Security
7 Act (42 U.S.C. 401) is amended by adding at the end the
8 following:

9 “(n)(1) Notwithstanding any other provision of this
10 section, the Secretary of the Treasury shall transfer at
11 least quarterly from the Federal Old-Age and Survivors
12 Insurance Trust Fund and the Federal Disability Insur-
13 ance Trust Fund 100 percent of the guest worker taxes
14 to the Guest Worker Investment Fund for deposit in a
15 guest worker investment account for each guest worker
16 as specified in section 253.

17 “(2) For purposes of this subsection—

18 “(A) the term ‘guest worker taxes’ means that
19 portion of the amounts appropriated to the Federal
20 Old-Age and Survivors Insurance Trust Fund and
21 the Federal Disability Insurance Trust Fund under
22 this section and properly attributable to the wages
23 (as defined in section 3121 of the Internal Revenue
24 Code of 1986) and self-employment income (as de-
25 fined in section 1402 of such Code) of guest workers

1 as determined by the Commissioner of Social Secu-
2 rity; and

3 “(B) the term ‘guest worker’ has the meaning
4 given such term by section 218A(k) of the Immigra-
5 tion and Nationality Act.”.

6 (b) GUEST WORKER INVESTMENT ACCOUNTS.—Title
7 II of the Social Security Act (42 U.S.C. 401 et seq.) is
8 amended—

9 (1) by inserting before section 201 the fol-
10 lowing:

11 “PART A—SOCIAL SECURITY”;

12 and

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

14 “PART B—GUEST WORKER INVESTMENT ACCOUNTS

15 “DEFINITIONS

16 “SEC. 251. For purposes of this part:

17 “(1) GUEST WORKER.—The term ‘guest work-
18 er’ has the meaning given such term by section
19 218A(k) of the Immigration and Nationality Act.

20 “(2) COVERED EMPLOYER.—The term ‘covered
21 employer’ means, for any calendar year, any person
22 on whom an excise tax is imposed under section
23 3111 of the Internal Revenue Code of 1986 with re-
24 spect to having an individual in the person’s employ

1 to whom wages are paid by such person during such
2 calendar year.

3 “(3) GUEST WORKER INVESTMENT ACCOUNT.—

4 The term ‘guest worker investment account’ means
5 an account for a guest worker which is administered
6 by the Secretary through the Guest Worker Invest-
7 ment Fund.

8 “(4) GUEST WORKER INVESTMENT FUND.—The

9 term ‘Guest Worker Investment Fund’ means the
10 fund established under section 253.

11 “(5) SECRETARY.—The term ‘Secretary’ means
12 the Secretary of the Treasury.

13 “GUEST WORKER INVESTMENT ACCOUNTS

14 “SEC. 252. (a) IN GENERAL.—A guest worker invest-
15 ment account shall be established by the Secretary in the
16 Guest Worker Investment Fund for each individual not
17 later than 10 business days after the covered employer of
18 such individual submits a W-4 form (or any successor
19 form) identifying such individual as a guest worker.

20 “(b) TIME ACCOUNT TAKES EFFECT.—A guest
21 worker investment account established under subsection
22 (a) shall take effect with respect to the first pay period
23 beginning more than 14 days after the date of such estab-
24 lishment.

25 “(c) GUEST WORKER’S PROPERTY RIGHT IN GUEST
26 WORKER INVESTMENT ACCOUNT.—The guest worker in-

1 vestment account established for a guest worker is the sole
2 property of the worker.

3 “GUEST WORKER INVESTMENT FUND

4 “SEC. 253. (a) IN GENERAL.—There is created on
5 the books of the Treasury of the United States a trust
6 fund to be known as the ‘Guest Worker Investment Fund’
7 to be administered by the Secretary. Such Fund shall con-
8 sist of the assets transferred under section 201(n) to each
9 guest worker investment account established under section
10 252 and the income earned under subsection (e) and cred-
11 ited to such account.

12 “(b) NOTICE OF CONTRIBUTIONS.—The full amount
13 of a guest worker’s investment account transfers shall be
14 shown on such worker’s W-2 tax statement, as provided
15 in section 6051(a)(12) of the Internal Revenue Code of
16 1986.

17 “(c) INVESTMENT EARNINGS REPORT.—

18 “(1) IN GENERAL.—At least annually, the
19 Guest Worker Investment Fund shall provide to
20 each guest worker with a guest worker investment
21 account managed by the Fund a guest worker in-
22 vestment status report. Such report may be trans-
23 mitted electronically upon the agreement of the
24 guest worker under the terms and conditions estab-
25 lished by the Secretary.

1 “(2) CONTENTS OF REPORT.—The guest work-
2 er investment status report, with respect to a guest
3 worker investment account, shall provide the fol-
4 lowing information:

5 “(A) The total amounts transferred under
6 section 201(n) in the last quarter, the last year,
7 and since the account was established.

8 “(B) The amount and rate of income
9 earned under subsection (e) for each period de-
10 scribed in subparagraph (A).

11 “(d) MAXIMUM ADMINISTRATIVE FEE.—The Guest
12 Worker Investment Fund shall charge each guest worker
13 in the Fund a single, uniform annual administrative fee
14 not to exceed 0.3 percent of the value of the assets in-
15 vested in the worker’s account.

16 “(e) INVESTMENT DUTIES OF SECRETARY.—The
17 Secretary shall establish policies for the investment and
18 management of guest worker investment accounts, includ-
19 ing policies that shall provide for prudent Federal Govern-
20 ment investment instruments suitable for accumulating
21 funds.

22 “GUEST WORKER INVESTMENT ACCOUNT DISTRIBUTIONS

23 “SEC. 254. (a) DATE OF DISTRIBUTION.—Except as
24 provided in subsections (b) and (c), a distribution of the
25 balance in a guest worker investment account may only
26 be made on or after the date the worker permanently

1 leaves the guest worker program established under section
2 218A of the Immigration and Nationality Act and returns
3 to the worker's home country.

4 “(b) DISTRIBUTION IN THE EVENT OF DEATH.—If
5 the guest worker dies before the date determined under
6 subsection (a), the balance in the worker's account shall
7 be distributed to the worker's estate under rules estab-
8 lished by the Secretary.

9 “TAX TREATMENT OF ACCOUNTS

10 “SEC. 255. (a) IN GENERAL.—A guest worker invest-
11 ment account shall be exempt from taxation under the In-
12 ternal Revenue Code of 1986.

13 “(b) TAXATION OF DISTRIBUTIONS.—Any distribu-
14 tion from a guest worker investment account under section
15 254 shall be exempt from any taxation under such Code.

16 “(c) NONAPPLICATION OF STATE TAX.—

17 “(1) IN GENERAL.—No tax, fee, or other mone-
18 tary payment may be imposed or collected by any
19 State, the District of Columbia, or the Common-
20 wealth of Puerto Rico, or by any political subdivision
21 or other governmental authority thereof, on, or with
22 respect to—

23 “(A) any guest worker investment account,
24 or

25 “(B) any distribution under section 254
26 from such account.”.

1 (c) GUEST WORKER INVESTMENT ACCOUNT TRANS-
2 FERS SHOWN ON W-2'S.—

3 (1) IN GENERAL.—Section 6051(a) of the In-
4 ternal Revenue Code of 1986 (relating to receipts
5 for employees) is amended by striking “and” at the
6 end of paragraph (10), by striking the period at the
7 end of paragraph (11) and inserting “, and”, and in-
8 serting after paragraph (11) the following:

9 “(12) in the case of a guest worker (as defined
10 in section 251(1) of the Social Security Act), of the
11 amount shown pursuant to paragraph (6), the total
12 amount transferred to such worker’s guest worker
13 investment account under section 201(n) of such
14 Act.”.

15 (2) CONFORMING AMENDMENTS.—

16 (A) Section 6051(a)(6) of such Code is
17 amended by inserting “and paid as tax under
18 section 3111” after “section 3101”.

19 (B) Section 6051(c) of such Code is
20 amended by inserting “and paid as tax under
21 section 3111” after “section 3101”.

22 **SEC. 106. FUNDING.**

23 Funds appropriated to the Secretary of Labor for the
24 United States Employment Service shall be available to
25 pay the costs of the Department of Labor in carrying out

1 its responsibilities under sections 218A and 218B of the
2 Immigration and Nationality Act, as added by sections
3 101 and 102 of this Act.

4 **TITLE II—ADJUSTMENT OF STA-**
5 **TUS OF CERTAIN UNLAW-**
6 **FULLY PRESENT ALIENS TO**
7 **NONIMMIGRANT GUEST**
8 **WORKER STATUS**

9 **SEC. 201. ADJUSTMENT OF STATUS.**

10 (a) IN GENERAL.—The Secretary of Homeland Secu-
11 rity shall adjust the status of an alien unlawfully present
12 in the United States as of the date of enactment of this
13 Act to that of an alien admitted to the United States as
14 a nonimmigrant guest worker under section
15 101(a)(15)(W) of the Immigration and Nationality Act,
16 as added by section 103 of this Act, if the Secretary of
17 Homeland Security is satisfied that the following require-
18 ments are satisfied with respect to the alien:

19 (1) APPLICATION PERIOD.—The alien must
20 apply for such adjustment not later than 12 months
21 after the date of enactment of this Act.

22 (2) ADMISSIBILITY.—The alien must establish
23 that the alien is otherwise admissible to the United
24 States under section 101(a)(15)(W) of the Immigra-

1 tion and Nationality Act, as added by section 103 of
2 this Act.

3 (3) ATTESTATION BY UNITED STATES EM-
4 PLOYER.—A United States employer must file an at-
5 testation with the Secretary of Labor that the alien
6 is employed by the United States employer.

7 (b) TREATMENT AS NONIMMIGRANT “W” WORK-
8 ERS.—All requirements applicable to aliens admitted to
9 the United States under section 101(a)(15)(W) of the Im-
10 migration and Nationality Act, as added by section 103
11 of this Act, shall apply to aliens receiving adjustment of
12 status under this section, except that—

13 (1) the country of the alien’s birth shall be con-
14 sidered the guest worker program country; and

15 (2) the attestation described in subsection
16 (a)(3) shall substitute for an application by the
17 United States employer under section 218B of the
18 Immigration and Nationality Act, as added by sec-
19 tion 102.

20 **SEC. 202. ENHANCED CIVIL PENALTIES FOR EMPLOYMENT**
21 **OF UNAUTHORIZED ALIENS AFTER TERMI-**
22 **NATION DATE FOR ADJUSTMENT OF STATUS.**

23 (a) IN GENERAL.—In addition to such civil penalties
24 as may be imposed for the employment of unauthorized
25 aliens under section 274 of the Immigration and Nation-

1 ality Act (8 U.S.C. 1324), the Secretary of Homeland Se-
2 curity, after notice and an opportunity to be heard, shall
3 issue an order imposing a civil penalty upon any United
4 States employer that knowingly employs an unauthorized
5 alien after the expiration of the application period for ad-
6 justment of status under section 201(a).

7 (b) CEASE AND DESIST ORDER WITH CIVIL MONEY
8 PENALTY FOR HIRING UNAUTHORIZED ALIENS.—With re-
9 spect to a violation of subsection (a), the order under that
10 subsection shall require the United States employer to
11 cease and desist from such violations and to pay a civil
12 penalty in an amount of—

13 (1) not less than \$500 and not more than
14 \$2,500 for each unauthorized alien with respect to
15 whom a violation occurred;

16 (2) not less than \$2,000 and not more than
17 \$5,000 for each such alien in the case of a United
18 States employer previously subject to 1 order under
19 subsection (a);

20 (3) not less than \$4,000 and not more than
21 \$10,000 for each such alien in the case of a United
22 States employer previously subject to 2 orders under
23 subsection (a), plus debarment from the guest work-
24 er program for a period of 5 years; and

1 (4) not less than \$10,000 for each such alien
2 in the case of a United States employer previously
3 subject to 3 orders under subsection (a), plus per-
4 manent debarment from the guest worker program.

5 (c) EFFECT ON GUEST WORKER OF HIRING BY
6 DEBARRED EMPLOYER.—Any guest worker employed by
7 a United States employer that is debarred from participa-
8 tion in the guest worker program shall be granted a new
9 work contract and shall be entitled to remain in the
10 United States for the period of stay authorized with re-
11 spect to the original work contract.