109TH CONGRESS
1ST SESSION

H. R. 793

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2005

Mr. GILCHREST (for himself, Mr. DELAHUNT, Mr. BASS, Mr. STUPAK, Mr. BRADLEY of New Hampshire, Mr. ALLEN, Mr. SIMMONS, Mr. POMEROY, Mr. CANNON, Mr. SERRANO, Mr. JONES of North Carolina, Mr. VAN HOLLEN, and Ms. BORDALLO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Save Our Small and
5 Seasonal Businesses Act”.

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

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

“(9) An alien counted toward the numerical limitations of paragraph (1)(B) during any one of the 3 fiscal years prior to the submission of a petition for a non-immigrant worker described in section 101(a)(15)(H)(ii)(b) shall not be counted toward such limitation for the fiscal year in which the petition is approved.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment in subsection (a) shall take effect as if enacted on October 1, 2004, and shall expire on October 1, 2006.

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

SEC. 3. FRAUD PREVENTION AND DETECTION FEE.

(a) IMPOSITION OF FEE.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 426(a) of division J of the Consoli-
dated Appropriations Act, 2005 (Public Law 108–447), is amended by adding at the end the following:

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

“(B) The amount of the fee imposed under subparagraph (A) shall be $150.’’.

(b) USE OF FEES.—

(1) Fraud prevention and detection account.—Subsection (v) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as added by section 426(b) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended—

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

(B) in paragraph (1), as amended by subparagraph (A), by striking “section 214(c)(12)” and inserting “paragraph (12) or (13) of section 214(e)”;

(C) in paragraphs (2)(A)(i) and (2)(B), as amended by subparagraph (A), by striking
“(H)(i)” each place it appears and inserting “(H)(i), (H)(ii),”; and

(D) in paragraph (2)(D), as amended by subparagraph (A), by inserting before the period at the end “or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in section 101(a)(15)(H)(ii)”.

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

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

SEC. 4. SANCTIONS.

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

“(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a non-immigrant worker under section 101(a)(15)(H)(ii)(b) or
a willful misrepresentation of a material fact in such peti-

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

“(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this sub-

section during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

“(B) The Secretary of Homeland Security may dele-

gate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Sec-


“(C) In determining the level of penalties to be as-

sessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the condi-
tions of the petition that involve harm to United States workers.

“(D) In this paragraph, the term ‘substantial failure’ means the willful failure to comply with the requirements
of this section that constitutes a significant deviation from
the terms and conditions of a petition.”.

(b) Effective Date.—The amendment made by
subsection (a) shall take effect on October 1, 2005.

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

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

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

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

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

(1) by striking “Attorney General” each place
that term appears and inserting “Secretary of
Homeland Security”; and
(2) by adding at the end the following new subsection:

“(d) Provision of Information.—

“(1) Quarterly Notification.—Beginning not later than March 1, 2006, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of House of Representatives of the number of aliens who during the preceding 1-year period—

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

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

“(2) Annual Submission.—Beginning in fiscal year 2007, the Secretary of Homeland Security shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

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

“(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

“(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

“(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.”.