

112TH CONGRESS
1ST SESSION

S. 1384

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

IN THE SENATE OF THE UNITED STATES

JULY 19, 2011

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Agriculture
5 Receive Verifiable Employees Securely and Temporarily
6 Act of 2011” or the “HARVEST Act of 2011”.

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

8 It is the sense of the Senate that—

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

4 (2) abundant harvests in the United States
5 allow this Nation to provide over ½ of the world's
6 food aid donations to help our international neigh-
7 bors in need;

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

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

15 (5) the Secretary of Agriculture announced that
16 the United States exported \$108,700,000,000 worth
17 of agricultural exports during fiscal year 2010;

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

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

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

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

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

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

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

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

22 **SEC. 3. ADMISSION OF TEMPORARY AGRICULTURAL WORK-**
23 **ERS.**

24 (a) DEFINITION.—Section 101(a)(15)(H)(ii)(a) of
25 the Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(H)(ii)(a)) is amended by striking “, of a tem-
2 porary or seasonal nature”.

3 (b) PROCEDURE FOR ADMISSION.—

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

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

8 “(a) DEFINITIONS.—In this section and in section
9 218A:

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

13 “(A) the State minimum wage; or

14 “(B) the hourly wage prescribed under sec-
15 tion 6(a)(1) of the Fair Labor Standards Act of
16 1938 (29 U.S.C. 206(a)(1)).

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

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

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

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

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

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

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

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

23 “(B) agricultural work included within the
24 provisions of section 3(f) of the Fair Labor
25 Standards Act of 1938 (29 U.S.C. 203(f)) or

1 section 3121(g) of the Internal Revenue Code
2 of 1986;

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

7 “(D) dairy or feedyard work.

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

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

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

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

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

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

8 “(7) LAY OFF.—

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

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

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

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

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

11 “(8) UNITED STATES WORKER.—The term
12 ‘United States worker’ means any worker who is a
13 national of the United States, an alien lawfully ad-
14 mitted for permanent residence, or an alien author-
15 ized to work in the relevant job opportunity within
16 the United States, except an alien admitted or other-
17 wise provided status under section
18 101(a)(15)(H)(ii)(a).

19 “(b) LABOR ATTESTATION PROCESS.—The Secretary
20 of Agriculture shall utilize the labor attestation process
21 described in this subsection until the Secretary of Labor
22 certifies that, based on State workforce agency data, there
23 is an adequate domestic workforce in the United States
24 to fill agricultural jobs in the State in which the agricul-
25 tural employer is seeking H–2A workers. Once the Sec-

1 retary of Labor certifies that there are adequate author-
2 ized workers in a State to fill agricultural jobs (excluding
3 H-2A workers), the Secretary of Agriculture, after con-
4 sultation with the Secretary of Labor, shall issue regula-
5 tions describing a labor certification process for agricul-
6 tural employers seeking H-2A workers. An alien may not
7 be admitted as an H-2A worker unless the employer has
8 filed an application with the Secretary of Agriculture in
9 which the employer attests to the following:

10 “(1) TEMPORARY WORK OR SERVICES.—

11 “(A) IN GENERAL.—The employer is seek-
12 ing to employ a specific number of agricultural
13 workers on a temporary basis and will provide
14 compensation to such workers at a specified
15 wage rate and under specified conditions.

16 “(B) SKILLED WORKERS.—If the worker is
17 a Level 2 H-2A worker, the employer will re-
18 cruit the worker separately and the application
19 will delineate separate wage rate and conditions
20 of employment for such worker.

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

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

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

7 “(B) all other temporary workers in the
8 same occupation at the same place of employ-
9 ment.

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

18 “(4) RECRUITMENT.—

19 “(A) IN GENERAL.—The employer will—

20 “(i) describe previous recruitment ef-
21 forts made before the filing of the applica-
22 tion; and

23 “(ii) complete adequate recruitment
24 requirements before H–2A workers are
25 issued a visa at an American consulate.

1 “(B) ADEQUATE RECRUITMENT.—The
2 adequate recruitment requirements under sub-
3 paragraph (A)(ii) are satisfied if the em-
4 ployer—

5 “(i) submits a copy of the job offer to
6 the local office of the State workforce
7 agency serving the area of intended em-
8 ployment and authorizes the posting of the
9 job opportunity on the Department of La-
10 bor’s electronic registry of job applications
11 for all other occupations in the same man-
12 ner as other United States employers, ex-
13 cept that nothing in this clause shall re-
14 quire the employer to file an interstate job
15 order under section 653 of title 20, Code
16 of Federal Regulations;

17 “(ii) advertises the availability of the
18 job opportunities for which the employer is
19 seeking workers in a publication in the
20 local market that is likely to be patronized
21 by potential farm workers; and

22 “(iii) mails a letter through the
23 United States Postal Service or otherwise
24 contacts any United States worker the em-
25 ployer employed within the past year in the

1 occupation at the place of intended employ-
2 ment for which the employer is seeking H-
3 2A workers that describes available job op-
4 portunities, unless the worker was termi-
5 nated from employment by the employer
6 for a lawful job-related reason or aban-
7 doned the job before the worker completed
8 the period of employment of the job oppor-
9 tunity for which the worker was hired.

10 “(C) ADVERTISEMENT REQUIREMENT.—

11 The advertisement requirement under subpara-
12 graph (B)(ii) is satisfied if the employer runs
13 an advertisement for 2 consecutive days that—

14 “(i) names the employer;

15 “(ii) describes the job or jobs;

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

18 “(iv) states the duration of employ-
19 ment;

20 “(v) describes the geographic area
21 with enough specificity to apprise appli-
22 cants of any travel requirements and where
23 applicants will likely have to reside to per-
24 form the job;

25 “(vi) states the rate of pay; and

1 “(vii) describes working conditions
2 and the availability of housing or the
3 amount of housing allowances.

4 “(D) END OF RECRUITMENT REQUIRE-
5 MENT.—The requirement to recruit and hire
6 United States workers for the contract period
7 for which H-2A workers have been hired shall
8 terminate on the first day of such contract pe-
9 riod.

10 “(5) OFFERS TO UNITED STATES WORKERS.—
11 The employer has offered or will offer the job for
12 which the nonimmigrant is sought to any eligible
13 United States worker who—

14 “(A) applies;

15 “(B) will be available at the time and place
16 of need; and

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

19 “(6) PROVISION OF INSURANCE.—If the job for
20 which the H-2A worker is sought is not covered by
21 State workers’ compensation law, the employer will
22 provide, at no cost to the worker, insurance covering
23 injury and disease arising out of, and in the course
24 of, the worker’s employment, which will provide ben-
25 efits at least equal to those provided under the State

1 workers' compensation law for comparable employ-
2 ment. No employer shall be liable for the provision
3 of health insurance for any H-2A worker.

4 “(7) STRIKE OR LOCKOUT.—There is not a
5 strike or lockout in the course of a labor dispute
6 that precludes the hiring of H-2A workers.

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

14 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
15 ing day after the date on which an application is filed
16 under this section, the employer shall make a copy of each
17 such application (and any necessary accompanying docu-
18 ments) available for public examination, at the employer's
19 work site or principal place of business.

20 “(d) LIST.—

21 “(1) IN GENERAL.—The Secretary of Agri-
22 culture shall maintain a list of the applications filed
23 under subsection (b), sorted by employer, which
24 shall include—

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

1 “(B) the wage rate;

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

3 and

4 “(D) the period of intended employment.

5 “(2) AVAILABILITY.—The Secretary of Agri-
6 culture shall make the list described in paragraph
7 (1) available for public examination.

8 “(e) APPLYING FOR ADMISSION.—

9 “(1) IN GENERAL.—An employer, or an asso-
10 ciation acting as an agent or joint employer for its
11 members, that seeks the admission into the United
12 States of an H-2A worker shall file an application
13 that includes the attestations described in subsection
14 (b) with the Secretary of Agriculture.

15 “(2) CONSIDERATION OF APPLICATIONS.—For
16 each application filed under this subsection—

17 “(A) the Secretary of Agriculture may not
18 require such application to be filed more than
19 60 days before the first date on which the em-
20 ployer requires the labor or services of the H-
21 2A worker; and

22 “(B) unless the Secretary of Agriculture
23 determines that the application is incomplete or
24 obviously inaccurate, or the Secretary has prob-
25 able cause to suspect the application was fraud-

1 ulently made, the Secretary shall either approve
2 or deny the application not later than 15 days
3 after the date on which such application was
4 filed.

5 “(3) APPLICATION AGREEMENTS.—By filing an
6 H–2A application, an applicant and each employer
7 consents to allow the Department of Agriculture ac-
8 cess to the site where labor is being performed for
9 the purpose of determining compliance with H–2A
10 requirements.

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

16 “(A) designates on the application each lo-
17 cation at which such workers will be used; and

18 “(B) performs adequate recruitment ef-
19 forts in each State in which such workers will
20 be used.

21 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

22 “(1) PERMITTING FILING BY AGRICULTURAL
23 ASSOCIATIONS.—An application to hire an H–2A
24 worker may be filed by an association of agricultural
25 employers which use agricultural labor.

1 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
2 EMPLOYERS.—If an association is a joint or sole em-
3 ployer of H-2A workers, such H-2A workers may be
4 transferred among its members to perform agricul-
5 tural labor of the same nature for which the applica-
6 tion was approved.

7 “(3) TREATMENT OF VIOLATIONS.—

8 “(A) INDIVIDUAL MEMBER.—If an indi-
9 vidual member of a joint employer association
10 violates any condition for approval with respect
11 to the member’s application, the Secretary of
12 Agriculture shall deny such application only
13 with respect to that member of the association
14 unless the Secretary determines that the asso-
15 ciation or other member participated in, had
16 knowledge of, or had reason to know of the vio-
17 lation.

18 “(B) ASSOCIATION OF AGRICULTURAL EM-
19 PLOYERS.—

20 “(i) JOINT EMPLOYER.—If an associa-
21 tion representing agricultural employers as
22 a joint employer violates any condition for
23 approval with respect to the association’s
24 application, the Secretary of Agriculture
25 shall deny such application only with re-

1 spect to the association and may not apply
2 the denial to any individual member of the
3 association, unless the Secretary deter-
4 mines that the member participated in,
5 had knowledge of, or had reason to know
6 of the violation.

7 “(ii) SOLE EMPLOYER.—If an associa-
8 tion of agricultural employers approved as
9 a sole employer violates any condition for
10 approval with respect to the association’s
11 application, no individual member of the
12 association may be the beneficiary of the
13 services of H–2A workers admitted under
14 this section in the occupation in which
15 such H–2A workers were employed by the
16 association which was denied approval dur-
17 ing the period such denial is in force.

18 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
19 Secretary of Agriculture, in conjunction with the Secretary
20 of State and the Secretary of Homeland Security, shall
21 issue regulations to provide for an expedited procedure—

22 “(1) for the review of a denial of an application
23 under this section by any of the Secretaries; or

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

1 “(h) MISCELLANEOUS PROVISIONS.—

2 “(1) REQUIREMENTS FOR PLACEMENT OF H-2A
3 WORKERS WITH OTHER EMPLOYERS.—An H-2A
4 worker may be transferred to another employer that
5 has had an application approved under this section.
6 The Secretary of Homeland Security and the Sec-
7 retary of State shall issue regulations to establish a
8 process for the approval and reissuance of visas for
9 transferred H-2A workers.

10 “(2) ENDORSEMENT OF DOCUMENTS.—The
11 Secretary of Homeland Security shall provide for the
12 endorsement of entry and exit documents of H-2A
13 workers to carry out this section and to provide no-
14 tice under section 274A.

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

19 “(4) FEES.—The Secretary of Agriculture may
20 charge a reasonable fee to recover the costs of proc-
21 essing applications under this section. In deter-
22 mining the amount of the fee to be charged under
23 this paragraph, the Secretary shall consider whether
24 the employer is a single employer or an association

1 and the number of H-2A workers intended to be
2 employed.

3 “(5) E-VERIFY PARTICIPATION BY EMPLOY-
4 ERS.—The Secretary of Agriculture shall require
5 employers participating in the H-2A program to
6 register with and participate in E-Verify, as estab-
7 lished under title IV of the Illegal Immigration Re-
8 form and Immigrant Responsibility Act of 1996 (di-
9 vision C of Public Law 104-208).

10 “(i) FAILURE TO MEET CONDITIONS.—

11 “(1) IN GENERAL.—The Secretary of Agri-
12 culture shall conduct investigations and random au-
13 dits of employer work sites to ensure employer com-
14 pliance with the requirements under this section. All
15 monetary fines assessed under this section shall be
16 paid by the violating employer to the Department of
17 Agriculture and used by the Secretary to conduct
18 audits and investigations.

19 “(2) PENALTIES FOR FAILURE TO MEET CONDI-
20 TIONS.—If the Secretary of Agriculture finds, after
21 notice and opportunity for a hearing, a failure to
22 meet a material condition under subsection (b), or a
23 material misrepresentation of fact in an application
24 filed under subsection (b), the Secretary—

1 “(A) shall notify the Secretary of Home-
2 land Security of such finding; and

3 “(B) may impose such other administrative
4 remedies, including civil money penalties in an
5 amount not to exceed \$1,000 per violation, as
6 the Secretary of Agriculture determines to be
7 appropriate.

8 “(3) PENALTIES FOR WILLFUL FAILURE.—If
9 the Secretary of Agriculture finds, after notice and
10 opportunity for a hearing, a willful failure to meet
11 a material condition under subsection (b) or a willful
12 misrepresentation of a material fact in an applica-
13 tion filed under subsection (b), the Secretary—

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

16 “(B) may impose such other administrative
17 remedies, including civil money penalties in an
18 amount not to exceed \$5,000 per violation, as
19 the Secretary of Agriculture determines to be
20 appropriate;

21 “(C) may disqualify the employer from the
22 employment of H-2A workers for a period of 2
23 years;

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

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

7 “(4) PENALTIES FOR DISPLACEMENT OF
8 UNITED STATES WORKERS.—If the Secretary of Ag-
9 riculture finds, after notice and opportunity for a
10 hearing, a willful failure to meet a material condition
11 of subsection (b) or a willful misrepresentation of a
12 material fact in an application filed under subsection
13 (b), and the employer displaced a United States
14 worker employed by the employer during the period
15 of employment on the employer’s application, or dur-
16 ing the 30-day period preceding such period of em-
17 ployment, the Secretary—

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

20 “(B) may impose such other administrative
21 remedies, including civil money penalties in an
22 amount not to exceed \$15,000 per violation, as
23 the Secretary of Agriculture determines to be
24 appropriate;

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

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

7 “(5) LIMITATIONS ON CIVIL MONEY PEN-
8 ALTIES.—The Secretary of Agriculture may not im-
9 pose total civil money penalties with respect to an
10 application filed under subsection (b) in excess of
11 \$100,000.

12 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
13 FITS.—

14 “(1) IN GENERAL.—The Secretary of Agri-
15 culture shall conduct investigations and random au-
16 dits of employer work sites to ensure employer com-
17 pliance with the requirements under this section.

18 “(2) ASSESSMENT.—If the Secretary of Agri-
19 culture finds, after notice and opportunity for a
20 hearing, that the employer has failed to pay the
21 wages or provide the housing allowance, transpor-
22 tation, subsistence requirement, or guarantee of em-
23 ployment attested in the application filed by the em-
24 ployer under subsection (b)(2), the Secretary shall
25 assess payment of back wages, or other required

1 benefits, due any United States worker or H-2A
2 worker employed by the employer in the specific em-
3 ployment in question.

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

6 “(A) shall be equal to the difference be-
7 tween the amount that should have been paid
8 and the amount that was paid to such worker;
9 and

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

12 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
13 CONDITIONS.—

14 “(1) PREFERENTIAL TREATMENT OF ALIENS
15 PROHIBITED.—

16 “(A) IN GENERAL.—Each employer seek-
17 ing to hire United States workers shall offer
18 such workers not less than the same benefits,
19 wages, and working conditions that the em-
20 ployer is offering, intends to offer, or will pro-
21 vide to H-2A workers in the same occupation.
22 No job offer may impose any restriction or obli-
23 gation on United States workers which will not
24 be imposed on the employer’s H-2A workers.
25 The benefits, wages, and other terms and condi-

1 tions of employment described in this sub-
2 section shall be provided in connection with em-
3 ployment under this section.

4 “(B) INTERPRETATION.—Every interpreta-
5 tion and determination made under this section
6 or under any other law, regulation, or interpre-
7 tative provision regarding the nature, scope,
8 and timing of the provision of these and any
9 other benefits, wages, and other terms and con-
10 ditions of employment shall be made so that—

11 “(i) the services of workers to their
12 employers and the employment opportuni-
13 ties afforded to workers by the employers,
14 including those employment opportunities
15 that require United States workers or H-
16 2A workers to travel or relocated in order
17 to accept or perform employment—

18 “(I) mutually benefit such work-
19 ers, as well as their families, and em-
20 ployers;

21 “(II) principally benefit neither
22 employer nor employee; and

23 “(III) employment opportunities
24 within the United States benefit the
25 United States economy.

1 “(2) REQUIRED WAGES.—

2 “(A) IN GENERAL.—Each employer apply-
3 ing for workers under subsection (b) shall pay
4 not less (and is not required to pay more) than
5 the greater of—

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

10 “(ii) the adverse effect wage rate.

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

13 “(i) IN GENERAL.—Each employer
14 applying for Level 2 H-2A workers under
15 subsection (b) shall pay such workers not
16 less than 140 percent of the adverse effect
17 wage rate for H-2A workers, excluding
18 piece-rate wages.

19 “(ii) WAGE RATE DATA.—The Sec-
20 retary of Agriculture shall expand and
21 disaggregate the source of wage rate data
22 used in the survey conducted by the Na-
23 tional Agricultural Statistics Service to in-
24 clude—

1 “(I) first line farming super-
2 visors/managers;

3 “(II) graders and sorters of agri-
4 cultural products;

5 “(III) agricultural equipment op-
6 erators;

7 “(IV) crop and nursery farm-
8 workers and laborers;

9 “(V) ranch and farm animal
10 farmworkers; and

11 “(VI) all other agricultural work-
12 ers.

13 “(iii) STUDY AND REPORT.—

14 “(I) STUDY.—After the Sec-
15 retary of Agriculture collects wage
16 rate data for 2 years using the meth-
17 od described in clause (ii), the Sec-
18 retary of Agriculture, in conjunction
19 with the Secretary of Labor, shall
20 conduct a study to determine if—

21 “(aa) the wages accurately
22 reflect prevailing wages for simi-
23 lar occupations in the area of em-
24 ployment; and

1 “(bb) it is necessary to es-
2 tablish a new wage methodology
3 to prevent the depression of
4 United States farmworker wages.

5 “(II) REPORT.—Not later than 3
6 years after the date of the enactment
7 of the HARVEST Act of 2011, the
8 Secretary of Agriculture shall submit
9 a final report reflecting the findings
10 of the study conducted under sub-
11 clause (I) to—

12 “(aa) the Committee on Ag-
13 riculture, Nutrition, and Forestry
14 of the Senate;

15 “(bb) the Committee on the
16 Judiciary of the Senate;

17 “(cc) the Committee on Ag-
18 riculture of the House of Rep-
19 resentatives; and

20 “(dd) the Committee on the
21 Judiciary of the House of Rep-
22 resentatives.

23 “(3) HOUSING REQUIREMENT.—

24 “(A) IN GENERAL.—Except as provided
25 under subparagraph (F), each employer apply-

1 ing for workers under subsection (b) shall offer
2 to provide housing at no cost to—

3 “(i) all workers in job opportunities
4 for which the employer has applied under
5 subsection (b); and

6 “(ii) all other workers in the same oc-
7 cupation at the same place of employment
8 whose place of residence is beyond normal
9 commuting distance.

10 “(B) COMPLIANCE.—An employer meets
11 the requirement under subparagraph (A) if the
12 employer—

13 “(i) provides the workers with housing
14 that meets applicable Federal standards
15 for temporary labor camps; or

16 “(ii) secures housing for the workers
17 that—

18 “(I) meets applicable local stand-
19 ards for rental or public accommoda-
20 tion housing, or other substantially
21 similar class of habitation; or

22 “(II) in the absence of applicable
23 local standards, meets State stand-
24 ards for rental or public accommoda-

1 tion housing or other substantially
2 similar class of habitation.

3 “(C) INSPECTION.—

4 “(i) REQUEST.—At the time an em-
5 ployer that plans to provide housing de-
6 scribed in subparagraph (B) to H-2A
7 workers files an application for H-2A
8 workers with the Secretary of Agriculture,
9 the employer shall request a certificate of
10 inspection by an approved Federal or State
11 agency.

12 “(ii) INSPECTION; FOLLOW UP.—Not
13 later than 28 days after the receipt of a re-
14 quest under clause (i), the Secretary of Ag-
15 riculture shall ensure that—

16 “(I) such an inspection has been
17 conducted; and

18 “(II) any necessary follow up has
19 been scheduled to ensure compliance
20 with the requirements under this
21 paragraph.

22 “(iii) DELAY PROHIBITED.—The Sec-
23 retary of Agriculture may not delay the ap-
24 proval of an application for failing to com-

1 ply with the deadlines set forth in clause
2 (iii).

3 “(D) RULEMAKING.—The Secretary of Ag-
4 riculture shall issue regulations that address
5 the specific requirements for the provision of
6 housing to workers engaged in the range pro-
7 duction of livestock.

8 “(E) HOUSING ALLOWANCE.—

9 “(i) AUTHORITY.—If the Governor of
10 a State certifies to the Secretary of Agri-
11 culture that there is adequate housing
12 available in the area of intended employ-
13 ment for migrant farm workers and H-2A
14 workers who are seeking temporary hous-
15 ing while employed in agricultural work, an
16 employer in such State may provide a rea-
17 sonable housing allowance instead of offer-
18 ing housing pursuant to subparagraph (A).
19 An employer who provides a housing allow-
20 ance to a worker shall not be required to
21 reserve housing accommodations for the
22 worker.

23 “(ii) ASSISTANCE IN LOCATING HOUS-
24 ING.—Upon the request of a worker seek-
25 ing assistance in locating housing, an em-

1 ployer providing a housing allowance under
2 clause (i) shall make a good faith effort to
3 assist the worker in identifying and locat-
4 ing housing in the area of intended em-
5 ployment.

6 “(iii) LIMITATION.—A housing allow-
7 ance may not be used for housing that is
8 owned or controlled by the employer. An
9 employer who offers a housing allowance to
10 a worker, or assists a worker in locating
11 housing which the worker occupies under
12 this subparagraph shall not be deemed a
13 housing provider under section 203 of the
14 Migrant and Seasonal Agricultural Worker
15 Protect Act (29 U.S.C. 1823) solely by vir-
16 tue of providing such housing allowance.

17 “(iv) OTHER REQUIREMENTS.—

18 “(I) NONMETROPOLITAN COUN-
19 TY.—If the place of employment of
20 the workers provided an allowance
21 under this subparagraph is a non-
22 metropolitan county, the amount of
23 the housing allowance under this sub-
24 paragraph shall be equal to the state-
25 wide average fair market rental for

1 existing housing for nonmetropolitan
2 counties for the State, as established
3 by the Secretary of Housing and
4 Urban Development pursuant to sec-
5 tion 8(c) of the United States Hous-
6 ing Act of 1937 (42 U.S.C. 1437f(c)),
7 based on a 2-bedroom dwelling unit
8 and an assumption of 2 persons per
9 bedroom.

10 “(II) METROPOLITAN COUNTY.—

11 If the place of employment of the
12 workers provided an allowance under
13 this subparagraph is in a metropolitan
14 county, the amount of the housing al-
15 lowance under this subparagraph shall
16 be equal to the statewide average fair
17 market rental for existing housing for
18 metropolitan counties for the State, as
19 established by the Secretary of Hous-
20 ing and Urban Development pursuant
21 to section 8(c) of the United States
22 Housing Act of 1937 (42 U.S.C.
23 1437f(c)), based on a 2-bedroom
24 dwelling unit and an assumption of 2
25 persons per bedroom.

1 “(v) INFORMATION.—If the employer
2 provides a housing allowance to H-2A em-
3 ployees, the employer shall provide a list of
4 the names and local addresses of such
5 workers to the Secretary of Agriculture
6 and the Secretary of Homeland Security
7 once per contract period.

8 “(4) REIMBURSEMENT OF TRANSPORTATION
9 COSTS.—

10 “(A) REQUIREMENT FOR REIMBURSE-
11 MENT.—A worker who completes 50 percent of
12 the period of employment of the job for which
13 the worker was hired shall be reimbursed by the
14 employer, beginning on the first day of such
15 employment, for the cost of the worker’s trans-
16 portation and subsistence from—

17 “(i) the place from which the worker
18 was approved to enter the United States to
19 the location at which the work for the em-
20 ployer is performed; or

21 “(ii) if the worker traveled from a
22 place in the United States at which the
23 worker was last employed, from such place
24 of last employment to the location at which

1 the work for the employer is being per-
2 formed.

3 “(B) TIMING OF REIMBURSEMENT.—Reim-
4 bursement to the worker of expenses for the
5 cost of the worker’s transportation and subsist-
6 ence to the place of employment under subpara-
7 graph (A) shall be considered timely if such re-
8 imbursement is made not later than the work-
9 er’s first regular payday after a worker com-
10 pletes 50 percent of the period of employment
11 of the job opportunity as provided under this
12 paragraph.

13 “(C) ADDITIONAL REIMBURSEMENT.—A
14 worker who completes the period of employment
15 for the job opportunity involved shall be reim-
16 bursed by the employer for the cost of the
17 worker’s transportation and subsistence from
18 the work site to the place where the worker was
19 approved to enter the United States to work for
20 the employer. If the worker has contracted with
21 a subsequent employer, the previous and subse-
22 quent employer shall share the cost of the work-
23 er’s transportation and subsistence from work
24 site to work site.

1 “(D) AMOUNT OF REIMBURSEMENT.—The
2 amount of reimbursement provided to a worker
3 under this paragraph shall be equal to the less-
4 er of—

5 “(i) the actual cost to the worker of
6 the transportation and subsistence in-
7 volved; or

8 “(ii) the most economical and reason-
9 able common carrier transportation and
10 subsistence costs for the distance involved.

11 “(E) REIMBURSEMENT FOR LAID OFF
12 WORKERS.—If the worker is laid off or employ-
13 ment is terminated for contract impossibility
14 (as described in paragraph (5)(D)) before the
15 anticipated ending date of employment, the em-
16 ployer shall provide—

17 “(i) the transportation and subsist-
18 ence required under subparagraph (C); and

19 “(ii) notwithstanding whether the
20 worker has completed 50 percent of the pe-
21 riod of employment, the transportation re-
22 imbursement required under subparagraph
23 (A).

24 “(F) TRANSPORTATION.—The employer
25 shall provide transportation between the work-

1 er’s living quarters and the employer’s work site
2 without cost to the worker in accordance with
3 applicable laws and regulations.

4 “(G) CONSTRUCTION.—Nothing in this
5 paragraph may be construed to require an em-
6 ployer to reimburse visa, passport, consular, or
7 international border-crossing fees incurred by
8 the worker or any other fees associated with the
9 worker’s lawful admission into the United
10 States to perform employment.

11 “(5) EMPLOYMENT GUARANTEE.—

12 “(A) IN GENERAL.—

13 “(i) REQUIREMENT.—Each employer
14 applying for workers under subsection (b)
15 shall guarantee to offer each such worker
16 employment for the hourly equivalent of
17 not less than 75 percent of the work hours
18 during the total anticipated period of em-
19 ployment beginning with the first work day
20 after the arrival of the worker at the place
21 of employment and ending on the expira-
22 tion date specified in the job offer.

23 “(ii) FAILURE TO MEET GUAR-
24 ANTEE.—If the employer affords the
25 United States worker or the H–2A workers

1 less employment than that required under
2 this subparagraph, the employer shall pay
3 such worker the amount which the worker
4 would have earned if the worker had
5 worked for the guaranteed number of
6 hours.

7 “(iii) PERIOD OF EMPLOYMENT.—In
8 this subparagraph, the term ‘period of em-
9 ployment’ means the total number of an-
10 ticipated work hours and work days de-
11 scribed in the job offer and shall exclude
12 the worker’s Sabbath and Federal holi-
13 days.

14 “(B) CALCULATION OF HOURS.—Any
15 hours which the worker fails to work, up to a
16 maximum number of hours specified in the job
17 offer for a work day, when the worker has been
18 offered an opportunity to do so, and all hours
19 of work actually performed (including voluntary
20 work in excess of the number of hours specified
21 in the job offer in a work day, on the worker’s
22 Sabbath, or on Federal holidays) may be count-
23 ed by the employer in calculating whether the
24 period of guaranteed employment has been met.

1 “(C) LIMITATION.—If the worker volun-
2 tarily abandons employment before the end of
3 the contract period, or is terminated for cause,
4 the worker is not entitled to the 75 percent
5 guarantee described in subparagraph (A).

6 “(D) TERMINATION OF EMPLOYMENT.—

7 “(i) IN GENERAL.—If, before the expi-
8 ration of the period of employment speci-
9 fied in the job offer, the services of the
10 worker are no longer required due to any
11 form of natural disaster, including flood,
12 hurricane, freeze, earthquake, fire,
13 drought, plant or animal disease, pest in-
14 festation, regulatory action, or any other
15 reason beyond the control of the employer
16 before the employment guarantee in sub-
17 paragraph (A) is fulfilled, the employer
18 may terminate the worker’s employment.

19 “(ii) REQUIREMENTS.—If a worker’s
20 employment is terminated under clause (i),
21 the employer shall—

22 “(I) fulfill the employment guar-
23 antee in subparagraph (A) for the
24 work days that have elapsed during
25 the period beginning on the first work

1 day after the arrival of the worker
2 and ending on the date on which such
3 employment is terminated; and

4 “(II) make efforts to transfer the
5 United States worker to other com-
6 parable employment acceptable to the
7 worker.

8 “(I) DISQUALIFICATION.—

9 “(1) GROUNDS OF INELIGIBILITY.—

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

12 “(i) is inadmissible to the United
13 States under section 212(a), except as pro-
14 vided under paragraph (2);

15 “(ii) is subject to the execution of an
16 outstanding administratively final order of
17 removal, deportation, or exclusion;

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

20 “(iv) has ordered, incited, assisted, or
21 otherwise participated in the persecution of
22 any person on account of race, religion, na-
23 tionality, membership in a particular social
24 group, or political opinion; or

1 “(v) has a felony or misdemeanor con-
2 viction, an element of which involves bodily
3 injury, threat of serious bodily injury, or
4 harm to property in excess of \$500.

5 “(B) APPLICABILITY TO GROUNDS OF IN-
6 ADMISSIBILITY.—Nothing in this subsection
7 may be construed to limit the applicability of
8 any ground of inadmissibility under section
9 212.

10 “(2) GROUNDS OF INADMISSIBILITY.—

11 “(A) IN GENERAL.—In determining an
12 alien’s admissibility—

13 “(i) paragraphs (5)(A), (6)(A)(i)
14 (with respect to an alien present in the
15 United States without being admitted or
16 paroled), (6)(B), (6)(C), (6)(D), (6)(F),
17 (6)(G), (7), (9)(B), and (9)(C)(i)(I) of sec-
18 tion 212(a) shall not apply with respect to
19 conduct occurring or arising before the
20 date of the alien’s application for an H-2A
21 visa if associated with obtaining employ-
22 ment;

23 “(ii) the Secretary of Homeland Secu-
24 rity may not waive—

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

4 “(II) section 212(a)(3) (relating
5 to security and related grounds);

6 “(III) section 212(a)(9)(C)(i)(II);

7 or

8 “(IV) subparagraph (A), (C), or
9 (D) of section 212(a)(10) (relating to
10 polygamists, child abductors, and un-
11 lawful voters).

12 “(B) CONSTRUCTION.—Nothing in this
13 paragraph may be construed as affecting the
14 authority of the Secretary of Homeland Secu-
15 rity, other than under this paragraph, to waive
16 the provisions of section 212(a).

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

19 “(A) the alien has violated any material
20 term or condition of such status granted pre-
21 viously, unless the alien has had such violation
22 waived under paragraph (2)(A);

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

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

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

16 “(5) NUMERICAL LIMITATIONS ON WAIVERS.—
17 The Secretary of Homeland Security may waive any
18 ground of inadmissibility, as authorized under this
19 section, only once for each beneficiary of an applica-
20 tion for an H–2A visa filed by an employer after the
21 date of the enactment of the HARVEST Act of
22 2011. Such waiver authority for the Secretary shall
23 expire 24 months after such date of enactment.

24 “(6) FINE.—Each alien applying for an H–2A
25 visa under this section who would be inadmissible

1 under section 212(a)(6), if such provision had not
2 been made inapplicable under subsection (l)(2)(A)(i),
3 shall be required to pay a fine in an amount equal
4 to \$500 before being granted such visa.

5 “(m) PERIOD OF ADMISSION.—

6 “(1) IN GENERAL.—An H-2A worker approved
7 to enter the United States may not remain in the
8 United States for more than 10 months during any
9 12-month period, excluding—

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

13 “(B) a period of not more than 14 days
14 after the period of employment for the purpose
15 of departure to complete late work caused by
16 weather or other unforeseen conditions.

17 “(2) EMPLOYMENT LIMITATION.—An H-2A
18 worker may not be employed during the 14-day pe-
19 riod described in paragraph (1)(B) except in the em-
20 ployment for which the alien was previously author-
21 ized.

22 “(3) CONSTRUCTION.—Nothing in this sub-
23 section shall limit the authority of the Secretary of
24 Homeland Security to extend the stay of an alien
25 under any other provision of this Act.

1 “(n) ABANDONMENT OF EMPLOYMENT.—

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

6 “(A) has failed to maintain nonimmigrant
7 status as an H-2A worker; and

8 “(B) shall depart the United States or be
9 subject to removal under section
10 237(a)(1)(C)(i).

11 “(2) REPORT BY EMPLOYER.—Not later than
12 36 hours after the premature abandonment of em-
13 ployment by an H-2A worker, the employer or asso-
14 ciation acting as an agent for the employer shall no-
15 tify the Secretary of Homeland Security of such
16 abandonment.

17 “(3) REMOVAL.—The Secretary of Homeland
18 Security shall ensure the prompt removal from the
19 United States of any H-2A worker who violates any
20 term or condition of the worker’s nonimmigrant sta-
21 tus.

22 “(4) VOLUNTARY TERMINATION.—Notwith-
23 standing paragraph (1), an alien may voluntarily
24 terminate the alien’s employment if the alien

1 promptly departs the United States upon termi-
2 nation of such employment.

3 “(o) REPLACEMENT OF WORKERS.—

4 “(1) IN GENERAL.—Upon receiving notification
5 under subsection (n)(2) or being notified that a
6 United States worker referred by the Department of
7 Labor or a United States worker recruited by the
8 employer during the recruitment period has pre-
9 maturely abandoned employment or has failed to ap-
10 pear for employment—

11 “(A) the Secretary of State shall promptly
12 issue a visa to an eligible alien designated by
13 the employer to replace a worker who abandons
14 or prematurely terminates employment; and

15 “(B) the Secretary of Homeland Security
16 shall expeditiously admit such alien into the
17 United States.

18 “(2) CONSTRUCTION.—Nothing in this sub-
19 section may be construed to limit any preference for
20 which United States workers are eligible under this
21 Act.

22 “(p) IDENTIFICATION DOCUMENT.—

23 “(1) IN GENERAL.—The Secretary of Homeland
24 Security shall provide each alien authorized to be an
25 H-2A worker with a single machine-readable, tam-

1 per-resistant, and counterfeit-resistant document
2 that—

3 “(A) authorizes the alien’s entry into the
4 United States;

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

7 “(C) verifies the identity of the alien
8 through the use of at least 1 biometric identi-
9 fier.

10 “(2) REQUIREMENTS.—The document required
11 for all aliens authorized to be an H–2A worker—

12 “(A) shall be capable of reliably deter-
13 mining whether the individual with the docu-
14 ment—

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

17 “(ii) is not claiming the identity of
18 another person; and

19 “(iii) is authorized to be admitted into
20 the United States; and

21 “(B) shall be compatible with—

22 “(i) other databases of the Depart-
23 ment of Homeland Security to prevent an
24 alien from obtaining benefits for which the
25 alien is not eligible and determining wheth-

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

3 “(ii) law enforcement databases to de-
4 termine if the alien has been convicted of
5 criminal offenses.

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

7 “(a) DEFINITION.—In this section, the term ‘cross-
8 border H-2A worker’ means a nonimmigrant described in
9 section 101(a)(15)(H)(ii)(a) who participates in the cross-
10 border worker program established under this section.

11 “(b) INCORPORATION BY REFERENCE.—

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

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

18 “(c) MANDATORY ENTRY AND EXIT.—A cross-border
19 H-2A worker who complies with the provisions of this sec-
20 tion—

21 “(1) may enter the United States each sched-
22 uled work day, in accordance with regulations pro-
23 mulgated by the Secretary of Homeland Security;
24 and

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

3 “(d) RECRUITMENT.—Each employer that employs a
4 cross-border H–2A worker under this section shall conduct
5 a recruitment for each position occupied by such H–2A
6 worker that complies with the requirements under section
7 218(b)(4) at least once every 10 months.”.

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

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

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

12 (c) RULEMAKING.—

13 (1) ISSUANCE OF VISAS.—Not later than 180
14 days after the date of the enactment of this Act, the
15 Secretary of State shall promulgate regulations, in
16 accordance with the notice and comment provisions
17 of section 553 of title 5, United States Code, to pro-
18 vide for uniform procedures for the issuance of H–
19 2A visas by United States consulates and consular
20 officials to nonimmigrants described in section
21 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

23 (2) BORDER CROSSINGS.—The Secretary of
24 State shall promulgate regulations to establish a

1 process for cross-border H-2A workers authorized to
2 work in the United States under section 218A of the
3 Immigration and Nationality Act, as added by sub-
4 section (b), to ensure that such workers expedi-
5 tiously enter and exit the United States during each
6 work day.

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

10 **SEC. 4. LEGAL ASSISTANCE FROM THE LEGAL SERVICES**
11 **CORPORATION.**

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

14 (1) by striking subsection (b) and inserting the
15 following:

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

20 “(2) The Legal Services Corporation may not provide
21 legal assistance for, or on behalf of, any alien, and may
22 not provide financial assistance to any person or entity
23 that provides legal assistance for, or on behalf of, any
24 alien, unless the alien—

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

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

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

9 “(i) the party makes a request to the Federal
10 Mediation and Conciliation Service or an equivalent
11 State program (as defined by the Secretary of
12 Labor) not later than 90 days before bringing the
13 action to assist the parties in reaching a satisfactory
14 resolution of all issues involving parties to the dis-
15 pute;

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

19 “(iii) the parties to the dispute have attempted,
20 in good faith, mediation or other non-binding dis-
21 pute resolution of all issues involving all such par-
22 ties.

23 “(B) If the mediator finds that an agricultural em-
24 ployer, agricultural association, or farm labor contractor
25 has corrected a violation of this Act or a regulation under

1 this Act not later than 14 days after the date on which
2 such agricultural employer, agricultural association, or
3 farm labor contractor received written notification of such
4 violation, no action may be brought under this section with
5 respect to such violation.

6 “(C) Any settlement reached through the mediation
7 process described in subparagraph (A) shall preclude any
8 right of action arising out of the same facts between the
9 parties in any Federal or State court or administrative
10 proceeding.

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

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

21 “(5) The employer of an H-2A worker shall post the
22 contact information of the Legal Services Corporation in
23 the dwelling and at the work site of each nonimmigrant
24 employee in a language in which all employees can under-
25 stand.

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

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

6 “(g)(1) If a defendant prevails in an action under this
7 section in which the plaintiff is represented by an attorney
8 who is employed by the Legal Services Corporation or any
9 entity receiving funds from the Legal Services Corpora-
10 tion, such entity or the Legal Services Corporation shall
11 award to the prevailing defendant fees and other expenses
12 incurred by the defendant in connection with the action.

13 “(2) In this subsection, the term ‘fees and other ex-
14 penses’ has the meaning given the term in section
15 514(b)(1)(A) of title 5, United States Code.

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

19 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to the De-
21 partment of Homeland Security and the Department of
22 State such sums as may be necessary to adjudicate H-
23 2A applications.

○