

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.

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## 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

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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”.

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

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

5 “(9) An alien counted toward the numerical limita-  
6 tions of paragraph (1)(B) during any one of the 3 fiscal  
7 years prior to the submission of a petition for a non-  
8 immigrant worker described in section  
9 101(a)(15)(H)(ii)(b) shall not be counted toward such lim-  
10 itation for the fiscal year in which the petition is ap-  
11 proved.”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendment in sub-  
14 section (a) shall take effect as if enacted on October  
15 1, 2004, and shall expire on October 1, 2006.

16 (2) IMPLEMENTATION.—Not later than the date  
17 of enactment of this Act, the Secretary of Homeland  
18 Security shall begin accepting and processing peti-  
19 tions filed on behalf of aliens described in section  
20 101(a)(15)(H)(ii)(b), in a manner consistent with  
21 this Act and the amendments made by this Act.

22 **SEC. 3. FRAUD PREVENTION AND DETECTION FEE.**

23 (a) IMPOSITION OF FEE.—Section 214(c) of the Im-  
24 migration and Nationality Act (8 U.S.C. 1184(c)), as  
25 amended by section 426(a) of division J of the Consoli-

1 dated Appropriations Act, 2005 (Public Law 108–447),  
2 is amended by adding at the end the following:

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

8 “(B) The amount of the fee imposed under subpara-  
9 graph (A) shall be \$150.”.

10 (b) USE OF FEES.—

11 (1) FRAUD PREVENTION AND DETECTION AC-  
12 COUNT.—Subsection (v) of section 286 of the Immi-  
13 gration and Nationality Act (8 U.S.C. 1356), as  
14 added by section 426(b) of division J of the Consoli-  
15 dated Appropriations Act, 2005 (Public Law 108–  
16 447), is amended—

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

20 (B) in paragraph (1), as amended by sub-  
21 paragraph (A), by striking “section 214(c)(12)”  
22 and inserting “paragraph (12) or (13) of sec-  
23 tion 214(c)”;

24 (C) in paragraphs (2)(A)(i) and (2)(B), as  
25 amended by subparagraph (A), by striking

1 “(H)(i)” each place it appears and inserting  
 2 “(H)(i), (H)(ii),”; and

3 (D) in paragraph (2)(D), as amended by  
 4 subparagraph (A), by inserting before the pe-  
 5 riod at the end “or for programs and activities  
 6 to prevent and detect fraud with respect to peti-  
 7 tions under paragraph (1) or (2)(A) of section  
 8 214(c) to grant an alien nonimmigrant status  
 9 described in section 101(a)(15)(H)(ii)”.

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

13 (c) EFFECTIVE DATE.—The amendments made by  
 14 subsections (a) and (b) shall take effect on October 1,  
 15 2005.

16 **SEC. 4. SANCTIONS.**

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

21 “(14)(A) If the Secretary of Homeland Security  
 22 finds, after notice and an opportunity for a hearing, a sub-  
 23 stantial failure to meet any of the conditions of the peti-  
 24 tion to admit or otherwise provide status to a non-  
 25 immigrant worker under section 101(a)(15)(H)(ii)(b) or

1 a willful misrepresentation of a material fact in such peti-  
2 tion—

3 “(i) the Secretary of Homeland Security may,  
4 in addition to any other remedy authorized by law,  
5 impose such administrative remedies (including civil  
6 monetary penalties in an amount not to exceed  
7 \$10,000 per violation) as the Secretary of Homeland  
8 Security determines to be appropriate; and

9 “(ii) the Secretary of Homeland Security may  
10 deny petitions filed with respect to that employer  
11 under section 204 or paragraph (1) of this sub-  
12 section during a period of at least 1 year but not  
13 more than 5 years for aliens to be employed by the  
14 employer.

15 “(B) The Secretary of Homeland Security may dele-  
16 gate to the Secretary of Labor, with the agreement of the  
17 Secretary of Labor, any of the authority given to the Sec-  
18 retary of Homeland Security under subparagraph (A)(i).

19 “(C) In determining the level of penalties to be as-  
20 sessed under subparagraph (A), the highest penalties shall  
21 be reserved for willful failures to meet any of the condi-  
22 tions of the petition that involve harm to United States  
23 workers.

24 “(D) In this paragraph, the term ‘substantial failure’  
25 means the willful failure to comply with the requirements

1 of this section that constitutes a significant deviation from  
 2 the terms and conditions of a petition.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
 4 subsection (a) shall take effect on October 1, 2005.

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

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

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

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

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

23 (1) by striking “Attorney General” each place  
 24 that term appears and inserting “Secretary of  
 25 Homeland Security”; and

1           (2) by adding at the end the following new sub-  
2       section:

3       “(d) PROVISION OF INFORMATION.—

4           “(1) QUARTERLY NOTIFICATION.—Beginning  
5       not later than March 1, 2006, the Secretary of  
6       Homeland Security shall notify, on a quarterly basis,  
7       the Committee on the Judiciary of the Senate and  
8       the Committee on the Judiciary of House of Rep-  
9       resentatives of the number of aliens who during the  
10      preceding 1-year period—

11           “(A) were issued visas or otherwise pro-  
12      vided nonimmigrant status under section  
13      101(a)(15)(H)(ii)(b) of the Immigration and  
14      Nationality Act (8 U.S.C.  
15      1101(a)(15)(H)(ii)(b)); or

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

18       “(2) ANNUAL SUBMISSION.—Beginning in fiscal  
19      year 2007, the Secretary of Homeland Security shall  
20      submit, on an annual basis, to the Committees on  
21      the Judiciary of the House of Representatives and  
22      the Senate—

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

1           vided nonimmigrant status under section  
2           101(a)(15)(H)(ii)(b) of the Immigration and  
3           Nationality Act (8 U.S.C.  
4           1101(a)(15)(H)(ii)(b)) during the previous fis-  
5           cal year;

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

10          “(C) the number of aliens who were pro-  
11          vided nonimmigrant status under such section  
12          during both such fiscal year and the preceding  
13          fiscal year.

14          “(3) INFORMATION MAINTAINED BY STATE.—If  
15          the Secretary of Homeland Security determines that  
16          information maintained by the Secretary of State is  
17          required to make a submission described in para-  
18          graph (1) or (2), the Secretary of State shall provide  
19          such information to the Secretary of Homeland Se-  
20          curity upon request.”.

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