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*Larry Chambliss*

*PENDING*

AMENDMENT NO.

Calendar No.

Purpose: To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

H. R. 1268

Mak *First* for AMENDMENT No. 0432

By *Chambliss - Kyl*

To: *H.R. 1268*

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GPO: 2004 97-290(Mac)

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CHAMBLISS  
(for himself and Mr. KYL)

Viz:

- 1 On page 231, between lines 3 and 4, insert the fol-
- 2 lowing:

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1           **TITLE VII—TEMPORARY**  
2           **AGRICULTURAL WORKERS**

3   **SEC. 701. SHORT TITLE.**

4           This title may be cited as the “Temporary Agricul-  
5 tural Work Reform Act of 2005”.

6           **Subtitle A—Temporary H-2A**  
7           **Workers**

8   **SEC. 711. ADMISSION OF TEMPORARY H-2A WORKERS.**

9           Section 218 of the Immigration and Nationality Act  
10 (8 U.S.C. 1188) is amended to read as follows:

11           “ADMISSION OF TEMPORARY H-2A WORKERS

12           “SEC. 218. (a) APPLICATION.—An alien may not be  
13 admitted as an H-2A worker unless the employer has filed  
14 with the Secretary of Homeland Security a petition attest-  
15 ing to the following:

16           “(1) TEMPORARY OR SEASONAL WORK OR  
17 SERVICES.—

18           “(A) IN GENERAL.—The agricultural em-  
19 ployment for which the H-2A worker or work-  
20 ers is or are sought is temporary or seasonal,  
21 the number of workers sought, and the wage  
22 rate and conditions under which they will be  
23 employed.

24           “(B) TEMPORARY OR SEASONAL WORK.—

25           For purposes of subparagraph (A), a worker is

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1           employed on a 'temporary' or 'seasonal' basis if  
2           the employment is intended not to exceed 10  
3           months.

4           “(2) BENEFITS, WAGE, AND WORKING CONDI-  
5           TIONS.—The employer will provide, at a minimum,  
6           the benefits, wages, and working conditions required  
7           by subsection (m) to all workers employed in the  
8           jobs for which the H-2A worker or workers is or are  
9           sought and to all other temporary workers in the  
10          same occupation at the place of employment.

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

19          “(4) RECRUITMENT.—

20                 “(A) IN GENERAL.—The employer shall at-  
21                 test that the employer—

22                         “(i) conducted adequate recruitment  
23                         in the metropolitan statistical area of in-  
24                         tended employment before filing the attes-  
25                         tation; and

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1           “(ii) was unsuccessful in locating  
2           qualified United States workers for the job  
3           opportunity for which the certification is  
4           sought.

5           “(B) RECRUITMENT.—The adequate re-  
6           cruitment requirement under subparagraph (A)  
7           is satisfied if the employer—

8           “(i) places a job order with America’s  
9           Job Bank Program of the Department of  
10          Labor; and

11          “(ii) places a Sunday advertisement in  
12          a newspaper of general circulation or an  
13          advertisement in an appropriate trade  
14          journal or ethnic publication that is likely  
15          to be patronized by a potential worker in  
16          the area of intended employment.

17          “(C) ADVERTISEMENT CRITERIA.—The ad-  
18          vertisement requirement under subparagraph  
19          (B)(ii) is satisfied if the advertisement—

20          “(i) names the employer;

21          “(ii) directs applicants to report or  
22          send resumes, as appropriate for the occu-  
23          pation, to the employer;

24          “(iii) provides a description of the va-  
25          cancy that is specific enough to apprise

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1 United States workers of the job oppor-  
2 tunity for which certification is sought;

3 “(iv) describes the geographic area  
4 with enough specificity to apprise appli-  
5 cants of any travel requirements and where  
6 applicants will likely have to reside to per-  
7 form the job;

8 “(v) states the rate of pay, which  
9 must equal or exceed the wage paid for the  
10 occupation in the area of intended employ-  
11 ment; and

12 “(vi) offers wages, terms, and condi-  
13 tions of employment, which are at least as  
14 favorable as those offered to the alien.

15 “(5) OFFERS TO UNITED STATES WORKERS.—  
16 The employer has offered or will offer the job for  
17 which the nonimmigrant is, or the nonimmigrants  
18 are, sought to any eligible United States worker who  
19 applies and is equally or better qualified for the job  
20 and who will be available at the time and place of  
21 need.

22 “(6) PROVISION OF INSURANCE.—If the job for  
23 which the nonimmigrant is, or the nonimmigrants  
24 are, sought is not covered by State workers’ com-  
25 pensation law, the employer will provide, at no cost

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1 to the worker, insurance covering injury and disease  
2 arising out of, and in the course of, the worker's em-  
3 ployment which will provide benefits at least equal to  
4 those provided under the State workers' compensa-  
5 tion law for comparable employment.

6 “(7) STRIKE OR LOCKOUT.—The specific job  
7 opportunity for which the employer is requesting an  
8 H-2A worker is not vacant because the former occu-  
9 pant is on strike or being locked out in the course  
10 of a labor dispute.

11 “(8) PREVIOUS VIOLATIONS.—The employer  
12 has not, during the previous 5-year period, employed  
13 H-2A workers and knowingly violated a material  
14 term or condition of approval with respect to the  
15 employment of domestic or nonimmigrant workers,  
16 as determined by the Secretary of Labor after notice  
17 and opportunity for a hearing.

18 “(b) PUBLICATION.—The employer shall make avail-  
19 able for public examination, within 1 working day after  
20 the date on which a petition under this section is filed,  
21 at the employer's principal place of business or worksite,  
22 a copy of each such petition (and such accompanying doc-  
23 uments as are necessary).

24 “(c) LIST.—The Secretary of Labor shall compile, on  
25 a current basis, a list (by employer) of the petitions filed

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1 under subsection (a). Such list shall include the wage rate,  
2 number of aliens sought, period of intended employment,  
3 and date of need. The Secretary of Labor shall make such  
4 list available for public examination in Washington, Dis-  
5 trict of Columbia.

6 “(d) SPECIAL RULES FOR CONSIDERATION OF PETI-  
7 TIONS.—The following rules shall apply in the case of the  
8 filing and consideration of a petition under subsection (a):

9 “(1) DEADLINE FOR FILING APPLICATIONS.—  
10 The Secretary of Homeland Security may not re-  
11 quire that the petition be filed more than 28 days  
12 before the first date the employer requires the labor  
13 or services of the H-2A worker or workers.

14 “(2) ISSUANCE OF APPROVAL.—Unless the Sec-  
15 retary of Homeland Security finds that the petition  
16 is incomplete or obviously inaccurate, the Secretary  
17 of Homeland Security shall provide a decision within  
18 7 days of the date of the filing of the petition.

19 “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

20 “(1) PERMITTING FILING BY AGRICULTURAL  
21 ASSOCIATIONS.—A petition to hire an alien as a  
22 temporary agricultural worker may be filed by an as-  
23 sociation of agricultural producers which use agricul-  
24 tural services.

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1           “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
2 EMPLOYERS.—If an association is a joint or sole em-  
3 ployer of temporary agricultural workers, such work-  
4 ers may be transferred among its producer members  
5 to perform agricultural services of a temporary or  
6 seasonal nature for which the petition was approved.

7           “(3) STATEMENT OF LIABILITY.—The applica-  
8 tion form shall include a clear statement explaining  
9 the liability under this section of an employer who  
10 places an H-2A worker with another H-2A em-  
11 ployer if the other employer displaces a United  
12 States worker in violation of the condition described  
13 in subsection (a)(7).

14           “(4) TREATMENT OF VIOLATIONS.—

15           “(A) MEMBER’S VIOLATION DOES NOT  
16 NECESSARILY DISQUALIFY ASSOCIATION OR  
17 OTHER MEMBERS.—If an individual producer  
18 member of a joint employer association is deter-  
19 mined to have committed an act that is in viola-  
20 tion of the conditions for approval with respect  
21 to the member’s petition, the denial shall apply  
22 only to that member of the association unless  
23 the Secretary of Labor determines that the as-  
24 sociation or other member participated in, had

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1 knowledge of, or had reason to know of the vio-  
2 lation.

3 “(B) ASSOCIATION’S VIOLATION DOES NOT  
4 NECESSARILY DISQUALIFY MEMBERS.—

5 “(i) JOINT EMPLOYER.—If an associa-  
6 tion representing agricultural producers as  
7 a joint employer is determined to have  
8 committed an act that is in violation of the  
9 conditions for approval with respect to the  
10 association’s petition, the denial shall apply  
11 only to the association and does not apply  
12 to any individual producer member of the  
13 association, unless the Secretary of Labor  
14 determines that the member participated  
15 in, had knowledge of, or had reason to  
16 know of the violation.

17 “(ii) SOLE EMPLOYER.—If an associa-  
18 tion of agricultural producers approved as  
19 a sole employer is determined to have com-  
20 mitted an act that is in violation of the  
21 conditions for approval with respect to the  
22 association’s petition, no individual pro-  
23 ducer member of such association may be  
24 the beneficiary of the services of temporary  
25 alien agricultural workers admitted under

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1           this section in the commodity and occupa-  
2           tion in which such aliens were employed by  
3           the association which was denied approval  
4           during the period such denial is in force,  
5           unless such producer member employs such  
6           aliens in the commodity and occupation in  
7           question directly or through an association  
8           which is a joint employer of such workers  
9           with the producer member.

10       “(f) EXPEDITED ADMINISTRATIVE APPEALS OF CER-  
11 TAIN DETERMINATIONS.—Regulations shall provide for an  
12 expedited procedure for the review of a denial of approval  
13 under this section, or at the applicant’s request, for a de  
14 novo administrative hearing respecting the denial.

15       “(g) MISCELLANEOUS PROVISIONS.—

16           “(1) ENDORSEMENT OF DOCUMENTS.—The  
17 Secretary of Homeland Security shall provide for the  
18 endorsement of entry and exit documents of non-  
19 immigrants described in section 101(a)(15)(H)(ii)(a)  
20 as may be necessary to carry out this section and to  
21 provide notice for purposes of section 274A.

22           “(2) PREEMPTION OF STATE LAWS.—The pro-  
23 visions of subsections (a) and (c) of section 214 and  
24 the provisions of this section preempt any State or

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1 local law regulating admissibility of nonimmigrant  
2 workers.

3 “(3) FEES.—

4 “(A) IN GENERAL.—The Secretary of  
5 Homeland Security may require, as a condition  
6 of approving the petition, the payment of a fee  
7 in accordance with subparagraph (B) to recover  
8 the reasonable costs of processing petitions.

9 “(B) AMOUNTS.—

10 “(i) EMPLOYER.—The fee for each  
11 employer that receives a temporary alien  
12 agricultural labor certification shall be  
13 equal to \$100 plus \$10 for each job oppor-  
14 tunity for H-2A workers certified, pro-  
15 vided that the fee to an employer for each  
16 temporary alien agricultural labor certifi-  
17 cation received shall not exceed \$1,000.

18 “(ii) JOINT EMPLOYER ASSOCIA-  
19 TION.—In the case of a joint employer as-  
20 sociation that receives a temporary alien  
21 agricultural labor certification, each em-  
22 ployer-member receiving such certification  
23 shall pay a fee equal to \$100 plus \$10 for  
24 each job opportunity for H-2A workers  
25 certified, provided that the fee to an em-

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1 ployer for each temporary alien agricul-  
2 tural labor certification received shall not  
3 exceed \$1,000. The joint employer associa-  
4 tion shall not be charged a separate fee.

5 “(C) PAYMENTS.—The fees collected under  
6 this paragraph shall be paid by check or money  
7 order made payable to the ‘Department of  
8 Homeland Security’. In the case of employers of  
9 H-2A workers that are members of a joint em-  
10 ployer association applying on their behalf, the  
11 aggregate fees for all employers of H-2A work-  
12 ers under the petition may be paid by 1 check  
13 or money order.

14 “(D) INFLATION ADJUSTMENT.—In the  
15 case of any calendar year beginning after 2005,  
16 each dollar amount in subparagraph (B) may  
17 be increased by an amount equal to—

18 “(i) such dollar amount; multiplied by  
19 “(ii) the percentage (if any) by which  
20 the average of the Consumer Price Index  
21 for all urban consumers (United States  
22 city average) for the 12-month period end-  
23 ing with August of the preceding calendar  
24 year exceeds such average for the 12-  
25 month period ending with August 2004.

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1       “(h) FAILURE TO MEET CONDITIONS.—If the Sec-  
2 retary of Labor finds, after notice and opportunity for a  
3 hearing, a failure to meet a condition of subsection (a),  
4 or a material misrepresentation of fact in a petition under  
5 subsection (a)—

6           “(1) the Secretary of Labor shall notify the  
7 Secretary of Homeland Security of such finding and  
8 may, in addition, impose such other administrative  
9 remedies (including civil money penalties in an  
10 amount not to exceed \$1,000 per violation) as the  
11 Secretary of Labor determines to be appropriate;  
12 and

13           “(2) the Secretary of Homeland Security may  
14 disqualify the employer from the employment of H-  
15 2A workers for a period of 1 year.

16       “(i) WILLFUL FAILURES AND WILLFUL MISREPRE-  
17 SENTATIONS.—If the Secretary of Labor finds, after no-  
18 tice and opportunity for a hearing, a willful failure to meet  
19 a material condition of subsection (a) or a willful misrepre-  
20 sentation of a material fact in a petition under subsection  
21 (a)—

22           “(1) the Secretary of Labor shall notify the  
23 Secretary of Homeland Security of such finding and  
24 may, in addition, impose such other administrative  
25 remedies (including civil money penalties in an

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1 amount not to exceed \$5,000 per violation) as the  
2 Secretary of Labor determines to be appropriate;

3 “(2) the Secretary of Homeland Security may  
4 disqualify the employer from the employment of H-  
5 2A workers for a period of 2 years;

6 “(3) for a second violation, the Secretary of  
7 Homeland Security may disqualify the employer  
8 from the employment of H-2A workers for a period  
9 of 5 years; and

10 “(4) for a third violation, the Secretary of  
11 Homeland Security may permanently disqualify the  
12 employer from the employment of H-2A workers.

13 “(j) DISPLACEMENT OF UNITED STATES WORK-  
14 ERS.—If the Secretary of Labor finds, after notice and  
15 opportunity for a hearing, a willful failure to meet a mate-  
16 rial condition of subsection (a) or a willful misrepresenta-  
17 tion of a material fact in a petition under subsection (a),  
18 in the course of which failure or misrepresentation the em-  
19 ployer displaced a United States worker employed by the  
20 employer during the period of employment on the employ-  
21 er’s petition under subsection (a) or during the period of  
22 30 days preceding such period of employment—

23 “(1) the Secretary of Labor shall notify the  
24 Secretary of Homeland Security of such finding and  
25 may, in addition, impose such other administrative

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1 remedies (including civil money penalties in an  
2 amount not to exceed \$15,000 per violation) as the  
3 Secretary of Labor determines to be appropriate;

4 “(2) the Secretary of Homeland Security may  
5 disqualify the employer from the employment of H-  
6 2A workers for a period of 5 years; and

7 “(3) for a second violation, the Secretary of  
8 Homeland Security may permanently disqualify the  
9 employer from the employment of H-2A workers.

10 “(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—  
11 The Secretary of Labor shall not impose total civil money  
12 penalties with respect to a petition under subsection (a)  
13 in excess of \$90,000.

14 “(l) FAILURES TO PAY WAGES OR REQUIRED BENE-  
15 FITS.—If the Secretary of Labor finds, after notice and  
16 opportunity for a hearing, that the employer has failed to  
17 pay the wages, or provide the housing allowance, transpor-  
18 tation, subsistence reimbursement, or guarantee of em-  
19 ployment required under subsection (a)(2), the Secretary  
20 of Labor shall assess payment of back wages, or other re-  
21 quired benefits, due any United States worker or H-2A  
22 worker employed by the employer in the specific employ-  
23 ment in question. The back wages or other required bene-  
24 fits under subsection (a)(2) shall be equal to the difference

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1 between the amount that should have been paid and the  
2 amount that actually was paid to such worker.

3 “(m) MINIMUM BENEFITS, WAGES, AND WORKING  
4 CONDITIONS.—

5 “(1) PREFERENTIAL TREATMENT OF ALIENS  
6 PROHIBITED.—

7 “(A) IN GENERAL.—Employers seeking to  
8 hire United States workers shall offer the  
9 United States workers not less than the same  
10 benefits, wages, and working conditions that the  
11 employer is offering, intends to offer, or will  
12 provide to H-2A workers. Conversely, no job  
13 offer may impose on United States workers any  
14 restrictions or obligations which will not be im-  
15 posed on the employer’s H-2A workers.

16 “(B) INTERPRETATIONS AND DETERMINA-  
17 TIONS.—While benefits, wages, and other terms  
18 and conditions of employment specified in this  
19 subsection are required to be provided in con-  
20 nection with employment under this section,  
21 every interpretation and determination made  
22 under this Act or under any other law, regula-  
23 tion, or interpretative provision regarding the  
24 nature, scope, and timing of the provision of  
25 these and any other benefits, wages, and other

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1 terms and conditions of employment shall be  
2 made in conformance with the governing prin-  
3 ciples that the services of workers to their em-  
4 ployers and the employment opportunities af-  
5 farded to workers by their employers, including  
6 those employment opportunities that require  
7 United States workers or H-2A workers to  
8 travel or relocate in order to accept or perform  
9 employment, mutually benefit such workers, as  
10 well as their families, and employers, principally  
11 benefitting neither, and that employment oppor-  
12 tunities within the United States further benefit  
13 the United States economy as a whole and  
14 should be encouraged.

15 “(2) REQUIRED WAGES.—

16 “(A) An employer applying for workers  
17 under subsection (a) shall offer to pay, and  
18 shall pay, all workers in the occupation for  
19 which the employer has applied for workers, not  
20 less than the prevailing wage.

21 “(B) In complying with subparagraph (A),  
22 an employer may request and obtain a pre-  
23 vailing wage determination from the State em-  
24 ployment security agency.

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1           “(C) In lieu of the procedure described in  
2           subparagraph (B), an employer may rely on  
3           other wage information, including a survey of  
4           the prevailing wages of workers in the occupa-  
5           tion in the area of intended employment that  
6           has been conducted or funded by the employer  
7           or a group of employers, that meets criteria  
8           specified by the Secretary of Labor in regula-  
9           tions.

10           “(D) An employer who obtains such pre-  
11           vailing wage determination, or who relies on a  
12           qualifying survey of prevailing wages, and who  
13           pays the wage determined to be prevailing, shall  
14           be considered to have complied with the re-  
15           quirement of subparagraph (A).

16           “(E) No worker shall be paid less than the  
17           greater of the prevailing wage or the applicable  
18           State minimum wage.

19           “(3) REQUIREMENT TO PROVIDE HOUSING OR A  
20           HOUSING ALLOWANCE.—

21           “(A) IN GENERAL.—An employer applying  
22           for workers under subsection (a) shall offer to  
23           provide housing at no cost to all workers in job  
24           opportunities for which the employer has ap-  
25           plied under that section and to all other work-

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1           ers in the same occupation at the place of em-  
2           ployment, whose place of residence is beyond  
3           normal commuting distance.

4           “(B) TYPE OF HOUSING.—In complying  
5           with subparagraph (A), an employer may, at  
6           the employer’s election, provide housing that  
7           meets applicable Federal standards for tem-  
8           porary labor camps or secure housing that  
9           meets applicable local standards for rental or  
10          public accommodation housing, or other sub-  
11          stantially similar class of habitation, or in the  
12          absence of applicable local standards, State  
13          standards for rental or public accommodation  
14          housing or other substantially similar class of  
15          habitation. In the absence of applicable State or  
16          local standards, Federal temporary labor camp  
17          standards shall apply.

18          “(C) CERTIFICATE OF INSPECTION.—Prior  
19          to any occupation by a worker in housing de-  
20          scribed in subparagraph (B), the employer shall  
21          submit a certificate of inspection by an ap-  
22          proved Federal or State agency to the Secretary  
23          of Labor.

24          “(D) WORKERS ENGAGED IN THE RANGE  
25          PRODUCTION OF LIVESTOCK.—The Secretary of

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1 Labor shall issue regulations that address the  
2 specific requirements for the provision of hous-  
3 ing to workers engaged in the range production  
4 of livestock.

5 “(E) LIMITATION.—Nothing in this para-  
6 graph shall be construed to require an employer  
7 to provide or secure housing for persons who  
8 were not entitled to such housing under the  
9 temporary labor certification regulations in ef-  
10 fect on June 1, 1986.

11 “(F) HOUSING ALLOWANCE AS ALTER-  
12 NATIVE.—

13 “(i) IN GENERAL.—The employer may  
14 provide a reasonable housing allowance in  
15 lieu of offering housing under subpara-  
16 graph (A) if the requirement under clause  
17 (v) is satisfied.

18 “(ii) ASSISTANCE TO LOCATE HOUS-  
19 ING.—Upon the request of a worker seek-  
20 ing assistance in locating housing, the em-  
21 ployer shall make a good-faith effort to as-  
22 sist the worker in locating housing in the  
23 area of intended employment.

24 “(iii) LIMITATION.—A housing allow-  
25 ance may not be used for housing which is

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1 owned or controlled by the employer. An  
2 employer who offers a housing allowance to  
3 a worker, or assists a worker in locating  
4 housing which the worker occupies, pursu-  
5 ant to this clause shall not be deemed a  
6 housing provider under section 203 of the  
7 Migrant and Seasonal Agricultural Worker  
8 Protection Act (29 U.S.C. 1823) solely by  
9 virtue of providing such housing allowance.

10 “(iv) REPORTING REQUIREMENT.—

11 The employer must provide the Secretary  
12 of Labor with a list of the names of all  
13 workers assisted under this subparagraph  
14 and the local address of each such worker.

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

25 “(vi) AMOUNT OF ALLOWANCE.—

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

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

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

9 “(G) EXEMPTION.—An employer applying  
10 for workers under subsection (a) whose primary  
11 job site is located 150 miles or less from the  
12 United States border shall not be required to  
13 provide housing or a housing allowance.

14 “(4) REIMBURSEMENT OF TRANSPORTATION.—

15 “(A) TO PLACE OF EMPLOYMENT.—

16 “(i) IN GENERAL.—A worker who  
17 completes 50 percent of the period of em-  
18 ployment of the job opportunity for which  
19 the worker was hired, measured from the  
20 worker’s first day of work in such employ-  
21 ment, shall be reimbursed by the employer  
22 for the cost of the worker’s transportation  
23 and subsistence from the place from which  
24 the worker was approved to enter the  
25 United States to work for the employer (or

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1 place of last employment, if the worker  
2 traveled from such place) to the place of  
3 employment by the employer.

4 “(ii) OTHER FEES.—The employer  
5 shall not be required to reimburse visa,  
6 passport, consular, or international border-  
7 crossing fees or any other fees associated  
8 with the worker’s lawful admission into the  
9 United States to perform employment that  
10 may be incurred by the worker.

11 “(iii) TIMELY REIMBURSEMENT.—Re-  
12 imbursement to the worker of expenses for  
13 the cost of the worker’s transportation and  
14 subsistence to the place of employment  
15 shall be considered timely if such reim-  
16 bursement is made not later than the  
17 worker’s first regular payday after the  
18 worker completes 50 percent of the period  
19 of employment of the job opportunity as  
20 provided under this paragraph.

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

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1 the place from which the worker was approved  
2 to enter the United States to work for the em-  
3 ployer.

4 “(C) LIMITATION.—

5 “(i) AMOUNT OF REIMBURSEMENT.—

6 Except as provided in clause (ii), the  
7 amount of reimbursement provided under  
8 subparagraph (A) or (B) to a worker or  
9 alien shall not exceed the lesser of—

10 “(I) the actual cost to the worker  
11 or alien of the transportation and sub-  
12 sistence involved; or

13 “(II) the most economical and  
14 reasonable common carrier transpor-  
15 tation charges and subsistence costs  
16 for the distance involved.

17 “(ii) DISTANCE TRAVELED.—No reim-  
18 bursement under subparagraph (A) or (B)  
19 shall be required if the distance traveled is  
20 100 miles or less or if the worker is not re-  
21 siding in employer-provided housing or  
22 housing secured through an allowance as  
23 provided in paragraph (3).

24 “(D) EARLY TERMINATION.—If the worker  
25 is laid off or employment is terminated for con-

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1 tract impossibility (as described in paragraph  
2 (5)(D)) before the anticipated ending date of  
3 employment, the employer shall provide the  
4 transportation and subsistence required by sub-  
5 paragraph (B) and, notwithstanding whether  
6 the worker has completed 50 percent of the pe-  
7 riod of employment, shall provide the transpor-  
8 tation reimbursement required by subparagraph  
9 (A).

10 “(E) TRANSPORTATION BETWEEN LIVING  
11 QUARTERS AND WORKSITE.—The employer  
12 shall provide transportation between the work-  
13 er’s living quarters (such as housing provided  
14 by the employer pursuant to paragraph (3), in-  
15 cluding housing provided through a housing al-  
16 lowance) and the employer’s worksite without  
17 cost to the worker, and such transportation will  
18 be in accordance with applicable laws and regu-  
19 lations.

20 “(5) GUARANTEE OF EMPLOYMENT.—

21 “(A) OFFER TO WORKER.—The employer  
22 shall guarantee to offer the worker employment  
23 for the hourly equivalent of at least 75 percent  
24 of the work days of the total period of employ-  
25 ment, beginning with the first work day after

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1 the arrival of the worker at the place of employ-  
2 ment and ending on the expiration date speci-  
3 fied in the job offer. For purposes of this sub-  
4 paragraph, the hourly equivalent means the  
5 number of hours in the work days as stated in  
6 the job offer and shall exclude the worker's  
7 Sabbath and Federal holidays. If the employer  
8 affords the United States or H-2A worker less  
9 employment than that required under this sub-  
10 paragraph, the employer shall pay such worker  
11 the amount which the worker would have  
12 earned had the worker, in fact, worked for the  
13 guaranteed number of hours.

14 “(B) FAILURE TO WORK.—Any hours  
15 which the worker fails to work, up to a max-  
16 imum of the number of hours specified in the  
17 job offer for a work day, when the worker has  
18 been offered an opportunity to do so, and all  
19 hours of work actually performed (including vol-  
20 untary work in excess of the number of hours  
21 specified in the job offer in a work day, on the  
22 worker's Sabbath, or on Federal holidays) may  
23 be counted by the employer in calculating  
24 whether the period of guaranteed employment  
25 has been met.

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1           “(C) ABANDONMENT OF EMPLOYMENT;  
2           TERMINATION FOR CAUSE.—If the worker vol-  
3           untarily abandons employment before the end  
4           of the contract period, or is terminated for  
5           cause, the worker is not entitled to the 75 per-  
6           cent guarantee described in subparagraph (A).

7           “(D) CONTRACT IMPOSSIBILITY.—If, be-  
8           fore the expiration of the period of employment  
9           specified in the job offer, the services of the  
10          worker are no longer required for reasons be-  
11          yond the control of the employer due to any  
12          form of natural disaster (including a flood, hur-  
13          ricane, freeze, earthquake, fire, or drought),  
14          plant or animal disease, pest infestation, or reg-  
15          ulatory action, before the employment guar-  
16          antee in subparagraph (A) is fulfilled, the em-  
17          ployer may terminate the worker’s employment.  
18          In the event of such termination, the employer  
19          shall fulfill the employment guarantee in sub-  
20          paragraph (A) for the work days that have  
21          elapsed from the first work day after the arrival  
22          of the worker to the termination of employ-  
23          ment. In such cases, the employer will make ef-  
24          forts to transfer the United States worker to

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1 other comparable employment acceptable to the  
2 worker.

3 “(n) PETITIONING FOR ADMISSION.—An employer,  
4 or an association acting as an agent or joint employer for  
5 its members, that seeks the admission into the United  
6 States of an H-2A worker must file a petition with the  
7 Secretary of Homeland Security. The petition shall include  
8 the attestations for the certification described in section  
9 101(a)(15)(H)(ii)(a).

10 “(o) EXPEDITED ADJUDICATION BY THE SEC-  
11 RETARY.—The Secretary of Homeland Security—

12 “(1) shall establish a procedure for expedited  
13 adjudication of petitions filed under subsection (n);  
14 and

15 “(2) not later than 7 working days after such  
16 filing shall, by fax, cable, or other means assuring  
17 expedited delivery transmit a copy of notice of action  
18 on the petition—

19 “(A) to the petitioner; and

20 “(B) in the case of approved petitions, to  
21 the appropriate immigration officer at the port  
22 of entry or United States consulate where the  
23 petitioner has indicated that the alien bene-  
24 ficiary or beneficiaries will apply for a visa or  
25 admission to the United States.

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1       “(p) DISQUALIFICATION.—

2               “(1) Subject to paragraph (2), an alien shall be  
3 considered inadmissible to the United States and in-  
4 eligible for nonimmigrant status under section  
5 101(a)(15)(H)(ii)(a) if the alien has, at any time  
6 during the past 5 years, violated a term or condition  
7 of admission into the United States as a non-  
8 immigrant, including overstaying the period of au-  
9 thorized admission.

10               “(2) WAIVERS.—

11               “(A) IN GENERAL.—An alien outside the  
12 United States, and seeking admission under  
13 section 101(a)(15)(H)(ii)(a), shall not be  
14 deemed inadmissible under such section by rea-  
15 son of paragraph (1) or section 212(a)(9)(B) if  
16 the previous violation occurred on or before  
17 April 1, 2005.

18               “(B) LIMITATION.—In any case in which  
19 an alien is admitted to the United States upon  
20 having a ground of inadmissibility waived under  
21 subparagraph (A), such waiver shall be consid-  
22 ered to remain in effect unless the alien again  
23 violates a material provision of this section or  
24 otherwise violates a term or condition of admis-

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1           sion into the United States as a nonimmigrant,  
2           in which case such waiver shall terminate.

3           “(q) ABANDONMENT OF EMPLOYMENT.—

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

11          “(2) REPORT BY EMPLOYER.—The employer  
12          (or association acting as agent for the employer)  
13          shall notify the Secretary of Homeland Security  
14          within 7 days of an H-2A worker’s having pre-  
15          maturely abandoned employment.

16          “(3) REMOVAL BY THE SECRETARY.—The Sec-  
17          retary of Homeland Security shall promptly remove  
18          from the United States any H-2A worker who vio-  
19          lates any term or condition of the worker’s non-  
20          immigrant status.

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

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1       “(r) REPLACEMENT OF ALIEN.—

2               “(1) IN GENERAL.—Upon presentation of the  
3 notice to the Secretary of Homeland Security re-  
4 quired by subsection (q)(2), the Secretary of State  
5 shall promptly issue a visa to, and the Secretary of  
6 Homeland Security shall admit into the United  
7 States, an eligible alien designated by the employer  
8 to replace an H-2A worker who abandons or pre-  
9 maturely terminates employment.

10              “(2) CONSTRUCTION.—Nothing in this sub-  
11 section shall limit any preference required to be ac-  
12 corded United States workers under any other provi-  
13 sion of this Act.

14       “(s) IDENTIFICATION DOCUMENT.—

15              “(1) IN GENERAL.—The Department of Home-  
16 land Security shall provide each alien authorized to  
17 be admitted under section 101(a)(15)(H)(ii)(a) with  
18 a single machine-readable, tamper-resistant, and  
19 counterfeit-resistant document that—

20                      “(A) authorizes the alien’s entry into the  
21 United States; and

22                      “(B) serves, for the appropriate period, as  
23 an employment eligibility document.

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

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

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

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

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

17           “(B) The document shall—

18           “(i) be compatible with other data-  
19           bases of the Secretary of Homeland Secu-  
20           rity for the purpose of excluding aliens  
21           from benefits for which they are not eligi-  
22           ble and determining whether the alien is  
23           unlawfully present in the United States;  
24           and

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

4           “(t) EXTENSION OF STAY OF H-2A WORKERS IN  
5 THE UNITED STATES.—

6           “(1) EXTENSION OF STAY.—

7           “(A) IN GENERAL.—An employer may seek  
8           up to 2 10-month extensions under this sub-  
9           section.

10           “(B) PETITION.—If an employer seeks to  
11           employ an H-2A worker who is lawfully present  
12           in the United States, the petition filed by the  
13           employer or an association pursuant to sub-  
14           section (n) shall request an extension of the  
15           alien’s stay.

16           “(C) COMMENCEMENT; MAXIMUM PE-  
17           RIOD.—An extension of stay under this sub-  
18           section—

19           “(i) may only commence upon the ter-  
20           mination of the H-2A worker’s contract  
21           with an employer; and

22           “(ii) may not exceed 10 months unless  
23           the employer files a written request for up  
24           to an additional 30 days accompanied by  
25           justification that the need for such addi-

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1            tional time is necessitated by adverse  
2            weather conditions, acts of God, or eco-  
3            nomic hardship beyond the control of the  
4            employer.

5            “(D) FUTURE ELIGIBILITY.—At the con-  
6            clusion of 3 10-month employment periods au-  
7            thorized under this section, the alien so em-  
8            ployed may not be employed in the United  
9            States as an H-2A worker until the alien has  
10           returned to the alien’s country of nationality or  
11           country of last residence for not less than 6  
12           months.

13           “(2) WORK AUTHORIZATION UPON FILING PE-  
14           TITION FOR EXTENSION OF STAY.—

15           “(A) IN GENERAL.—An alien who is law-  
16           fully present in the United States may com-  
17           mence or continue the employment described in  
18           a petition under paragraph (1) on the date on  
19           which the petition is filed. The employer shall  
20           provide a copy of the employer’s petition to the  
21           alien, who shall keep the petition with the  
22           alien’s identification and employment eligibility  
23           document, as evidence that the petition has  
24           been filed and that the alien is authorized to  
25           work in the United States.

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1           “(B) APPROVAL.—Upon approval of a pe-  
2           tition for an extension of stay or change in the  
3           alien’s authorized employment, the Secretary of  
4           Homeland Security shall provide a new or up-  
5           dated employment eligibility document to the  
6           alien indicating the new validity date, after  
7           which the alien is not required to retain a copy  
8           of the petition.

9           “(C) DEFINITION.—In this paragraph, the  
10          term ‘file’ means sending the petition by cer-  
11          tified mail via the United States Postal Service,  
12          return receipt requested, or delivered by guar-  
13          anteed commercial delivery which will provide  
14          the employer with a documented acknowledg-  
15          ment of the date of receipt of the petition.

16          “(u) SPECIAL RULE FOR ALIENS EMPLOYED AS  
17          SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—  
18          Notwithstanding any other provision of this section, an  
19          alien admitted under section 101(a)(15)(H)(ii)(a) for em-  
20          ployment as a shepherd, goatherder, or dairy worker  
21          may be admitted for a period of up to 2 years.

22          “(v) DEFINITIONS.—For purposes of this section:

23                 “(1) AREA OF EMPLOYMENT.—The term ‘area  
24                 of employment’ means the area within normal com-  
25                 muting distance of the worksite or physical location

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1 where the work of the H-2A worker is or will be  
2 performed. If such worksite or location is within a  
3 Metropolitan Statistical Area, any place within such  
4 area is deemed to be within the area of employment.

5 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
6 individual’ means, with respect to employment, an  
7 individual who is not an unauthorized alien (as de-  
8 fined in section 274A(h)(3)) with respect to that em-  
9 ployment.

10 “(3) DISPLACE.—In the case of a petition with  
11 respect to 1 or more H-2A workers by an employer,  
12 the employer is considered to ‘displace’ a United  
13 States worker from a job if the employer lays off the  
14 worker from a job that is essentially the equivalent  
15 of the job for which the H-2A worker or workers is  
16 or are sought. A job shall not be considered to be  
17 essentially equivalent of another job unless it in-  
18 volves essentially the same responsibilities, was held  
19 by a United States worker with substantially equiva-  
20 lent qualifications and experience, and is located in  
21 the same area of employment as the other job.

22 “(4) H-2A WORKER.—The term ‘H-2A worker’  
23 means a nonimmigrant described in section  
24 101(a)(15)(H)(ii)(a).

25 “(5) LAYS OFF.—

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

3                   “(i) means to cause the worker’s loss  
4                   of employment, other than through a dis-  
5                   charge for inadequate performance, viola-  
6                   tion of workplace rules, cause, voluntary  
7                   departure, voluntary retirement, or the ex-  
8                   piration of a grant or contract (other than  
9                   a temporary employment contract entered  
10                  into in order to evade a condition described  
11                  in paragraph (3) or (7) of subsection (a);  
12                  but

13                   “(ii) does not include any situation in  
14                   which the worker is offered, as an alter-  
15                   native to such loss of employment, a simi-  
16                   lar employment opportunity with the same  
17                   employer (or, in the case of a placement of  
18                   a worker with another employer under sub-  
19                   section (a)(7), with either employer de-  
20                   scribed in such subsection) at equivalent or  
21                   higher compensation and benefits than the  
22                   position from which the employee was dis-  
23                   charged, regardless of whether or not the  
24                   employee accepts the offer.

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1           “(B) CONSTRUCTION.—Nothing in this  
2           paragraph is intended to limit an employee’s  
3           rights under a collective bargaining agreement  
4           or other employment contract.

5           “(6) PREVAILING WAGE.—The term ‘prevailing  
6           wage’ means, with respect to an agricultural occupa-  
7           tion in an area of intended employment, the rate of  
8           wages that includes the 51st percentile of employees  
9           with similar experience and qualifications in the ag-  
10          ricultural occupation in the area of intended employ-  
11          ment, expressed in terms of the prevailing method of  
12          pay for the occupation in the area of intended em-  
13          ployment.

14          “(7) UNITED STATES WORKER.—The term  
15          ‘United States worker’ means any worker, whether  
16          a United States citizen or national, a lawfully admit-  
17          ted permanent resident alien, or any other alien au-  
18          thorized to work in the relevant job opportunity  
19          within the United States, except—

20                 “(A) an alien admitted or otherwise pro-  
21                 vided status under section 101(a)(15)(H)(ii)(a);  
22                 and

23                 “(B) an alien provided status under sec-  
24                 tion 220.”.

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1 **SEC. 712. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**  
2 **SERVICES CORPORATION.**

3 Section 305 of the Immigrant Reform and Control  
4 Act of 1986 (8 U.S.C. 1101 note) is amended—

5 (1) by striking “A nonimmigrant” and inserting  
6 the following:

7 “(a) **IN GENERAL.**—A nonimmigrant”; and

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

9 “(b) **LEGAL ASSISTANCE.**—The Legal Services Cor-  
10 poration may not provide legal assistance for or on behalf  
11 of any alien, and may not provide financial assistance to  
12 any person or entity that provides legal assistance for or  
13 on behalf of any alien, unless the alien—

14 “(1) is present in the United States at the time  
15 the legal assistance is provided; and

16 “(2) is an alien to whom subsection (a) ap-  
17 plies.”

18 “(c) **REQUIRED MEDIATION.**—No party may bring a  
19 civil action for damages on behalf of a nonimmigrant de-  
20 scribed in section 101(a)(15)(H)(ii)(a) of the Immigration  
21 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) or  
22 pursuant to those in the Blue Card Program established  
23 under section 220 of such Act, unless at least 90 days  
24 before bringing the action a request has been made to the  
25 Federal Mediation and Conciliation Service to assist the  
26 parties in reaching a satisfactory resolution of all issues

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1 involving all parties to the dispute and mediation has been  
2 attempted.”.

### 3 **Subtitle B—Blue Card Status**

#### 4 **SEC. 721. BLUE CARD PROGRAM.**

5 (a) IN GENERAL.—Chapter 2 of title II of the Immi-  
6 gration and Nationality Act (8 U.S.C. 1181 et seq.) is  
7 amended by adding at the end the following:

8 “BLUE CARD PROGRAM

9 “SEC. 220. (a) DEFINITIONS.—As used in this sec-  
10 tion—

11 “(1) the term ‘agricultural employment’—

12 “(A) means any service or activity that is  
13 considered to be agricultural under section 3(f)  
14 of the Fair Labor Standards Act of 1938 (29  
15 U.S.C. 203(f)) or agricultural labor under sec-  
16 tion 3121(g) of the Internal Revenue Code of  
17 1986; and

18 “(B) includes any service or activity de-  
19 scribed in—

20 “(i) title 37, 37–3011, or 37–3012  
21 (relating to landscaping) of the Depart-  
22 ment of Labor 2004–2005 Occupational  
23 Information Network Handbook;

24 “(ii) title 45 (relating to farming fish-  
25 ing, and forestry) of such handbook; or

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1                   “(iii) title 51, 51-3022, or 51-3023  
2                   (relating to meat, poultry, fish processors  
3                   and packers) of such handbook.

4                   “(2) the term ‘blue card status’ means the sta-  
5                   tus of an alien who has been—

6                   “(A) lawfully admitted for a temporary pe-  
7                   riod under subsection (b); and

8                   “(B) issued a tamper-resistant, machine-  
9                   readable document that serves as the alien’s  
10                  visa, employment authorization, and travel doc-  
11                  umentation and contains such biometrics as are  
12                  required by the Secretary;

13                  “(3) the term ‘employer’ means any person or  
14                  entity, including any farm labor contractor and any  
15                  agricultural association, that employs workers in ag-  
16                  ricultural employment;

17                  “(4) the term ‘Secretary’ means the Secretary  
18                  of Homeland Security;

19                  “(5) the term ‘small employer’ means an em-  
20                  ployer employing fewer than 500 employees based  
21                  upon the average number of employees for each of  
22                  the pay periods for the preceding 10 calendar  
23                  months, including the period in which the employer  
24                  employed H-2A workers; and

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1           “(6) the term ‘United States worker’ means  
2           any worker, whether a United States citizen or na-  
3           tional, a lawfully admitted permanent resident alien,  
4           or any other alien authorized to work in the relevant  
5           job opportunity within the United States, except—

6                   “(A) an alien admitted or otherwise pro-  
7                   vided status under section 101(a)(15)(H)(ii)(a);  
8                   and

9                   “(B) an alien provided status under this  
10                  section.

11          “(b) BLUE CARD PROGRAM.—

12                  “(1) BLUE CARD PROGRAM.—Notwithstanding  
13                  any other provision of law, the Secretary shall confer  
14                  blue card status upon an alien who qualifies under  
15                  this subsection if the Secretary determines that the  
16                  alien—

17                          “(A) has been in the United States con-  
18                          tinuously as of April 1, 2005;

19                          “(B) has performed more than 50 percent  
20                          of total annual weeks worked in agricultural  
21                          employment in the United States (except in the  
22                          case of a child provided derivative status as of  
23                          April 1, 2005);

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1           “(C) is otherwise admissible to the United  
2 States under section 212, except as otherwise  
3 provided under paragraph (2); and

4           “(D) is the beneficiary of a petition filed  
5 by an employer, as described in paragraph (3).

6           “(2) WAIVER OF CERTAIN GROUNDS FOR INAD-  
7 MISSIBILITY.—In determining an alien’s eligibility  
8 for blue card status under paragraph (1)(C)—

9           “(A) the provisions of paragraphs (5),  
10 (6)(A), (7)(A), and (9)(B) of section 212(a)  
11 shall not apply;

12           “(B) the provisions of section 212(a)(6)(C)  
13 shall not apply with respect to prior or current  
14 agricultural employment; and

15           “(C) the Secretary may not waive para-  
16 graph (1), (2), or (3) of section 212(a) unless  
17 such waiver is permitted under another provi-  
18 sion of law.

19           “(3) PETITIONS.—

20           “(A) IN GENERAL.—An employer seeking  
21 blue card status under this section for an alien  
22 employee shall file a petition for blue card sta-  
23 tus with the Secretary.

24           “(B) EMPLOYER PETITION.—An employer  
25 filing a petition under subparagraph (A) shall—

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1 “(i) pay a registration fee of—

2 “(I) \$1,000, if the employer em-  
3 ploys more than 500 employees; or

4 “(II) \$500, if the employer is a  
5 small employer employing 500 or  
6 fewer employees;

7 “(ii) pay a processing fee to cover the  
8 actual costs incurred in adjudicating the  
9 petition; and

10 “(iii) attest that the employer con-  
11 ducted adequate recruitment in the metro-  
12 politan statistical area of intended employ-  
13 ment before filing the attestation and was  
14 unsuccessful in locating qualified United  
15 States workers for the job opportunity for  
16 which the certification is sought, which at-  
17 testation shall be valid for a period of 60  
18 days.

19 “(C) RECRUITMENT.—

20 “(i) The adequate recruitment re-  
21 quirement under subparagraph (B)(iii) is  
22 satisfied if the employer—

23 “(I) places a job order with  
24 America’s Job Bank Program of the  
25 Department of Labor; and

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1           “(II) places a Sunday advertise-  
2           ment in a newspaper of general cir-  
3           culation or an advertisement in an ap-  
4           propriate trade journal or ethnic pub-  
5           lication that is likely to be patronized  
6           by a potential worker in the metro-  
7           politan statistical area of intended  
8           employment.

9           “(ii) An advertisement under clause  
10          (i)(II) shall—

11                   “(I) name the employer;

12                   “(II) direct applicants to report  
13                   or send resumes, as appropriate for  
14                   the occupation, to the employer;

15                   “(III) provide a description of  
16                   the vacancy that is specific enough to  
17                   apprise United States workers of the  
18                   job opportunity for which certification  
19                   is sought;

20                   “(IV) describe the geographic  
21                   area with enough specificity to apprise  
22                   applicants of any travel requirements  
23                   and where applicants will likely have  
24                   to reside to perform the job;

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1                   “(V) state the rate of pay, which  
2                   must equal or exceed the wage paid  
3                   for the occupation in the area of in-  
4                   tended employment; and

5                   “(VI) offer wages, terms, and  
6                   conditions of employment, which are  
7                   at least as favorable as those offered  
8                   to the alien.

9                   “(D) NOTIFICATION OF DENIAL.—The  
10                  Secretary shall provide notification of a denial  
11                  of a petition filed for an alien to the alien and  
12                  the employer who filed such petition.

13                  “(E) EFFECT OF DENIAL.—If the Sec-  
14                  retary denies a petition filed for an alien, such  
15                  alien shall return to the country of the alien’s  
16                  nationality or last residence outside the United  
17                  States.

18                  “(4) BLUE CARD STATUS.—

19                  “(A) BLUE CARD.—

20                  “(i) ALL-IN-ONE CARD.—The Sec-  
21                  retary, in conjunction with the Secretary of  
22                  State, shall develop a single machine-read-  
23                  able, tamper-resistant document that—

24                  “(I) authorizes the alien’s entry  
25                  into the United States;

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1           “(II) serves, during the period an  
2 alien is in blue card status, as an em-  
3 ployment authorized endorsement or  
4 other appropriate work permit for ag-  
5 ricultural employment only; and

6           “(III) serves as an entry and exit  
7 document to be used in conjunction  
8 with a proper visa or as a visa and as  
9 other appropriate travel and entry  
10 documentation using biometric identi-  
11 fiers that meet the biometric identifier  
12 standards jointly established by the  
13 Secretary of State and the Secretary.

14           “(ii) BIOMETRICS.—

15           “(I) After a petition is filed by  
16 an employer and receipt of such peti-  
17 tion is confirmed by the Secretary, the  
18 alien, in order to further adjudicate  
19 the petition, shall submit 2 biometric  
20 identifiers, as required by the Sec-  
21 retary, at an Application Support  
22 Center.

23           “(II) The Secretary shall pre-  
24 scribe a process for the submission of  
25 a biometric identifier to be incor-

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1           porated electronically into an employ-  
2           er's prior electronic filing of a peti-  
3           tion. The Secretary shall prescribe an  
4           alternative process for employers to  
5           file a petition in a manner other than  
6           electronic filing, as needed.

7           “(B) DOCUMENT REQUIREMENTS.—The  
8           Secretary shall issue a blue card that is—

9                   “(i) capable of reliably determining if  
10           the individual with the blue card whose eli-  
11           gibility is being verified is—

12                           “(I) eligible for employment;

13                           “(II) claiming the identify of an-  
14           other person; and

15                           “(III) authorized to be admitted;  
16           and

17                   “(ii) compatible with—

18                           “(I) other databases maintained  
19           by the Secretary for the purpose of  
20           excluding aliens from benefits for  
21           which they are not eligible and deter-  
22           mining whether the alien is unlawfully  
23           present in the United States; and

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1                   “(II) law enforcement databases  
2                   to determine if the alien has been con-  
3                   victed of criminal offenses.

4                   “(C) AUTHORIZED TRAVEL.—During the  
5                   period an alien is in blue card status granted  
6                   under this section and pursuant to regulations  
7                   established by the Secretary, the alien may  
8                   make brief visits outside the United States. An  
9                   alien may be readmitted to the United States  
10                  after such a visit without having to obtain a  
11                  visa if the alien presents the alien’s blue card  
12                  document. Such periods of time spent outside  
13                  the United States shall not cause the period of  
14                  blue card status in the United States to be ex-  
15                  tended.

16                  “(D) PORTABILITY.—

17                  “(i) During the period in which an  
18                  alien is in blue card status, the alien issued  
19                  a blue card may accept new employment  
20                  upon the Secretary’s receipt of a petition  
21                  filed by an employer on behalf of the alien.  
22                  Employment authorization shall continue  
23                  for such alien until such petition is adju-  
24                  dicated.

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1           “(ii) If a petition filed under clause (i)  
2           is denied and the alien has ceased employ-  
3           ment with the previous employer, the au-  
4           thorization under clause (i) shall terminate  
5           and the alien shall be required to return to  
6           the country of the alien’s nationality or  
7           last residence.

8           “(iii) A fee may be required by the  
9           Secretary to cover the actual costs incurred  
10          in adjudicating a petition under this sub-  
11          paragraph. No other fee may be required  
12          under this subparagraph.

13          “(iv) A petition by an employer under  
14          this subparagraph may not be accepted  
15          within 90 days after the adjudication of a  
16          previous petition on behalf of an alien.

17          “(E) ANNUAL CHECK IN.—The employer  
18          of an alien in blue card status who has been  
19          employed for 1 year in blue card status shall  
20          confirm the alien’s continued employment sta-  
21          tus with the Secretary electronically or in writ-  
22          ing. Such confirmation will not require a fur-  
23          ther labor attestation.

24          “(F) TERMINATION OF BLUE CARD STA-  
25          TUS.—

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1           “(i) During the period of blue card  
2 status granted an alien, the Secretary may  
3 terminate such status upon a determina-  
4 tion by the Secretary that the alien is de-  
5 portable or has become inadmissible.

6           “(ii) The Secretary may terminate  
7 blue card status granted to an alien if—

8           “(I) the Secretary determines  
9 that, without the appropriate waiver,  
10 the granting of blue card status was  
11 the result of fraud or willful misrepre-  
12 sentation (as described in section  
13 212(a)(6)(C)(i));

14           “(II) the alien is convicted of a  
15 felony or a misdemeanor committed in  
16 the United States; or

17           “(III) the Secretary determines  
18 that the alien is deportable or inad-  
19 missible under any other provision of  
20 this Act.

21           “(5) PERIOD OF AUTHORIZED ADMISSION.—

22           “(A) IN GENERAL.—The initial period of  
23 authorized admission for an alien with blue  
24 card status shall be not more than 3 years. The  
25 employer of such alien may petition for exten-

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1 sions of such authorized admission for 2 addi-  
2 tional periods of not more than 3 years each.

3 “(B) EXCEPTION.—The limit on renewals  
4 shall not apply to a nonimmigrant in a position  
5 of full-time, non-temporary employment who  
6 has managerial or supervisory responsibilities.  
7 The employer of such nonimmigrant shall be re-  
8 quired to make an additional attestation to  
9 such an employment classification with the fil-  
10 ing of a petition.

11 “(C) REPORTING REQUIREMENT.—If an  
12 alien with blue card status ceases to be em-  
13 ployed by an employer, such employer shall im-  
14 mediately notify the Secretary of such cessation  
15 of employment. The Secretary shall provide  
16 electronic means for making such notification.

17 “(D) LOSS OF EMPLOYMENT.—

18 “(i) An alien’s blue card status shall  
19 terminate if the alien is unemployed for 60  
20 or more consecutive days.

21 “(ii) An alien whose period of author-  
22 ized admission terminates under clause (i)  
23 shall be required to return to the country  
24 of the alien’s nationality or last residence.

25 “(6) GROUNDS FOR INELIGIBILITY.—

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1           “(A) BAR TO FUTURE VISAS FOR CONDI-  
2           TION VIOLATIONS.—Any alien having blue card  
3           status shall not again be eligible for the same  
4           blue card status if the alien violates any term  
5           or condition of such status.

6           “(B) ALIENS UNLAWFULLY PRESENT.—  
7           Any alien who enters the United States after  
8           April 1, 2005, without being admitted or pa-  
9           roled shall be ineligible for blue card status.

10           “(C) ALIENS IN H-2A STATUS.—Any alien  
11           in lawful H-2A status as of April 1, 2005, shall  
12           be ineligible for blue card status.

13           “(7) BAR ON CHANGE OR ADJUSTMENT OF STA-  
14           TUS.—

15           “(A) IN GENERAL.—An alien having blue  
16           card status shall not be eligible to change or  
17           adjust status in the United States or obtain a  
18           different nonimmigrant or immigrant visa from  
19           a United States Embassy or consulate.

20           “(B) LOSS OF ELIGIBILITY.—An alien hav-  
21           ing blue card status shall lose eligibility for  
22           such status if the alien—

23                   “(i) files a petition to adjust status to  
24                   legal permanent residence in the United  
25                   States; or

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1                   “(ii) requests a consular processing  
2                   for an immigrant visa outside the United  
3                   States.

4                   “(C) EXCEPTION.—An alien having blue  
5                   card status may not adjust status to legal per-  
6                   manent resident status or obtain another non-  
7                   immigrant or immigrant status unless—

8                   “(i)(I) the alien renounces his or her  
9                   blue card status by providing written noti-  
10                  fication to the Secretary of Homeland Se-  
11                  curity or the Secretary of State; or

12                  “(II) the alien’s blue card status oth-  
13                  erwise expires; and

14                  “(ii) the alien has resided and been  
15                  physically present in the alien’s country of  
16                  nationality or last residence for not less  
17                  than 1 year after leaving the United States  
18                  and the renouncement or expiration of blue  
19                  card status.

20                  “(8) JUDICIAL REVIEW.—There shall be no ju-  
21                  dicial review of a denial of blue card status.

22                  “(c) SAFE HARBOR.—

23                  “(1) SAFE HARBOR OF ALIEN.—An alien for  
24                  whom a nonfrivolous petition is filed under this sec-  
25                  tion—

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1           “(A) shall be granted employment author-  
2           ization pending final adjudication of the peti-  
3           tion;

4           “(B) may not be detained, determined in-  
5           admissible or deportable, or removed pending  
6           final adjudication of the petition for change in  
7           status, unless the alien commits an act which  
8           renders the alien ineligible for such change of  
9           status; and

10           “(C) may not be considered an unauthor-  
11           ized alien as defined in section 274A(h)(3) until  
12           such time as the petition for status is adju-  
13           dicated.

14           “(2) SAFE HARBOR FOR EMPLOYER.—An em-  
15           ployer that files a petition for blue card status for  
16           an alien shall not be subject to civil and criminal tax  
17           liability relating directly to the employment of such  
18           alien. An employer that provides unauthorized aliens  
19           with copies of employment records or other evidence  
20           of employment pursuant to the petition shall not be  
21           subject to civil and criminal liability pursuant to sec-  
22           tion 274A for employing such unauthorized aliens.

23           “(d) TREATMENT OF SPOUSES AND CHILDREN.—

24           “(1) SPOUSES.—A spouse of an alien having  
25           blue card status shall not be eligible for derivative

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1 status by accompanying or following to join the  
2 alien. Such a spouse may obtain status based only  
3 on an independent petition filed by an employer peti-  
4 tioning under subsection (b)(3) with respect to the  
5 employment of the spouse.

6 “(2) CHILDREN.—A child of an alien having  
7 blue card status shall not be eligible for the same  
8 temporary status unless—

9 “(A) the child is accompanying or fol-  
10 lowing to join the alien; and

11 “(B) the alien is the sole custodial parent  
12 of the child or both custodial parents of the  
13 child have obtained such status.”

14 (b) CLERICAL AMENDMENT.—The table of contents  
15 of the Immigration and Nationality Act is amended by in-  
16 serting after the item relating to section 219 the following:

“Sec. 220. Blue card program.”

17 **SEC. 722. PENALTIES FOR FALSE STATEMENTS.**

18 Section 1546 of title 18, United States Code, is  
19 amended—

20 (1) by redesignating subsection (c) as sub-  
21 section (d); and

22 (2) by inserting after subsection (b) the fol-  
23 lowing:

24 “(c) Any person, including the alien who is the bene-  
25 ficiary of a petition, who—

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1           “(1) files a petition under section 220(b)(3) of  
2           the Immigration and Nationality Act; and

3           “(2)(A) knowingly and willfully falsifies, con-  
4           ceals, or covers up a material fact related to such a  
5           petition;

6           “(B) makes any false, fictitious, or fraudulent  
7           statements or representations, or makes or uses any  
8           false writing or document knowing the same to con-  
9           tain any false, fictitious, or fraudulent statement or  
10          entry related to such a petition; or

11          “(C) creates or supplies a false writing or docu-  
12          ment for use in making such a petition,  
13          shall be fined in accordance with this title, imprisoned not  
14          more than 5 years, or both.”.

15          **SEC. 723. SECURING THE BORDERS.**

16          Not later than 6 months after the date of enactment  
17          of this Act, the Secretary of Homeland Security shall sub-  
18          mit to Congress a comprehensive plan for securing the  
19          borders of the United States.

20          **SEC. 724. EFFECTIVE DATE.**

21          This subtitle shall take effect on the date that is 6  
22          months after the date of enactment of this Act.