

109TH CONGRESS
1ST SESSION

S. _____

To revise certain requirements for H-2B employers and require submission of information regarding H-2B nonimmigrants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. MIKULSKI (for herself, Mr. GREGG, Mr. LEAHY, Mr. WARNER, Mr. CHAFEE, Mr. THOMAS, Mr. LEVIN, Mr. SALAZAR, Mr. ALLEN, Mr. KENNEDY, Mr. JEFFORDS, Ms. COLLINS, Mr. SARBANES, Ms. SNOWE, Mr. DORGAN, Mr. REED, Mr. DAYTON, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To revise certain requirements for H-2B employers and require submission of information regarding H-2B nonimmigrants, 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 “Save Our Small and
5 Seasonal Businesses Act of 2005”.

1 **SEC. 2. NUMERICAL LIMITATIONS ON H-2B WORKERS.**

2 (a) IN GENERAL.—Section 214(g) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1184(g)) is amended
4 by adding at the end the following:

5 “(9) An alien counted toward the numerical limita-
6 tions of paragraph (1)(B) during any one of the 3 fiscal
7 years prior to the submission of a petition for a non-
8 immigrant worker described in section
9 101(a)(15)(H)(ii)(b) may not be counted toward such lim-
10 itation for the fiscal year in which the petition is ap-
11 proved.”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendment in sub-
14 section (a) shall take effect as if enacted on October
15 1, 2004, and shall expire on October 1, 2006.

16 (2) IMPLEMENTATION.—Not later than the date
17 of enactment of this Act, the Secretary of Homeland
18 Security shall begin accepting and processing peti-
19 tions filed on behalf of aliens described in section
20 101(a)(15)(H)(ii)(b), in a manner consistent with
21 this Act and the amendments made by this Act.

22 **SEC. 3. FRAUD PREVENTION AND DETECTION FEE.**

23 (a) IMPOSITION OF FEE.—Section 214(e) of the Im-
24 migration and Nationality Act (8 U.S.C. 1184(e)), as
25 amended by section 426(a) of division J of the Consoli-

1 dated Appropriations Act, 2005 (Public Law 108–447),
2 is amended by adding at the end the following:

3 “(13)(A) In addition to any other fees authorized by
4 law, the Secretary of Homeland Security shall impose a
5 fraud prevention and detection fee on an employer filing
6 a petition under paragraph (1) for nonimmigrant workers
7 described in section 101(a)(15)(H)(ii)(b).

8 “(B) The amount of the fee imposed under subpara-
9 graph (A) shall be \$150.”

10 (b) USE OF FEES.—

11 (1) FRAUD PREVENTION AND DETECTION AC-
12 COUNT.—Subsection (v) of section 286 of the Immi-
13 gration and Nationality Act (8 U.S.C. 1356), as
14 added by section 426(b) of division J of the Consoli-
15 dated Appropriations Act, 2005 (Public Law 108–
16 447), is amended—

17 (A) in paragraphs (1), (2)(A), (2)(B),
18 (2)(C), and (2)(D) by striking “H1–B and L”
19 each place it appears;

20 (B) in paragraph (1), as amended by sub-
21 paragraph (A), by striking “section 214(c)(12)”
22 and inserting “paragraph (12) or (13) of sec-
23 tion 214(c)”;

24 (C) in paragraphs (2)(A)(i) and (2)(B), as
25 amended by subparagraph (A), by striking

1 “(H)(i)” each place it appears and inserting
2 “(H)(i), (H)(ii), ”; and

3 (D) in paragraph (2)(D), as amended by
4 subparagraph (A), by inserting before the pe-
5 riod at the end “or for programs and activities
6 to prevent and detect fraud with respect to peti-
7 tions under paragraph (1) or (2)(A) of section
8 214(c) to grant an alien nonimmigrant status
9 described in section 101(a)(15)(H)(ii)”.

10 (2) CONFORMING AMENDMENT.—The heading
11 of such subsection 286 is amended by striking “H1-
12 B AND L”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 subsections (a) and (b) shall take effect on October 1,
15 2005.

16 **SEC. 4. SANCTIONS.**

17 (a) IN GENERAL.—Section 214(c) of the Immigration
18 and Nationality Act (8 U.S.C. 1184(c)), as amended by
19 section 3, is further amended by adding at the end the
20 following:

21 “(14)(A) If the Secretary of Homeland Security
22 finds, after notice and an opportunity for a hearing, a sub-
23 stantial failure to meet any of the conditions of the peti-
24 tion to admit or otherwise provide status to a non-
25 immigrant worker under section 101(a)(15)(H)(ii)(b) or

1 a willful misrepresentation of a material fact in such peti-
2 tion—

3 “(i) the Secretary of Homeland Security may,
4 in addition to any other remedy authorized by law,
5 impose such administrative remedies (including civil
6 monetary penalties in an amount not to exceed
7 \$10,000 per violation) as the Secretary of Homeland
8 Security determines to be appropriate; and

9 “(ii) the Secretary of Homeland Security may
10 deny petitions filed with respect to that employer
11 under section 204 or paragraph (1) of this sub-
12 section during a period of at least 1 year but not
13 more than 5 years for aliens to be employed by the
14 employer.

15 “(B) The Secretary of Homeland Security may dele-
16 gate to the Secretary of Labor, with the agreement of the
17 Secretary of Labor, any of the authority given to the Sec-
18 retary of Homeland Security under subparagraph (A)(i).

19 “(C) In determining the level of penalties to be as-
20 sessed under subparagraph (A), the highest penalties shall
21 be reserved for willful failures to meet any of the condi-
22 tions of the petition that involve harm to United States
23 workers.

24 “(D) In this paragraph, the term ‘substantial failure’
25 means the willful failure to comply with the requirements

1 of this section that constitutes a significant deviation from
2 the terms and conditions of a petition.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect on October 1, 2005.

5 **SEC. 5. ALLOCATION OF H-2B VISAS DURING A FISCAL**
6 **YEAR.**

7 Section 214(g) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(g)), as amended by section 2, is fur-
9 ther amended by adding at the end the following new para-
10 graph:

11 “(10) The numerical limitations of paragraph (1)(B)
12 shall be allocated for a fiscal year so that the total number
13 of aliens who enter the United States pursuant to a visa
14 or other provision of nonimmigrant status under section
15 101(a)(15)(H)(ii)(b) during the first 6 months of such fis-
16 cal year is not more than 33,000.”.

17 **SEC. 6. SUBMISSION TO CONGRESS OF INFORMATION RE-**
18 **GARDING H-2B NONIMMIGRANTS.**

19 Section 416 of the American Competitiveness and
20 Workforce Improvement Act of 1998 (title IV of division
21 C of Public Law 105–277; 8 U.S.C. 1184 note) is amend-
22 ed—

23 (1) by striking “Attorney General” each place
24 that term appears and inserting “Secretary of
25 Homeland Security”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(d) PROVISION OF INFORMATION.—

4 “(1) QUARTERLY NOTIFICATION.—Beginning
5 not later than March 1, 2006, the Secretary of
6 Homeland Security shall notify, on a quarterly basis,
7 the Committee on the Judiciary of the Senate and
8 the Committee on the Judiciary of House of Rep-
9 resentatives of the number of aliens who during the
10 preceding 1-year period—

11 “(A) were issued visas or otherwise pro-
12 vided nonimmigrant status under section
13 101(a)(15)(H)(ii)(b) of the Immigration and
14 Nationality Act (8 U.S.C.
15 1101(a)(15)(H)(ii)(b)); or

16 “(B) had such a visa or such status expire
17 or be revoked or otherwise terminated.

18 “(2) ANNUAL SUBMISSION.—Beginning in fiscal
19 year 2007, the Secretary of Homeland Security shall
20 submit, on an annual basis, to the Committees on
21 the Judiciary of the House of Representatives and
22 the Senate—

23 “(A) information on the countries of origin
24 of, occupations of, and compensation paid to
25 aliens who were issued visas or otherwise pro-

1 vided nonimmigrant status under section
2 101(a)(15)(H)(ii)(b) of the Immigration and
3 Nationality Act (8 U.S.C.
4 1101(a)(15)(H)(ii)(b)) during the previous fis-
5 cal year;

6 “(B) the number of aliens who had such a
7 visa or such status expire or be revoked or oth-
8 erwise terminated during each month of such
9 fiscal year; and

10 “(C) the number of aliens who were pro-
11 vided nonimmigrant status under such section
12 during both such fiscal year and the preceding
13 fiscal year.

14 “(3) INFORMATION MAINTAINED BY STATE.—If
15 the Secretary of Homeland Security determines that
16 information maintained by the Secretary of State is
17 required to make a submission described in para-
18 graph (1) or (2), the Secretary of State shall provide
19 such information to the Secretary of Homeland Se-
20 curity upon request.”.