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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2005

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

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A BILL

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

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Save Our Small and
5 Seasonal Businesses Act of 2005”.
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) may 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 pe-
period at the end “or for programs and activities
to prevent and detect fraud with respect to peti-
tions 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 sub-
stantial failure to meet any of the conditions of the peti-
tion 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 petition—

“(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 subsection 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 delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

“(C) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions 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-
vided 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)) during the previous fis-
cal year;

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

“(C) the number of aliens who were pro-
vided 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 para-
graph (1) or (2), the Secretary of State shall provide
such information to the Secretary of Homeland Se-
curity upon request.”.