

Union Calendar No. 506

113TH CONGRESS
2^D SESSION

H. R. 1773

[Report No. 113–674, Part I]

To create a nonimmigrant H–2C work visa program for agricultural workers,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. GOODLATTE (for himself, Mr. SMITH of Texas, Mr. GOWDY, Mr. FARENTHOLD, Mr. WESTMORELAND, Mr. POE of Texas, Mr. HOLDING, Mr. PETERSON, and Mr. HURT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 12, 2014

Additional sponsors: Mr. THOMPSON of Pennsylvania, Mr. BACHUS, and Mr.
SESSIONS

DECEMBER 12, 2014

Deleted sponsor: Mr. PETERSON (added April 26, 2013; deleted May 23,
2013)

DECEMBER 12, 2014

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 12, 2014

The Committees on Education and the Workforce and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 26, 2013]

A BILL

To create a nonimmigrant H-2C work visa program for 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—*

5 *(1) the “Agricultural Guestworker Act”; or*

6 *(2) the “AG Act”.*

7 **SEC. 2. H-2C TEMPORARY AGRICULTURAL WORK VISA PRO-**
8 **GRAM.**

9 *(a) IN GENERAL.—Section 101(a)(15)(H) of the Immi-*
10 *gration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is*
11 *amended by striking “; or (iii)” and inserting “, or (c) hav-*
12 *ing a residence in a foreign country which he has no inten-*
13 *tion of abandoning who is coming temporarily to the*
14 *United States to perform agricultural labor or services; or*
15 *(iii)”.*

16 *(b) DEFINITION.—Section 101(a) of such Act (8 U.S.C.*
17 *1101(a)) is amended by adding at the end the following:*

18 *“(53) The term ‘agricultural labor or services’ has the*
19 *meaning given such term by the Secretary of Agriculture*
20 *in regulations and includes agricultural labor as defined*
21 *in section 3121(g) of the Internal Revenue Code of 1986,*
22 *agriculture as defined in section 3(f) of the Fair Labor*
23 *Standards Act of 1938 (29 U.S.C. 203(f)), the handling,*
24 *planting, drying, packing, packaging, processing, freezing,*
25 *or grading prior to delivery for storage of any agricultural*

1 *or horticultural commodity in its unmanufactured state, all*
2 *activities required for the preparation, processing or manu-*
3 *facturing of a product of agriculture (as such term is de-*
4 *finied in such section 3(f)) for further distribution, and ac-*
5 *tivities similar to all the foregoing as they relate to fish*
6 *or shellfish facilities.”.*

7 **SEC. 3. ADMISSION OF TEMPORARY H-2C WORKERS.**

8 *(a) PROCEDURE FOR ADMISSION.—Chapter 2 of title*
9 *II of the Immigration and Nationality Act (8 U.S.C. 1181*
10 *et seq.) is amended by inserting after section 218 the fol-*
11 *lowing:*

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

13 *“(a) DEFINITIONS.—In this section and section 218B:*

14 *“(1) AREA OF EMPLOYMENT.—The term ‘area of*
15 *employment’ means the area within normal com-*
16 *muting distance of the worksite or physical location*
17 *where the work of the H-2C worker is or will be per-*
18 *formed. If such work site or location is within a Met-*
19 *ropolitan Statistical Area, any place within such*
20 *area shall be considered to be within the area of em-*
21 *ployment.*

22 *“(2) DISPLACE.—The term ‘displace’ means to*
23 *lay off a worker from a job that is essentially equiva-*
24 *lent to the job for which an H-2C worker is sought.*

1 *A job shall not be considered to be ‘essentially equivalent’ to another job unless the job—*

3 *“(A) involves essentially the same responsibilities as such other job;*

5 *“(B) was held by a United States worker with substantially equivalent qualifications and experience; and*

7 *“(C) is located in the same area of employment as the other job.*

8 *“(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment of the individual.*

10 *“(4) EMPLOYER.—The term ‘employer’ means an employer who hires workers to perform agricultural employment.*

12 *“(5) H-2C WORKER.—The term ‘H-2C worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).*

14 *“(6) LAY OFF.—*

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

18 *“(i) means to cause a worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure,*

1 *voluntary retirement, or the expiration of a*
2 *grant or contract (other than a temporary*
3 *employment contract entered into in order*
4 *to evade a condition described in paragraph*
5 *(3) of subsection (b)); and*

6 “(ii) *does not include any situation in*
7 *which the worker is offered, as an alter-*
8 *native to such loss of employment, a similar*
9 *employment opportunity with the same em-*
10 *ployer (or, in the case of a placement of a*
11 *worker with another employer under sub-*
12 *section (b)(7), with either employer de-*
13 *scribed in such subsection) at equivalent or*
14 *higher compensation and benefits than the*
15 *position from which the employee was dis-*
16 *charged, regardless of whether or not the*
17 *employee accepts the offer.*

18 “(B) *CONSTRUCTION.—Nothing in this*
19 *paragraph is intended to limit an employee’s*
20 *rights under a collective bargaining agreement or*
21 *other employment contract.*

22 “(7) *PREVAILING WAGE.—The term ‘prevailing*
23 *wage’ means the wage rate paid to workers in the*
24 *same occupation in the area of employment as com-*
25 *puted pursuant to section 212(p).*

1 “(8) *UNITED STATES WORKER.*—*The term*
2 *‘United States worker’ means any worker who is—*

3 “(A) *a citizen or national of the United*
4 *States; or*

5 “(B) *an alien who is lawfully admitted for*
6 *permanent residence, is admitted as a refugee*
7 *under section 207, is granted asylum under sec-*
8 *tion 208, or is an immigrant otherwise author-*
9 *ized, by this Act or by the Secretary of Home-*
10 *land Security, to be employed.*

11 “(b) *PETITION.*—*An employer, or an association act-*
12 *ing as an agent or joint employer for its members, that seeks*
13 *the admission into the United States of an H-2C worker*
14 *shall file with the Secretary of Agriculture a petition attest-*
15 *ing to the following:*

16 “(1) *TEMPORARY WORK OR SERVICES.*—

17 “(A) *IN GENERAL.*—*The employer is seeking*
18 *to employ a specific number of agricultural*
19 *workers on a temporary basis and will provide*
20 *compensation to such workers at a specified wage*
21 *rate.*

22 “(B) *DEFINITION.*—*For purposes of this*
23 *paragraph, a worker is employed on a tem-*
24 *porary basis if the employer intends to employ*

1 *the worker for no longer than 18 months (except*
2 *for shepherders) during any contract period.*

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

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

18 “(4) *RECRUITMENT.—*

19 “(A) *IN GENERAL.—The employer—*

20 “(i) *conducted adequate recruitment in*
21 *the area of intended employment before fil-*
22 *ing the attestation; and*

23 “(ii) *was unsuccessful in locating a*
24 *qualified United States worker for the job*

1 *opportunity for which the H-2C worker is*
2 *sought.*

3 “(B) *OTHER REQUIREMENTS.*—*The recruit-*
4 *ment requirement under subparagraph (A) is*
5 *satisfied if the employer places a local job order*
6 *with the State workforce agency serving the local*
7 *area where the work will be performed, except*
8 *that nothing in this subparagraph shall require*
9 *the employer to file an interstate job order under*
10 *section 653 of title 20, Code of Federal Regula-*
11 *tions. The State workforce agency shall post the*
12 *job order on its official agency website for a min-*
13 *imum of 30 days and not later than 3 days after*
14 *receipt using the employment statistics system*
15 *authorized under section 15 of the Wagner-*
16 *Peyser Act (29 U.S.C. 49l-2). The Secretary of*
17 *Labor shall include links to the official Web sites*
18 *of all State workforce agencies on a single*
19 *webpage of the official Web site of the Depart-*
20 *ment of Labor.*

21 “(C) *END OF RECRUITMENT REQUIRE-*
22 *MENT.*—*The requirement to recruit United*
23 *States workers shall terminate on the first day*
24 *that work begins for the H-2C worker.*

1 “(5) *OFFERS TO UNITED STATES WORKERS.*—
2 *The employer has offered or will offer the job for*
3 *which the H–2C worker is sought to any eligible*
4 *United States worker who—*

5 “(A) *applies;*

6 “(B) *is qualified for the job; and*

7 “(C) *will be available at the time and place*
8 *of need.*

9 *This requirement shall not apply to a United States*
10 *worker who applies for the job on or after the first*
11 *day that work begins for the H–2C worker.*

12 “(6) *PROVISION OF INSURANCE.*—*If the job for*
13 *which the H–2C worker is sought is not covered by*
14 *State workers’ compensation law, the employer will*
15 *provide, at no cost to the worker unless State law pro-*
16 *vides otherwise, insurance covering injury and disease*
17 *arising out of, and in the course of, the worker’s em-*
18 *ployment, which will provide benefits at least equal to*
19 *those provided under the State workers compensation*
20 *law for comparable employment.*

21 “(7) *REQUIREMENTS FOR PLACEMENT OF H–2C*
22 *WORKERS WITH OTHER EMPLOYERS.*—*A non-*
23 *immigrant who is admitted into the United States as*
24 *an H–2C worker may be transferred to another em-*

1 *ployer that has filed a petition under this subsection*
2 *and is in compliance with this section.*

3 *“(8) STRIKE OR LOCKOUT.—There is not a strike*
4 *or lockout in the course of a labor dispute which,*
5 *under regulations promulgated by the Secretary of*
6 *Agriculture, precludes the hiring of H–2C workers.*

7 *“(9) PREVIOUS VIOLATIONS.—The employer has*
8 *not, during the previous two-year period, employed*
9 *H–2C workers and knowingly violated a material*
10 *term or condition of approval with respect to the em-*
11 *ployment of domestic or nonimmigrant workers, as*
12 *determined by the Secretary of Agriculture after no-*
13 *tice and opportunity for a hearing.*

14 *“(c) PUBLIC EXAMINATION.—Not later than 1 working*
15 *day after the date on which a petition under this section*
16 *is filed, the employer shall make a copy of each such peti-*
17 *tion available for public examination, at the employer’s*
18 *principal place of business or worksite.*

19 *“(d) LIST.—*

20 *“(1) IN GENERAL.—The Secretary of Agriculture*
21 *shall maintain a list of the petitions filed under sub-*
22 *section (b), which shall—*

23 *“(A) be sorted by employer; and*

1 “(B) include the number of H-2C workers
2 sought, the wage rate, the period of intended em-
3 ployment, and the date of need for each alien.

4 “(2) AVAILABILITY.—The Secretary of Agri-
5 culture shall make the list available for public exam-
6 ination.

7 “(e) PETITIONING FOR ADMISSION.—

8 “(1) CONSIDERATION OF PETITIONS.—For peti-
9 tions filed and considered under subsection (b)—

10 “(A) the Secretary of Agriculture may not
11 require such petition to be filed more than 28
12 calendar days before the first date the employer
13 requires the labor or services of the H-2C work-
14 er;

15 “(B) unless the Secretary of Agriculture de-
16 termines that the petition is incomplete or obvi-
17 ously inaccurate, the Secretary, not later than 10
18 business days after the date on which such peti-
19 tion was filed, shall either approve or reject the
20 petition and provide the petitioner with notice of
21 such action by means ensuring same or next day
22 delivery; and

23 “(C) if the Secretary determines that the pe-
24 tition is incomplete or obviously inaccurate, the
25 Secretary shall—

1 “(i) *within 5 business days of receipt*
2 *of the petition, notify the petitioner of the*
3 *deficiencies to be corrected by means ensur-*
4 *ing same or next day delivery; and*

5 “(ii) *within 10 business days of receipt*
6 *of the corrected petition, approve or deny*
7 *the petition and provide the petitioner with*
8 *notice of such action by means ensuring*
9 *same or next day delivery.*

10 “(2) *PETITION AGREEMENTS.—By filing an H-*
11 *2C petition, a petitioner and each employer consents*
12 *to allow access to the site where the labor is being per-*
13 *formed to the Department of Agriculture and the De-*
14 *partment of Homeland Security for the purpose of in-*
15 *vestigations to determine compliance with H-2C re-*
16 *quirements and the immigration laws. Notwith-*
17 *standing any other provision of law, the Departments*
18 *of Agriculture and Homeland Security cannot dele-*
19 *gate their compliance functions to other agencies or*
20 *Departments.*

21 “(f) *ROLES OF AGRICULTURAL ASSOCIATIONS.—*

22 “(1) *PERMITTING FILING BY AGRICULTURAL AS-*
23 *SOCIATIONS.—A petition under subsection (b) to hire*
24 *an alien as a temporary agricultural worker may be*

1 *filed by an association of agricultural employers*
2 *which use agricultural services.*

3 “(2) *TREATMENT OF ASSOCIATIONS ACTING AS*
4 *EMPLOYERS.—If an association is a joint employer of*
5 *temporary agricultural workers, such workers may be*
6 *transferred among its members to perform agricul-*
7 *tural services of a temporary nature for which the pe-*
8 *tion was approved.*

9 “(3) *TREATMENT OF VIOLATIONS.—*

10 “(A) *INDIVIDUAL MEMBER.—If an indi-*
11 *vidual member of a joint employer association*
12 *violates any condition for approval with respect*
13 *to the member’s petition, the Secretary of Agri-*
14 *culture shall consider as an employer for pur-*
15 *poses of subsection (b)(9) and invoke penalties*
16 *pursuant to subsection (i) against only that*
17 *member of the association unless the Secretary of*
18 *Agriculture determines that the association or*
19 *other member participated in, had knowledge of,*
20 *or had reason to know of the violation.*

21 “(B) *ASSOCIATION OF AGRICULTURAL EM-*
22 *PLOYERS.—If an association representing agri-*
23 *cultural employers as a joint employer violates*
24 *any condition for approval with respect to the*
25 *association’s petition, the Secretary of Agri-*

1 *culture shall consider as an employer for pur-*
2 *poses of subsection (b)(9) and invoke penalties*
3 *pursuant to subsection (i) against only the asso-*
4 *ciation and not any individual member of the*
5 *association, unless the Secretary determines that*
6 *the member participated in, had knowledge of, or*
7 *had reason to know of the violation.*

8 “(g) *EXPEDITED ADMINISTRATIVE APPEALS.—The*
9 *Secretary of Agriculture shall promulgate regulations to*
10 *provide for an expedited procedure—*

11 “(1) *for the review of a denial of a petition*
12 *under this section by the Secretary; or*

13 “(2) *at the petitioner’s request, for a de novo ad-*
14 *ministrative hearing at which new evidence may be*
15 *introduced.*

16 “(h) *MISCELLANEOUS PROVISIONS.—*

17 “(1) *ENDORSEMENT OF DOCUMENTS.—The Sec-*
18 *retary of Homeland Security shall provide for the en-*
19 *dorsement of entry and exit documents of H–2C work-*
20 *ers as may be necessary to carry out this section and*
21 *to provide notice for purposes of section 274A.*

22 “(2) *FEEES.—*

23 “(A) *IN GENERAL.—The Secretary of Agri-*
24 *culture shall require, as a condition of approving*
25 *the petition, the payment of a fee, in accordance*

1 with subparagraph (B), to recover the reasonable
2 cost of processing petitions filed by employers or
3 associations of employers seeking H-2C workers
4 for jobs of a temporary or seasonal nature, but
5 may not require the payment of such fees to re-
6 cover the costs of processing petitions filed by
7 employers or associations of employers seeking
8 H-2C workers for jobs not of a temporary or sea-
9 sonal nature.

10 “(B) *FEE BY TYPE OF EMPLOYEE.*—

11 “(i) *SINGLE EMPLOYER.*—An employer
12 whose petition for temporary alien agricul-
13 tural workers is approved shall, for each ap-
14 proved petition, pay a fee that—

15 “(I) subject to subclause (II), is
16 equal to \$100 plus \$10 for each ap-
17 proved H-2C worker; and

18 “(II) does not exceed \$1,000.

19 “(ii) *ASSOCIATION.*—Each employer-
20 member of a joint employer association
21 whose petition for H-2C workers is ap-
22 proved shall, for each such approved peti-
23 tion, pay a fee that—

1 “(I) subject to subclause (II), is
2 equal to \$100 plus \$10 for each ap-
3 proved H-2C worker; and

4 “(II) does not exceed \$1,000.

5 “(iii) *LIMITATION ON ASSOCIATION*
6 *FEES.—A joint employer association under*
7 *clause (ii) shall not be charged a separate*
8 *fee.*

9 “(C) *METHOD OF PAYMENT.—The fees col-*
10 *lected under this paragraph shall be paid by*
11 *check or money order to the Department of Agri-*
12 *culture. In the case of employers of H-2C work-*
13 *ers that are members of a joint employer associa-*
14 *tion petitioning on their behalf, the aggregate*
15 *fees for all employers of H-2C workers under the*
16 *petition may be paid by 1 check or money order.*

17 “(i) *ENFORCEMENT.—*

18 “(1) *INVESTIGATIONS AND AUDITS.—The Sec-*
19 *retary of Agriculture shall be responsible for con-*
20 *ducting investigations and random audits of employ-*
21 *ers to ensure compliance with the requirements of the*
22 *H-2C program. All monetary fines levied against vio-*
23 *lating employers shall be paid to the Department of*
24 *Agriculture and used to enhance the Department of*
25 *Agriculture’s investigatory and auditing power.*

1 “(2) *FAILURE TO MEET CONDITIONS.*—If the
2 *Secretary of Agriculture finds, after notice and oppor-*
3 *tunity for a hearing, a failure to meet a condition of*
4 *subsection (b), or a material misrepresentation of fact*
5 *in a petition under subsection (b), the Secretary—*

6 “(A) *may impose such other administrative*
7 *remedies (including civil money penalties in an*
8 *amount not to exceed \$1,000 per violation) as*
9 *the Secretary determines to be appropriate; and*

10 “(B) *may disqualify the employer from the*
11 *employment of H-2C workers for a period of 1*
12 *year.*

13 “(3) *PENALTIES FOR WILLFUL FAILURE.*—If the
14 *Secretary of Agriculture finds, after notice and oppor-*
15 *tunity for a hearing, a willful failure to meet a mate-*
16 *rial condition of subsection (b), or a willful misrepre-*
17 *sentation of a material fact in a petition under sub-*
18 *section (b), the Secretary—*

19 “(A) *may impose such other administrative*
20 *remedies (including civil money penalties in an*
21 *amount not to exceed \$5,000 per violation) as*
22 *the Secretary determines to be appropriate;*

23 “(B) *may disqualify the employer from the*
24 *employment of H-2C workers for a period of 2*
25 *years;*

1 “(C) may, for a subsequent violation not
2 arising out of the prior incident, disqualify the
3 employer from the employment of H-2C workers
4 for a period of 5 years; and

5 “(D) may, for a subsequent violation not
6 arising out of the prior incident, permanently
7 disqualify the employer from the employment of
8 H-2C workers.

9 “(4) *PENALTIES FOR DISPLACEMENT OF UNITED*
10 *STATES WORKERS.*—If the Secretary of Agriculture
11 finds, after notice and opportunity for a hearing, a
12 willful failure to meet a material condition of sub-
13 section (b) or a willful misrepresentation of a mate-
14 rial fact in a petition under subsection (b), in the
15 course of which failure or misrepresentation the em-
16 ployer displaced a United States worker employed by
17 the employer during the period of employment of the
18 H-2C worker or during the 30-day period preceding
19 such period of employment, the Secretary—

20 “(A) 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 determines to be appropriate;

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

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

7 “(j) *FAILURE TO PAY WAGES OR REQUIRED BENE-*
8 *FITS.—*

9 “(1) *ASSESSMENT.—If the Secretary of Agri-*
10 *culture finds, after notice and opportunity for a hear-*
11 *ing, that the employer has failed to provide the bene-*
12 *fits, wages, and working conditions attested by the*
13 *employer under subsection (b), the Secretary shall as-*
14 *sess payment of back wages, or such other required*
15 *benefits, due any United States worker or H-2C*
16 *worker employed by the employer in the specific em-*
17 *ployment in question.*

18 “(2) *AMOUNT.—The back wages or other required*
19 *benefits described in paragraph (1)—*

20 “(A) shall be equal to the difference between
21 the amount that should have been paid and the
22 amount that was paid to such worker; and

23 “(B) shall be distributed to the worker to
24 whom such wages or benefits are due.

1 “(k) *MINIMUM WAGES, BENEFITS, AND WORKING CON-*
2 *DITIONS.*—

3 “(1) *PREFERENTIAL TREATMENT OF ALIENS*
4 *PROHIBITED.*—

5 “(A) *IN GENERAL.*—*Each employer seeking*
6 *to hire United States workers shall offer such*
7 *workers not less than the same benefits, wages,*
8 *and working conditions that the employer is of-*
9 *fering, intends to offer, or will provide to H-2C*
10 *workers. No job offer may impose on United*
11 *States workers any restrictions or obligations*
12 *which will not be imposed on the employer’s H-*
13 *2C workers.*

14 “(B) *INTERPRETATION.*—*Every interpreta-*
15 *tion and determination made under this section*
16 *or under any other law, regulation, or interpre-*
17 *tative provision regarding the nature, scope, and*
18 *timing of the provision of these and any other*
19 *benefits, wages, and other terms and conditions*
20 *of employment shall be made so that—*

21 “(i) *the services of workers to their em-*
22 *ployers and the employment opportunities*
23 *afforded to workers by the employers, in-*
24 *cluding those employment opportunities*
25 *that require United States workers or H-2C*

1 *workers to travel or relocate in order to ac-*
2 *cept or perform employment—*

3 “(I) *mutually benefit such work-*
4 *ers, as well as their families, and em-*
5 *ployers; and*

6 “(II) *principally benefit neither*
7 *employer nor employee; and*

8 “(ii) *employment opportunities within*
9 *the United States benefit the United States*
10 *economy.*

11 “(2) *REQUIRED WAGES.—*

12 “(A) *IN GENERAL.—Each employer peti-*
13 *tioning for workers under subsection (b) shall*
14 *pay not less than the greater of—*

15 “(i) *the prevailing wage level for the*
16 *occupational classification in the area of*
17 *employment; or*

18 “(ii) *the applicable Federal, State, or*
19 *local minimum wage, whichever is greatest.*

20 “(B) *SPECIAL RULE.—An employer can*
21 *utilize a piece rate or other alternative wage*
22 *payment system as long as the employer guaran-*
23 *tees each worker a wage rate that equals or ex-*
24 *ceeds the amount required under subparagraph*
25 *(A).*

1 “(3) *EMPLOYMENT GUARANTEE.*—

2 “(A) *IN GENERAL.*—

3 “(i) *REQUIREMENT.*—*Each employer*
4 *petitioning for workers under subsection (b)*
5 *shall guarantee to offer the worker employ-*
6 *ment for the hourly equivalent of not less*
7 *than 50 percent of the work hours during*
8 *the total anticipated period of employment,*
9 *beginning with the first work day after the*
10 *arrival of the worker at the place of employ-*
11 *ment and ending on the expiration date*
12 *specified in the job offer.*

13 “(ii) *FAILURE TO MEET GUAR-*
14 *ANTEE.*—*If the employer affords the United*
15 *States worker or the H-2C worker less em-*
16 *ployment than that required under this sub-*
17 *paragraph, the employer shall pay such*
18 *worker the amount which the worker would*
19 *have earned if the worker had worked for*
20 *the guaranteed number of hours.*

21 “(iii) *PERIOD OF EMPLOYMENT.*—*For*
22 *purposes of this subparagraph, the term ‘pe-*
23 *riod of employment’ means the total number*
24 *of anticipated work hours and workdays de-*

1 scribed in the job offer and shall exclude the
2 worker's Sabbath and Federal holidays.

3 “(B) *CALCULATION OF HOURS.*—Any hours
4 which the worker fails to work, up to a max-
5 imum of the number of hours specified in the job
6 offer for a work day, when the worker has been
7 offered an opportunity to do so, and all hours of
8 work actually performed (including voluntary
9 work in excess of the number of hours specified
10 in the job offer in a work day, on the worker's
11 Sabbath, or on Federal holidays) may be counted
12 by the employer in calculating whether the pe-
13 riod of guaranteed employment has been met.

14 “(C) *LIMITATION.*—If the worker volun-
15 tarily abandons employment before the end of the
16 contract period, or is terminated for cause, the
17 worker is not entitled to the 50 percent guarantee
18 described in subparagraph (A).

19 “(D) *TERMINATION OF EMPLOYMENT.*—

20 “(i) *IN GENERAL.*—If, before the expi-
21 ration of the period of employment specified
22 in the job offer, the services of the worker
23 are no longer required due to any form of
24 natural disaster, including flood, hurricane,
25 freeze, earthquake, fire, drought, plant or

1 *animal disease, pest infestation, regulatory*
2 *action, or any other reason beyond the con-*
3 *trol of the employer before the employment*
4 *guarantee in subparagraph (A) is fulfilled,*
5 *the employer may terminate the worker's*
6 *employment.*

7 “(i) *REQUIREMENTS.—If a worker's*
8 *employment is terminated under clause (i),*
9 *the employer shall—*

10 “(I) *fulfill the employment guar-*
11 *antee in subparagraph (A) for the*
12 *work days that have elapsed during the*
13 *period beginning on the first work day*
14 *after the arrival of the worker and end-*
15 *ing on the date on which such employ-*
16 *ment is terminated;*

17 “(II) *make efforts to transfer the*
18 *United States worker to other com-*
19 *parable employment acceptable to the*
20 *worker; and*

21 “(III) *not later than 24 hours*
22 *after termination, notify (or have an*
23 *association acting as an agent for the*
24 *employer notify) the Secretary of*

1 *Homeland Security of such termi-*
2 *nation.*

3 “(l) *PERIOD OF ADMISSION.—*

4 “(1) *IN GENERAL.—An H-2C worker shall be*
5 *admitted for a period of employment, not to exceed 18*
6 *months (or 36 months as provided in subsection*
7 *(o)(3)(A) for a worker employed in a job that is not*
8 *of a temporary or seasonal nature), and except for*
9 *shepherders, that includes—*

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

13 “(B) *a period of not more than 14 days fol-*
14 *lowing the period of employment for the purpose*
15 *of departure or a period of not more than 30*
16 *days following the period of employment for the*
17 *purpose of seeking a subsequent offer of employ-*
18 *ment by an employer pursuant to a petition*
19 *under this section (or pursuant to at-will em-*
20 *ployment pursuant to section 218B during such*
21 *time as that section is in effect). An H-2C work-*
22 *er who does not depart within these periods will*
23 *be considered to have failed to maintain non-*
24 *immigrant status as an H-2C worker and shall*
25 *be subject to removal under section*

1 237(a)(1)(C)(i). Such alien shall be considered to
2 be inadmissible pursuant to section
3 212(a)(9)(B)(i) for having been unlawfully
4 present, with the alien considered to have been
5 unlawfully present for 180 days as of the 15th
6 day following the period of employment for the
7 purpose of departure or as of the 31st day fol-
8 lowing the period of employment for the purpose
9 of seeking a subsequent offer of employment
10 where the alien has not found at-will employ-
11 ment with a registered agricultural employer
12 pursuant to section 218B or employment pursu-
13 ant to this section.

14 “(2) *EMPLOYMENT LIMITATION.*—An alien may
15 not be employed during the 14-day period described
16 in paragraph (1)(B) except in the employment for
17 which the alien is otherwise authorized.

18 “(m) *ABANDONMENT OF EMPLOYMENT.*—

19 “(1) *IN GENERAL.*—An alien admitted or pro-
20 vided status under section 101(a)(15)(H)(ii)(c) who
21 abandons the employment which was the basis for
22 such admission or status—

23 “(A) shall have failed to maintain non-
24 immigrant status as an H-2C worker;

1 “(B) shall depart the United States or be
2 subject to removal under section 237(a)(1)(C)(i);
3 and

4 “(C) shall be considered to be inadmissible
5 pursuant to section 212(a)(9)(B)(i) for having
6 been unlawfully present, with the alien consid-
7 ered to have been unlawfully present for 180
8 days as of the 15th day following the date of the
9 abandonment of employment.

10 “(2) *REPORT BY EMPLOYER.*—Not later than 24
11 hours after an employer learns of the abandonment of
12 employment by an H-2C worker, the employer or as-
13 sociation acting as an agent for the employer, shall
14 notify the Secretary of Homeland Security of such
15 abandonment.

16 “(3) *REMOVAL.*—The Secretary of Homeland Se-
17 curity shall promptly remove from the United States
18 any H-2C worker who violates any term or condition
19 of the worker’s nonimmigrant status.

20 “(4) *VOLUNTARY TERMINATION.*—Notwith-
21 standing paragraph (1), an alien may voluntarily
22 terminate the alien’s employment if the alien prompt-
23 ly departs the United States upon termination of such
24 employment. An alien who voluntarily terminates the
25 alien’s employment and who does not depart within

1 14 days shall be considered to have failed to maintain
2 nonimmigrant status as an H-2C worker and shall
3 be subject to removal under section 237(a)(1)(C)(i).
4 Such alien shall be considered to be inadmissible pur-
5 suant to section 212(a)(9)(B)(i) for having been un-
6 lawfully present, with the alien considered to have
7 been unlawfully present for 180 days as of the 15th
8 day following the voluntary termination of employ-
9 ment.

10 “(n) *REPLACEMENT OF ALIEN.*—An employer may
11 designate an eligible alien to replace an H-2C worker who
12 abandons employment notwithstanding the numerical limi-
13 tation found in section 214(g)(1)(C).

14 “(o) *EXTENSION OF STAY OF H-2C WORKERS IN THE*
15 *UNITED STATES.*—

16 “(1) *EXTENSION OF STAY.*—If an employer seeks
17 approval to employ an H-2C worker who is lawfully
18 present in the United States, the petition filed by the
19 employer or an association pursuant to subsection (b)
20 shall request an extension of the alien’s stay and, if
21 applicable, a change in the alien’s employment.

22 “(2) *WORK AUTHORIZATION UPON FILING PETI-*
23 *TION FOR EXTENSION OF STAY.*—

24 “(A) *IN GENERAL.*—An alien who is law-
25 fully present in the United States on the date of

1 *the filing of a petition to extend the stay of the*
2 *alien may commence or continue the employment*
3 *described in a petition under paragraph (1)*
4 *until and unless the petition is denied. The em-*
5 *ployer shall provide a copy of the employer's pe-*
6 *tition for extension of stay to the alien. The alien*
7 *shall keep the petition with the alien's identifica-*
8 *tion and employment eligibility document, as*
9 *evidence that the petition has been filed and that*
10 *the alien is authorized to work in the United*
11 *States.*

12 “(B) *EMPLOYMENT ELIGIBILITY DOCU-*
13 *MENT.—Upon approval of a petition for an ex-*
14 *tension of stay or change in the alien's author-*
15 *ized employment, the Secretary of Homeland Se-*
16 *curity shall provide a new or updated employ-*
17 *ment eligibility document to the alien indicating*
18 *the new validity date, after which the alien is*
19 *not required to retain a copy of the petition.*

20 “(C) *FILE DEFINED.—In this paragraph,*
21 *the term ‘file’ means sending the petition by cer-*
22 *tified mail via the United States Postal Service,*
23 *return receipt requested, or delivering by guar-*
24 *anteed commercial delivery which will provide*
25 *the employer with a documented acknowledgment*

1 *of the date of receipt of the petition for an exten-*
2 *sion of stay.*

3 “(3) *LIMITATION ON AN INDIVIDUAL’S STAY IN*
4 *STATUS.—*

5 “(A) *MAXIMUM PERIOD.—The maximum*
6 *continuous period of authorized status as an H-*
7 *2C worker (including any extensions) is 18*
8 *months for a worker employed in a job that is*
9 *of a temporary or seasonal nature. For an H-*
10 *2C worker employed in a job that is not of a*
11 *temporary or seasonal nature, the initial max-*
12 *imum continuous period of authorized status is*
13 *36 months and subsequent maximum continuous*
14 *periods of authorized status are 18 months.*
15 *There is no maximum continuous period of au-*
16 *thorized status for a shepherd or for an H-2C*
17 *worker who returns to the worker’s permanent*
18 *residence outside the United States each day.*

19 “(B) *REQUIREMENT TO REMAIN OUTSIDE*
20 *THE UNITED STATES.—In the case of an alien*
21 *outside the United States who was employed in*
22 *a job of a temporary or seasonal nature pursu-*
23 *ant to section 101(a)(15)(H)(ii)(c) whose period*
24 *of authorized status as an H-2C worker (includ-*
25 *ing any extensions) has expired, the alien may*

1 *not again be admitted to the United States as an*
2 *H-2C worker unless the alien has remained out-*
3 *side the United States for a continuous period*
4 *equal to at least $\frac{1}{6}$ the duration of the alien's*
5 *previous period of authorized status as an H-2C*
6 *worker. For an alien outside the United States*
7 *who was employed in a job not of a temporary*
8 *or seasonal nature pursuant to section*
9 *101(a)(15)(H)(ii)(c) whose period of authorized*
10 *status as an H-2C worker (including any exten-*
11 *sions) has expired, the alien may not again be*
12 *admitted to the United States as an H-2C work-*
13 *er unless the alien has remained outside the*
14 *United States for a continuous period equal to at*
15 *least the lesser of $\frac{1}{6}$ the duration of the alien's*
16 *previous period of authorized status as an H-2C*
17 *worker or 3 months. There is no requirement to*
18 *remain outside the United States for a sheep-*
19 *herder or for an H-2C worker who returns to the*
20 *worker's permanent residence outside the United*
21 *States each day.*

22 “(p) *ADJUSTMENT OF STATUS.*—*Notwithstanding any*
23 *other provision of law, an alien who is unlawfully present*
24 *in the United States on April 25, 2013, is eligible to adjust*
25 *status to that of an H-2C worker.*

1 “(q) *TRUST FUND TO ASSURE WORKER RETURN.*—

2 “(1) *ESTABLISHMENT.*—*There is established in*
3 *the Treasury of the United States a trust fund (in*
4 *this section referred to as the ‘Trust Fund’)* for the
5 *purpose of providing a monetary incentive for H–2C*
6 *workers to return to their country of origin upon ex-*
7 *piration of their visas.*

8 “(2) *WITHHOLDING OF WAGES; PAYMENT INTO*
9 *THE TRUST FUND.*—

10 “(A) *IN GENERAL.*—*Notwithstanding the*
11 *Fair Labor Standards Act of 1938 (29 U.S.C.*
12 *201 et seq.), all employers of H–2C workers shall*
13 *withhold from the wages of the workers an*
14 *amount equivalent to 10 percent of the wages of*
15 *each worker and pay such withheld amount into*
16 *the Trust Fund.*

17 “(B) *JOBS THAT ARE NOT OF A TEMPORARY*
18 *OR SEASONAL NATURE.*—*Employers of H–2C*
19 *workers employed in jobs that are not of a tem-*
20 *porary or seasonal nature shall pay into the*
21 *Trust Fund an amount equivalent to the Federal*
22 *tax on the wages paid to H–2C workers that the*
23 *employer would be obligated to pay under chap-*
24 *ters 21 and 23 of the Internal Revenue Code of*

1 1986 had the H-2C workers been subject to such
2 chapters.

3 Amounts withheld under this paragraph shall be
4 maintained in such interest bearing account with
5 such a financial institution as the Secretary of Agri-
6 culture shall specify.

7 “(3) *DISTRIBUTION OF FUNDS.*—Amounts paid
8 into the Trust Fund on behalf of an H-2C worker,
9 and held pursuant to paragraph (2)(A) and interest
10 earned thereon, shall be paid by the Secretary of State
11 to the worker if—

12 “(A) the worker applies to the Secretary of
13 State (or the designee of such Secretary) for pay-
14 ment within 120 days of the expiration of the
15 alien’s last authorized stay in the United States
16 as an H-2C worker at a United States embassy
17 or consulate in the worker’s home country;

18 “(B) in such application the worker estab-
19 lishes that the worker has complied with the
20 terms and conditions of the H-2C program; and

21 “(C) in connection with the application, the
22 H-2C worker confirms their identity.

23 “(4) *ADMINISTRATIVE EXPENSES.*—The amounts
24 paid into the Trust Fund and held pursuant to para-
25 graph (2)(B), and interest earned thereon, shall be

1 *paid to the Secretary of State, the Secretary of Agri-*
2 *culture, and the Secretary of Homeland Security in*
3 *amounts equivalent to the expenses incurred by such*
4 *officials in the administration of the H-2C program*
5 *not reimbursed pursuant to subsection (h)(2) or sec-*
6 *tion 218B(b).*

7 “(5) *LAW ENFORCEMENT.*—*Notwithstanding any*
8 *other provision of law, amounts paid into the Trust*
9 *Fund under paragraph (2), and interest earned there-*
10 *on, that are not needed to carry out paragraphs (3)*
11 *and (4) shall, to the extent provided in advance in*
12 *appropriations Acts, be made available until ex-*
13 *pended without fiscal year limitation to the Secretary*
14 *of Homeland Security to apprehend, detain, and re-*
15 *move aliens unlawfully present in the United States.*

16 “(r) *INVESTMENT OF TRUST FUND.*—

17 “(1) *IN GENERAL.*—*It shall be the duty of the*
18 *Secretary of the Treasury to invest such portion of the*
19 *Trust Fund as is not, in the Secretary’s judgment, re-*
20 *quired to meet current withdrawals. Such investments*
21 *may be made only in interest-bearing obligations of*
22 *the United States or in obligations guaranteed as to*
23 *both principal and interest by the United States. For*
24 *such purpose, such obligations may be acquired—*

25 “(A) *on original issue at the price; or*

1 “(B) by purchase of outstanding obligations
2 at the market price.

3 The purposes for which obligations of the United
4 States may be issued under chapter 31 of title 31,
5 United States Code, are hereby extended to authorize
6 the issuance at par of special obligations exclusively
7 to the Trust Fund. Such special obligations shall bear
8 interest at a rate equal to the average rate of interest,
9 computed as to the end of the calendar month next
10 preceding the date of such issue, borne by all market-
11 able interest-bearing obligations of the United States
12 then forming a part of the public debt, except that
13 where such average rate is not a multiple of $\frac{1}{8}$ of 1
14 percent, the rate of interest of such special obligations
15 shall be the multiple of $\frac{1}{8}$ of 1 percent next lower
16 than such average rate. Such special obligations shall
17 be issued only if the Secretary of the Treasury deter-
18 mines that the purchase of other interest-bearing obli-
19 gations of the United States, or of obligations guaran-
20 teed as to both principal and interest by the United
21 States on original issue or at the market price, is not
22 in the public interest.

23 “(2) SALE OF OBLIGATION.—Any obligation ac-
24 quired by the Trust Fund (except special obligations
25 issued exclusively to the Trust Fund) may be sold by

1 *the Secretary of the Treasury at the market price, and*
2 *such special obligations may be redeemed at par plus*
3 *accrued interest.*

4 “(3) *CREDITS TO TRUST FUND.*—*The interest on,*
5 *and the proceeds from the sale or redemption of, any*
6 *obligations held in the Trust Fund shall be credited*
7 *to and form a part of the Trust Fund.*

8 “(4) *REPORT TO CONGRESS.*—*It shall be the*
9 *duty of the Secretary of the Treasury to hold the*
10 *Trust Fund, and (after consultation with the Sec-*
11 *retary of Agriculture) to report to the Congress each*
12 *year on the financial condition and the results of the*
13 *operations of the Trust Fund during the preceding*
14 *fiscal year and on its expected condition and oper-*
15 *ations during the next fiscal year. Such report shall*
16 *be printed as both a House and a Senate document*
17 *of the session of the Congress to which the report is*
18 *made.*

19 “(s) *AUDIT OF TRUST FUND.*—*The Secretary of Home-*
20 *land Security annually shall audit the Trust Fund.”.*

21 “(b) *AT-WILL EMPLOYMENT.*—*Chapter 2 of title II of*
22 *the Immigration and Nationality Act (8 U.S.C. 1181 et*
23 *seq.) is amended by inserting after section 218A (as inserted*
24 *by subsection (a)) the following:*

1 **“SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H-2C**
2 **WORKERS.**

3 “(a) *AT-WILL EMPLOYMENT.*—

4 “(1) *IN GENERAL.*—An H-2C worker may per-
5 form agricultural labor or services for any employer
6 that is designated as a ‘registered agricultural em-
7 ployer’ pursuant to subsection (b). However, an H-
8 2C worker may only perform labor or services pursu-
9 ant to this section if the worker is already lawfully
10 present in the United States as an H-2C worker, hav-
11 ing been admitted or otherwise provided non-
12 immigrant status pursuant to section 218A, and has
13 completed the period of employment specified in the
14 job offer the worker accepted pursuant to section 218A
15 or the employer has terminated the worker’s employ-
16 ment pursuant to section 218A(k)(3)(D)(i). An H-2C
17 worker who abandons the employment which was the
18 basis for admission or status pursuant to section
19 218A may not perform labor or services pursuant to
20 this section until the worker has returned to their
21 home country, been readmitted as an H-2C worker
22 pursuant to section 218A and has completed the pe-
23 riod of employment specified in the job offer the work-
24 er accepted pursuant to section 218A or the employer
25 has terminated the worker’s employment pursuant to
26 section 218A(k)(3)(D)(i).

1 “(2) *PERIOD OF STAY.*—An H-2C worker per-
2 forming such labor or services for a registered agricul-
3 tural employer is subject to the period of admission,
4 limitation of stay in status, and requirement to re-
5 main outside the United States contained in sub-
6 sections (l) and (o)(3) of section 218A.

7 “(3) *TERMINATION OF EMPLOYMENT.*—At the
8 conclusion of at-will employment with a registered
9 agricultural employer or the conclusion of employ-
10 ment pursuant to section 218A qualifying an H-2C
11 worker to perform at-will work pursuant to this sec-
12 tion, an H-2C worker shall find at-will employment
13 with a registered agricultural employer or employ-
14 ment pursuant to section 218A within 30 days or will
15 be considered to have failed to maintain non-
16 immigrant status as an H-2C worker and shall de-
17 part from the United States or be subject to removal
18 under section 237(a)(1)(C)(i). An H-2C worker who
19 does not so depart shall be considered to be inadmis-
20 sible pursuant to section 212(a)(9)(B)(i) for having
21 been unlawfully present, with the alien considered to
22 have been unlawfully present for 180 days as of the
23 31st day after conclusion of employment where the
24 alien has not found at-will employment with a reg-
25 istered agricultural employer or employment pursu-

1 *ant to section 218A. However, an alien may volun-*
2 *tarily terminate the alien’s employment if the alien*
3 *promptly departs the United States upon termination*
4 *of such employment. Either a registered agricultural*
5 *employer or an H–2C worker may voluntarily termi-*
6 *nate the worker’s at-will employment at any time.*
7 *The H–2C worker then shall find additional at-will*
8 *employment with a registered agricultural employer*
9 *or employment pursuant to section 218A within 30*
10 *days or will be considered to have failed to maintain*
11 *nonimmigrant status as an H–2C worker and shall*
12 *depart from the United States or be subject to removal*
13 *under section 237(a)(1)(C)(i). An H–2C worker who*
14 *does not so depart shall be considered to be inadmis-*
15 *sible pursuant to section 212(a)(9)(B)(i) for having*
16 *been unlawfully present, with the alien considered to*
17 *have been unlawfully present for 180 days as of the*
18 *31st day after conclusion of employment where the*
19 *alien has not found at-will employment with a reg-*
20 *istered agricultural employer or employment pursu-*
21 *ant to section 218A.*

22 “(b) REGISTERED AGRICULTURAL EMPLOYERS.—The
23 *Secretary of Agriculture shall establish a process to accept*
24 *and adjudicate applications by employers to be designated*
25 *as registered agricultural employers. The Secretary shall re-*

1 *quire, as a condition of approving the petition, the payment*
2 *of a fee to recover the reasonable cost of processing the appli-*
3 *cation. The Secretary shall designate an employer as a reg-*
4 *istered agricultural employer if the Secretary determines*
5 *that the employer—*

6 “(1) *employs individuals who perform agricul-*
7 *tural labor or services;*

8 “(2) *has not been subject to debarment from re-*
9 *ceiving future temporary agricultural labor certifi-*
10 *cations pursuant to section 101(a)(15)(H)(ii)(a)*
11 *within the last five years;*

12 “(3) *has not been subject to disqualification from*
13 *the employment of H-2C workers within the last five*
14 *years;*

15 “(4) *agrees to, if employing an H-2C worker*
16 *pursuant to this section, abide by the terms of the at-*
17 *testations contained in section 218A(b) and the obli-*
18 *gations contained in subsections (k) (excluding para-*
19 *graph (3) of such subsection) and (q) of section 218A*
20 *as if it had submitted a petition making those attesta-*
21 *tions and accepting those obligations; and*

22 “(5) *agrees to notify the Secretary of Agriculture*
23 *and the Secretary of Homeland Security each time it*
24 *employs an H-2C worker pursuant to this section*
25 *within 24 hours of the commencement of employment*

1 and each time an H-2C worker ceases employment
2 within 24 hours of the cessation of employment.

3 “(c) *LENGTH OF DESIGNATION.*—An employer’s des-
4 ignation as a registered agricultural employer shall be valid
5 for 3 years, and the designation can be extended upon re-
6 application for additional 3-year terms. The Secretary shall
7 revoke a designation before the expiration of its three year
8 term if the employer is subject to disqualification from the
9 employment of H-2C workers subsequent to being des-
10 ignated as a registered agricultural employer.

11 “(d) *ENFORCEMENT.*—The Secretary of Agriculture
12 shall be responsible for conducting investigations and ran-
13 dom audits of employers to ensure compliance with the re-
14 quirements of this section. All monetary fines levied against
15 violating employers shall be paid to the Department of Ag-
16 riculture and used to enhance the Department of Agri-
17 culture’s investigatory and audit power. The Secretary of
18 Agriculture’s enforcement powers and an employer’s liabil-
19 ity described in subsections (i) through (j) of section 218A
20 are applicable to employers employing H-2C workers pur-
21 suant to this section.

22 “(e) *REMOVAL OF H-2C WORKER.*—The Secretary of
23 Homeland Security shall promptly remove from the United
24 States any H-2C worker who is or had been employed pur-
25 suant to this section on an at-will basis who is who violates

1 *any term or condition of the worker’s nonimmigrant sta-*
2 *tus.”.*

3 (c) *PROHIBITION ON FAMILY MEMBERS.*—Section
4 *101(a)(15)(H) of the Immigration and Nationality Act (8*
5 *U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at*
6 *the end and inserting “him, except that no spouse or child*
7 *may be admitted under clause (ii)(c);”.*

8 (d) *NUMERICAL CAP.*—Section 214(g)(1) of the *Immi-*
9 *gration and Nationality Act (8 U.S.C. 1184(g)(1)) is*
10 *amended—*

11 (1) *in subparagraph (A), by striking “or” at the*
12 *end;*

13 (2) *in subparagraph (B), by striking the period*
14 *at the end and inserting “; or”; and*

15 (3) *by adding at the end the following:*

16 “(C) *under section 101(a)(15)(H)(ii)(c) may not*
17 *exceed 500,000, except that—*

18 “(i) *the Secretary of Agriculture may de-*
19 *crease such number based on—*

20 “(I) *a shortage or surplus of workers*
21 *performing agricultural labor or services;*

22 “(II) *growth or contraction in the*
23 *United States agricultural industry that*
24 *has increased or decreased the demand for*

1 *workers to perform agricultural labor or*
2 *services;*

3 “*(III) the level of unemployment and*
4 *underemployment of United States workers*
5 *(as defined in section 218A(a)(8)) in agri-*
6 *cultural labor or services;*

7 “*(IV) the number of nonimmigrant*
8 *workers employers sought during the pre-*
9 *ceding fiscal year pursuant to clause (a) or*
10 *(c) of section 101(a)(15)(H)(ii);*

11 “*(V) the number of H-2C workers (as*
12 *defined in section 218A(a)(5)) who in the*
13 *preceding fiscal year had to depart from the*
14 *United States or be subject to removal*
15 *under section 237(a)(1)(C)(i) because they*
16 *could not find additional at-will employ-*
17 *ment within 30 days pursuant to section*
18 *218B;*

19 “*(VI) the estimated number of United*
20 *States workers (as defined in section*
21 *218A(a)(8)) who worked in agriculture dur-*
22 *ing the preceding fiscal year pursuant to*
23 *clause (a) or (c) of section*
24 *101(a)(15)(H)(ii); and*

1 “(VII) the number of nonimmigrant
2 agricultural workers issued a visa or other-
3 wise provided nonimmigrant status pursu-
4 ant to clause (a) or (c) of section
5 101(a)(15)(H)(ii) during preceding fiscal
6 years who remain in the United States out
7 of compliance with the terms of their status;

8 “(i) during any fiscal year, the Secretary
9 of Agriculture may increase such number on an
10 emergency basis for severe shortages of agricul-
11 tural labor or services; and

12 “(iii) this numerical limitation shall not
13 apply to any alien who performed agricultural
14 labor or services in the United States for not
15 fewer than 575 hours, or 100 days in which the
16 alien was employed 5.75 or more hours per day,
17 pursuant to section 7 of the AG Act during the
18 2-year period beginning on the date of the enact-
19 ment of such Act and ending on the date that is
20 2 years after such date.”.

21 (e) *WAIVER OF BARS TO ADMISSIBILITY.*—Section
22 212(a)(9)(B)(v) of the Immigration and Nationality Act (8
23 U.S.C. 1182(a)(9)(B)(v)) is amended—

24 (1) by striking “The Attorney General” and in-
25 serting the following:

1 (g) *CLERICAL AMENDMENT.*—*The table of contents for*
 2 *the Immigration and Nationality Act (8 U.S.C. 1101 et*
 3 *seq.) is amended by inserting after the item relating to sec-*
 4 *tion 218 the following:*

“Sec. 218A. *Admission of temporary H-2C workers.*

“Sec. 218B. *At-will employment of temporary H-2C workers.*”

5 **SEC. 4. MEDIATION.**

6 *A nonimmigrant having status under section*
 7 *101(a)(15)(H)(ii)(c) of the Immigration and Nationality*
 8 *Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring a civil*
 9 *action for damages against the nonimmigrant’s employer,*
 10 *nor may any other attorney or individual bring a civil ac-*
 11 *tion for damages on behalf of such a nonimmigrant against*
 12 *the nonimmigrant’s employer, unless at least 90 days prior*
 13 *to bringing the action a request has been made to the Fed-*
 14 *eral Mediation and Conciliation Service to assist the par-*
 15 *ties in reaching a satisfactory resolution of all issues involv-*
 16 *ing all parties to the dispute and mediation has been at-*
 17 *tempted.*

18 **SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER**
 19 **PROTECTION.**

20 *Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-*
 21 *cultural Worker Protection Act (29 U.S.C. 1802(8)(B)(ii))*
 22 *is amended by striking “under sections*
 23 *101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and*
 24 *Nationality Act.” and inserting “under subclauses (a) and*

1 *(c) of section 101(a)(15)(H)(ii), and section 214(c), of the*
2 *Immigration and Nationality Act.”.*

3 **SEC. 6. BINDING ARBITRATION.**

4 *(a) APPLICABILITY.—Any H–2C worker may, as a*
5 *condition of employment with an employer, be subject to*
6 *mandatory binding arbitration and mediation of any*
7 *grievance relating to the employment relationship. An em-*
8 *ployer shall provide any such worker with notice of such*
9 *condition of employment at the time the job offer is made.*

10 *(b) ALLOCATION OF COSTS.—Any cost associated with*
11 *such arbitration and mediation process shall be equally di-*
12 *vided between the employer and the H–2C worker, except*
13 *that each party shall be responsible for the cost of its own*
14 *counsel, if any.*

15 *(c) DEFINITIONS.—As used in this section:*

16 *(1) The term “condition of employment” means*
17 *a term, condition, obligation, or requirement that is*
18 *part of the job offer, such as the term of employment,*
19 *the job responsibilities, the employee conduct stand-*
20 *ards, and the grievance resolution process, and to*
21 *which an applicant or prospective H–2C worker must*
22 *consent or accept in order to be hired for the position.*

23 *(2) The term “H–2C worker” means a non-*
24 *immigrant described in section 101(a)(15)(H)(ii)(c)*

1 of the Immigration and Nationality Act (8 U.S.C.
2 1101(a)(15)(ii)(c)).

3 **SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR**
4 **SERVICES BY ALIENS WHO ARE UNLAWFULLY**
5 **PRESENT.**

6 (a) *IN GENERAL.*—The Secretary of Homeland Secu-
7 rity shall waive the grounds of inadmissibility contained
8 in paragraphs (5), (6), (7), and (9)(B) of section 212(a),
9 and the grounds of deportability contained in subpara-
10 graphs (A) through (D) of paragraph (1), and paragraph
11 (3), of section 237(a), of the Immigration and Nationality
12 Act (8 U.S.C. 1101 et seq.) in the case of an alien described
13 in subsection (b) solely as may be necessary in order to
14 allow the alien to perform agricultural labor or services.
15 Such alien shall not be considered an unauthorized alien
16 for purposes of section 274A(h)(3) of the Immigration and
17 Nationality Act (8 U.S.C. 1324a(h)(3)) or to be unlawfully
18 present as long as the alien performs such labor or services.
19 Such aliens must thereafter remain outside the United
20 States for a period before they may be issued visas or other-
21 wise provided status as H-2C workers.

22 (b) *ALIENS DESCRIBED.*—An alien described in this
23 subsection is an alien who—

24 (1) was physically present in the United States
25 on April 25, 2013; and

1 (2) performed agricultural labor or services in
2 the United States for not fewer than 575 hours, or
3 100 days in which the alien was employed 5.75 or
4 more hours per day, during the 2-year period ending
5 on the date of the enactment of this Act.

6 **SEC. 8. ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND**
7 **REFUNDABLE TAX CREDITS.**

8 (a) *FEDERAL PUBLIC BENEFITS.*—*H-2C workers (as*
9 *defined in section 218A(a)(5) of the Immigration and Na-*
10 *tionality Act, as inserted by section 3(a) of this Act) and*
11 *aliens performing agricultural labor or services pursuant*
12 *to section 7 of this Act—*

13 (1) *are not entitled to the premium assistance*
14 *tax credit authorized under section 36B of the Inter-*
15 *nal Revenue Code of 1986;*

16 (2) *shall be subject to the rules applicable to in-*
17 *dividuals who are not lawfully present set forth in*
18 *subsection (e) of such section; and*

19 (3) *shall be subject to the rules applicable to in-*
20 *dividuals who are not lawfully present set forth in*
21 *section 1402(e) of the Patient Protection and Afford-*
22 *able Care Act (42 U.S.C. 18071(e)).*

23 (b) *REFUNDABLE TAX CREDITS.*—*H-2C workers (as*
24 *defined in section 218A(a)(5) of the Immigration and Na-*
25 *tionality Act, as inserted by section 3(a) of this Act) and*

1 *aliens performing agricultural labor or services pursuant*
2 *to section 7 of this Act shall not be allowed any credit under*
3 *section 24 or 32 of the Internal Revenue Code of 1986. In*
4 *the case of a joint return, no credit shall be allowed under*
5 *either such section if both spouses are such a worker or*
6 *alien.*

7 **SEC. 9. EFFECTIVE DATES; SUNSET; REGULATIONS.**

8 (a) *EFFECTIVE DATES.*—

9 (1) *IN GENERAL.*—*The amendments made by sec-*
10 *tions 2 and 4 through 6, and subsections (a) and (c)*
11 *through (f) of section 3, of this Act shall take effect*
12 *on the date that is 2 years after the date of the enact-*
13 *ment of this Act, and the Secretary of Agriculture*
14 *shall accept petitions to import an alien under sec-*
15 *tions 101(a)(15)(H)(ii)(c) and 218A of the Immigra-*
16 *tion and Nationality Act, as inserted by this Act, be-*
17 *ginning on such date.*

18 (2) *AT-WILL EMPLOYMENT.*—*The amendment*
19 *made by section 3(b) of this Act shall take effect on*
20 *the date that it becomes unlawful for any person or*
21 *other entity to hire, or to recruit or refer for a fee,*
22 *for employment in the United States an individual*
23 *(as provided in section 274A(a)(1) of the Immigra-*
24 *tion and Nationality Act) (8 U.S.C. 1324a(a)(1))*
25 *without participating in the E-Verify Program de-*

1 scribed in section 403(a) of the *Illegal Immigration*
2 *Reform and Immigrant Responsibility Act of 1996* (8
3 *U.S.C. 1324a note*) or an employment eligibility
4 verification system patterned on such program's
5 verification system, and only if at that time the *E-*
6 *Verify Program* (or another program patterned after
7 the *E-Verify Program*) responds to inquiries made by
8 such persons or entities by providing confirmation,
9 tentative nonconfirmation, and final nonconfirmation
10 of an individual's identity and employment eligibility
11 in such a way that indicates whether the individual
12 is eligible to be employed in all occupations or only
13 to perform agricultural labor or services pursuant to
14 section 101(a)(15)(H)(ii)(c) of the *Immigration and*
15 *Nationality Act* (as inserted by this Act), and if the
16 latter, whether the nonimmigrant would be in compli-
17 ance with their maximum continuous period of au-
18 thorized status and requirement to remain outside the
19 *United States* pursuant to sections 218A and 218B of
20 such Act (as so added) and on what date the alien
21 would cease to be in compliance with their maximum
22 continuous period of authorized status.

23 (3) *AGRICULTURAL LABOR OR SERVICES BY*
24 *ALIENS UNLAWFULLY PRESENT.*—Section 7 of this Act
25 shall take effect on the date of the enactment of this

1 *Act and shall cease to be in effect on the date that is*
2 *2 years after such date.*

3 **(b) OPERATION AND SUNSET OF THE H-2A PRO-**
4 **GRAM.—**

5 **(1) APPLICATION OF EXISTING REGULATIONS.—**
6 *The Department of Labor H-2A program regulations*
7 *published at 73 Federal Register 77110 et seq. (2008)*
8 *shall be in force for all petitions approved under sec-*
9 *tions 101(a)(15)(H)(ii)(c) and 218A of the Immigra-*
10 *tion and Nationality Act, as inserted by this Act, be-*
11 *ginning on the date of the enactment of this Act.*

12 **(2) ADJUSTMENT OF STATUS.—***Notwithstanding*
13 *any other provision of law, an alien who is unlaw-*
14 *fully present in the United States on the date of the*
15 *enactment of this Act is eligible to adjust status to*
16 *that of an alien described in section*
17 *101(a)(15)(H)(ii)(a) of the Immigration and Nation-*
18 *ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) beginning*
19 *on the date of the enactment of this Act and ending*
20 *on the date that is 2 years after the date of the enact-*
21 *ment of this Act.*

22 **(3) SUNSET.—***Beginning on the date that is 2*
23 *years after the date of the enactment of this Act, no*
24 *new petition to import an alien under sections*
25 *101(a)(15)(H)(ii)(a) and 218 of the Immigration and*

1 *Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a); 8*
2 *U.S.C. 1188) shall be accepted.*

3 (c) *REGULATIONS.*—*Not later than 18 months after the*
4 *date of the enactment of this Act, the Secretary of Agri-*
5 *culture shall promulgate regulations, in accordance with the*
6 *notice and comment provisions of section 553 of title 5,*
7 *United States Code, to implement the Secretary’s duties*
8 *under this Act.*

Union Calendar No. 506

113TH CONGRESS
2^D SESSION

H. R. 1773

[Report No. 113-674, Part I]

A BILL

To create a nonimmigrant H-2C work visa program for agricultural workers, and for other purposes.

DECEMBER 12, 2014

Reported from the Committee on the Judiciary with an amendment

DECEMBER 12, 2014

The Committees on Education and the Workforce and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed