

AMENDMENT TO H.R. 6136
OFFERED BY MR. GOODLATTE OF VIRGINIA

Add at the end of division B the following:

1 **TITLE VI—AGRICULTURAL**
2 **WORKER REFORM**

3 **SEC. 6101. SHORT TITLE.**

4 This title may be cited as—

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

6 (2) the “AG Act”.

7 **SEC. 6102. H-2C TEMPORARY AGRICULTURAL WORK VISA**
8 **PROGRAM.**

9 (a) **IN GENERAL.**—Section 101(a)(15)(H) of the Im-
10 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H))
11 is amended by striking “; or (iii)” and inserting “, or (c)
12 who is coming temporarily to the United States to perform
13 agricultural labor or services; or (iii)”.

14 (b) **DEFINITION.**—Section 101(a) of such Act (8
15 U.S.C. 1101(a)) is amended by adding at the end the fol-
16 lowing:

17 “(53) The term ‘agricultural labor or services’ has
18 the meaning given such term by the Secretary of Agri-
19 culture in regulations and includes—

1 “(A) agricultural labor as defined in section
2 3121(g) of the Internal Revenue Code of 1986;

3 “(B) agriculture as defined in section 3(f) of
4 the Fair Labor Standards Act of 1938 (29 U.S.C.
5 203(f));

6 “(C) the handling, planting, drying, packing,
7 packaging, processing, freezing, or grading prior to
8 delivery for storage of any agricultural or horti-
9 cultural commodity in its unmanufactured state;

10 “(D) all activities required for the preparation,
11 processing or manufacturing of a product of agri-
12 culture (as such term is defined in such section
13 3(f)), or fish or shellfish, for further distribution;

14 “(E) forestry-related activities; and

15 “(F) aquaculture activities,

16 except that in regard to labor or services consisting of
17 meat or poultry processing, the term ‘agricultural labor
18 or services’ only includes the killing of animals and the
19 breakdown of their carcasses.”.

20 **SEC. 6103. ADMISSION OF TEMPORARY H-2C WORKERS.**

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

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

2 “(a) DEFINITIONS.—In this section and section
3 218B:

4 “(1) DISPLACE.—The term ‘displace’ means to
5 lay off a United States worker from the job for
6 which H-2C workers are sought.

7 “(2) JOB.—The term ‘job’ refers to all posi-
8 tions with an employer that—

9 “(A) involve essentially the same respon-
10 sibilities;

11 “(B) are held by workers with substan-
12 tially equivalent qualifications and experience;
13 and

14 “(C) are located in the same place or
15 places of employment.

16 “(3) EMPLOYER.—The term ‘employer’ includes
17 a single or joint employer, including an association
18 acting as a joint employer with its members, who
19 hires workers to perform agricultural labor or serv-
20 ices.

21 “(4) FORESTRY-RELATED ACTIVITIES.—The
22 term ‘forestry-related activities’ includes tree plant-
23 ing, timber harvesting, logging operations, brush
24 clearing, vegetation management, herbicide applica-
25 tion, the maintenance of rights-of-way (including for
26 roads, trails, and utilities), regardless of whether

1 such right-of-way is on forest land, and the har-
2 vesting of pine straw.

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

6 “(6) LAY OFF.—

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

8 “(i) means to cause a worker’s loss of
9 employment, other than through a dis-
10 charge for inadequate performance, viola-
11 tion of workplace rules, cause, voluntary
12 departure, voluntary retirement, or the ex-
13 piration of a grant or contract (other than
14 a temporary employment contract entered
15 into in order to evade a condition described
16 in paragraph (4) of subsection (b)); and

17 “(ii) does not include any situation in
18 which the worker is offered, as an alter-
19 native to such loss of employment, a simi-
20 lar position with the same employer at
21 equivalent or higher wages and benefits
22 than the position from which the employee
23 was discharged, regardless of whether or
24 not the employee accepts the offer.

1 “(B) CONSTRUCTION.—Nothing in this
2 paragraph is intended to limit an employee’s
3 rights under a collective bargaining agreement
4 or other employment contract.

5 “(7) UNITED STATES WORKER.—The term
6 ‘United States worker’ means any worker who is—

7 “(A) a citizen or national of the United
8 States; or

9 “(B) an alien who is lawfully admitted for
10 permanent residence, is admitted as a refugee
11 under section 207, or is granted asylum under
12 section 208.

13 “(8) SPECIAL PROCEDURES INDUSTRY.—The
14 term ‘special procedures industry’ includes sheep-
15 herding, goat herding, and the range production of
16 livestock, itinerant commercial beekeeping and polli-
17 nation, itinerant animal shearing, and custom com-
18 bining and harvesting.

19 “(b) PETITION.—An employer that seeks to employ
20 aliens as H–2C workers under this section shall file with
21 the Secretary of Homeland Security a petition attesting
22 to the following:

23 “(1) OFFER OF EMPLOYMENT.—The employer
24 will offer employment to the aliens on a contractual
25 basis as H–2C workers under this section for a spe-

1 cific period of time during which the aliens may not
2 work on an at-will basis (as provided for in section
3 218B), and such contract shall only be required to
4 include a description of each place of employment,
5 period of employment, wages and other benefits to
6 be provided, and the duties of the positions.

7 “(2) TEMPORARY LABOR OR SERVICES.—

8 “(A) IN GENERAL.—The employer is seek-
9 ing to employ a specific number of H-2C work-
10 ers on a temporary basis and will provide com-
11 pensation to such workers at a wage rate no
12 less than that set forth in subsection (j)(2).

13 “(B) DEFINITION.—For purposes of this
14 paragraph, a worker is employed on a tem-
15 porary basis if the employer intends to employ
16 the worker for no longer than the time period
17 set forth in subsection (m)(1) (subject to the
18 exceptions in subsection (m)(3)).

19 “(3) BENEFITS, WAGES, AND WORKING CONDI-
20 TIONS.—The employer will provide, at a minimum,
21 the benefits, wages, and working conditions required
22 by subsection (k) to all workers employed in the job
23 for which the H-2C workers are sought.

24 “(4) NONDISPLACEMENT OF UNITED STATES
25 WORKERS.—The employer did not displace and will

1 not displace United States workers employed by the
2 employer during the period of employment of the H-
3 2C workers and during the 30-day period imme-
4 diately preceding such period of employment in the
5 job for which the employer seeks approval to employ
6 H-2C workers.

7 “(5) RECRUITMENT.—

8 “(A) IN GENERAL.—The employer—

9 “(i) conducted adequate recruitment
10 before filing the petition; and

11 “(ii) was unsuccessful in locating suf-
12 ficient numbers of willing and qualified
13 United States workers for the job for
14 which the H-2C workers are sought.

15 “(B) OTHER REQUIREMENTS.—The re-
16 cruitment requirement under subparagraph (A)
17 is satisfied if the employer places a local job
18 order with the State workforce agency serving
19 each place of employment, except that nothing
20 in this subparagraph shall require the employer
21 to file an interstate job order under section 653
22 of title 20, Code of Federal Regulations. The
23 State workforce agency shall post the job order
24 on its official agency website for a minimum of
25 30 days and not later than 3 days after receipt

1 using the employment statistics system author-
2 ized under section 15 of the Wagner-Peyser Act
3 (29 U.S.C. 491–2). The Secretary of Labor
4 shall include links to the official Web sites of all
5 State workforce agencies on a single webpage of
6 the official Web site of the Department of
7 Labor.

8 “(C) END OF RECRUITMENT REQUIRE-
9 MENT.—The requirement to recruit United
10 States workers for a job shall terminate on the
11 first day that work begins for the H–2C work-
12 ers.

13 “(6) OFFERS TO UNITED STATES WORKERS.—
14 The employer has offered or will offer the job for
15 which the H–2C workers are sought to any eligible
16 United States workers who—

17 “(A) apply;

18 “(B) are qualified for the job; and

19 “(C) will be available at the time, at each
20 place, and for the duration, of need.

21 This requirement shall not apply to United States
22 workers who apply for the job on or after the first
23 day that work begins for the H–2C workers.

24 “(7) PROVISION OF INSURANCE.—If the job for
25 which the H–2C workers are sought is not covered

1 by State workers' compensation law, the employer
2 will provide, at no cost to the workers unless State
3 law provides otherwise, insurance covering injury
4 and disease arising out of, and in the course of, the
5 workers' employment, which will provide benefits at
6 least equal to those provided under the State work-
7 ers compensation law for comparable employment.

8 “(8) STRIKE OR LOCKOUT.—The job that is the
9 subject of the petition is not vacant because the
10 former workers in that job are on strike or locked
11 out in the course of a labor dispute.

12 “(c) LIST.—

13 “(1) IN GENERAL.—The Secretary of Homeland
14 Security shall maintain a list of the petitions filed
15 under this subsection, which shall—

16 “(A) be sorted by employer; and

17 “(B) include the number of H-2C workers
18 sought, the wage rate, the period of employ-
19 ment, each place of employment, and the date
20 of need for each alien.

21 “(2) AVAILABILITY.—The Secretary of Home-
22 land Security shall make the list available for public
23 examination.

24 “(d) PETITIONING FOR ADMISSION.—

1 “(1) CONSIDERATION OF PETITIONS.—For peti-
2 tions filed and considered under this subsection—

3 “(A) the Secretary of Homeland Security
4 may not require such petition to be filed more
5 than 28 days before the first date the employer
6 requires the labor or services of H–2C workers;

7 “(B) within the appropriate time period
8 under subparagraph (C) or (D), the Secretary
9 of Homeland Security shall—

10 “(i) approve the petition;

11 “(ii) reject the petition; or

12 “(iii) determine that the petition is in-
13 complete or obviously inaccurate or that
14 the employer has not complied with the re-
15 quirements of subsection (b)(5)(A)(i)
16 (which the Secretary can ascertain by
17 verifying whether the employer has placed
18 a local job order as provided for in sub-
19 section (b)(5)(B));

20 “(C) if the Secretary determines that the
21 petition is incomplete or obviously inaccurate,
22 or that the employer has not complied with the
23 requirements of subsection (b)(5)(A)(i) (which
24 the Secretary can ascertain by verifying wheth-
25 er the employer has placed a local job order as

1 provided for in subsection (b)(5)(B)), the Sec-
2 retary shall—

3 “(i) within 5 business days of receipt
4 of the petition, notify the petitioner of the
5 deficiencies to be corrected by means en-
6 suring same or next day delivery; and

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

12 “(D) if the Secretary does not determine
13 that the petition is incomplete or obviously inac-
14 curate, the Secretary shall not later than 10
15 business days after the date on which such peti-
16 tion was filed, either approve or reject the peti-
17 tion and provide the petitioner with notice of
18 such action by means ensuring same or next
19 day delivery.

20 “(2) ACCESS.—By filing an H-2C petition, the
21 petitioner and each employer (if the petitioner is an
22 association that is a joint employer of workers who
23 perform agricultural labor or services) consent to
24 allow access to each place of employment to the De-
25 partment of Agriculture and the Department of

1 Homeland Security for the purpose of investigations
2 and audits to determine compliance with the immi-
3 gration laws (as defined in section 101(a)(17)).

4 “(3) CONFIDENTIALITY OF INFORMATION.—No
5 information contained in a non-fraudulent petition
6 filed by an employer pursuant to subsection (b)
7 which is not otherwise available to the Secretary of
8 Homeland Security may be used—

9 “(A) in a civil or criminal prosecution or
10 investigation of the petitioning employer under
11 section 274A or the Internal Revenue Code of
12 1986 for unlawful employment of an alien who
13 is the beneficiary of such petition; or

14 “(B) for the purpose of initiating or pro-
15 ceeding with removal proceedings with respect
16 to an alien who is the beneficiary of such peti-
17 tion, except in the case of an alien with respect
18 to whom a petition is denied.

19 “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

20 “(1) TREATMENT OF ASSOCIATIONS ACTING AS
21 EMPLOYERS.—If an association is a joint employer
22 of workers who perform agricultural labor or serv-
23 ices, H-2C workers may be transferred among its
24 members to perform the agricultural labor or serv-

1 ices on a temporary basis for which the petition was
2 approved.

3 “(2) TREATMENT OF VIOLATIONS.—

4 “(A) INDIVIDUAL MEMBER.—If an indi-
5 vidual member of an association that is a joint
6 employer commits a violation described in para-
7 graph (2) or (3) of subsection (h) or subsection
8 (i)(1), the Secretary of Agriculture shall invoke
9 penalties pursuant to subsections (h) and (i)
10 against only that member of the association un-
11 less the Secretary of Agriculture determines
12 that the association participated in, had knowl-
13 edge of, or had reason to know of the violation.

14 “(B) ASSOCIATION OF AGRICULTURAL EM-
15 PLOYERS.—If an association that is a joint em-
16 ployer commits a violation described in sub-
17 sections (h)(2) and (3) or (i)(1), the Secretary
18 of Agriculture shall invoke penalties pursuant
19 to subsections (h) and (i) against only the asso-
20 ciation and not any individual members of the
21 association, unless the Secretary determines
22 that the member participated in the violation.

23 “(f) EXPEDITED ADMINISTRATIVE APPEALS.—The
24 Secretary of Homeland Security shall promulgate regula-
25 tions to provide for an expedited procedure for the review

1 of a denial of a petition under this section by the Sec-
2 retary. At the petitioner's request, the review shall include
3 a de novo administrative hearing at which new evidence
4 may be introduced.

5 “(g) FEES.—The Secretary of Homeland Security
6 shall require, as a condition of approving the petition, the
7 payment of a fee to recover the reasonable cost of proc-
8 essing the petition.

9 “(h) ENFORCEMENT.—

10 “(1) INVESTIGATIONS AND AUDITS.—The Sec-
11 retary of Agriculture shall be responsible for con-
12 ducting investigations and audits, including random
13 audits, of employers to ensure compliance with the
14 requirements of the H-2C program. All monetary
15 fines levied against employers shall be paid to the
16 Department of Agriculture and used to enhance the
17 Department of Agriculture's investigative and audit-
18 ing abilities to ensure compliance by employers with
19 their obligations under this section.

20 “(2) VIOLATIONS.—If the Secretary of Agri-
21 culture finds, after notice and opportunity for a
22 hearing, a failure to fulfill an attestation required by
23 this subsection, or a material misrepresentation of a
24 material fact in a petition under this subsection, the
25 Secretary—

1 “(A) may impose such administrative rem-
2 edies (including civil money penalties in an
3 amount not to exceed \$1,000 per violation) as
4 the Secretary determines to be appropriate; and

5 “(B) may disqualify the employer from the
6 employment of H-2C workers for a period of 1
7 year.

8 “(3) WILLFUL VIOLATIONS.—If the Secretary
9 of Agriculture finds, after notice and opportunity for
10 a hearing, a willful failure to fulfill an attestation re-
11 quired by this subsection, or a willful misrepresenta-
12 tion of a material fact in a petition under this sub-
13 section, the Secretary—

14 “(A) may impose such administrative rem-
15 edies (including civil money penalties in an
16 amount not to exceed \$5,000 per violation, or
17 not to exceed \$15,000 per violation if in the
18 course of such failure or misrepresentation the
19 employer displaced one or more United States
20 workers employed by the employer during the
21 period of employment of H-2C workers or dur-
22 ing the 30-day period immediately preceding
23 such period of employment) in the job the H-
24 2C workers are performing as the Secretary de-
25 termines to be appropriate;

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

4 “(C) may, for a subsequent failure to fulfill
5 an attestation required by this subsection, or a
6 misrepresentation of a material fact in a peti-
7 tion under this subsection, disqualify the em-
8 ployer from the employment of H-2C workers
9 for a period of 5 years; and

10 “(D) may, for a subsequent willful failure
11 to fulfill an attestation required by this sub-
12 section, or a willful misrepresentation of a ma-
13 terial fact in a petition under this subsection,
14 permanently disqualify the employer from the
15 employment of H-2C workers.

16 “(i) FAILURE TO PAY WAGES OR REQUIRED BENE-
17 FITS.—

18 “(1) IN GENERAL.—If the Secretary of Agri-
19 culture finds, after notice and opportunity for a
20 hearing, that the employer has failed to provide the
21 benefits, wages, and working conditions that the em-
22 ployer has attested that it would provide under this
23 subsection, the Secretary shall require payment of
24 back wages, or such other required benefits, due any

1 United States workers or H-2C workers employed
2 by the employer.

3 “(2) AMOUNT.—The back wages or other re-
4 quired benefits described in paragraph (1)—

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

9 “(B) shall be distributed to the workers to
10 whom such wages or benefits are due.

11 “(j) MINIMUM WAGES, BENEFITS, AND WORKING
12 CONDITIONS.—

13 “(1) PREFERENTIAL TREATMENT OF H-2C
14 WORKERS PROHIBITED.—

15 “(A) IN GENERAL.—Each employer seek-
16 ing to hire United States workers for the job
17 the H-2C workers will perform shall offer such
18 United States workers not less than the same
19 benefits, wages, and working conditions that the
20 employer will provide to the H-2C workers, ex-
21 cept that if an employer chooses to provide H-
22 2C workers with housing or a housing allow-
23 ance, the employer need not offer housing or a
24 housing allowance to such United States work-
25 ers. No job offer may impose on United States

1 workers any restrictions or obligations which
2 will not be imposed on H-2C workers.

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

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

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

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

22 “(ii) employment opportunities within
23 the United States benefit the United
24 States economy.

25 “(2) REQUIRED WAGES.—

1 “(A) IN GENERAL.—Each employer peti-
2 tioning for H–2C workers under this subsection
3 (other than in the case of workers who will per-
4 form agricultural labor or services consisting of
5 meat or poultry processing) will offer the H–2C
6 workers, during the period of authorized em-
7 ployment as H–2C workers, wages that are at
8 least the greatest of—

9 “(i) the applicable State or local min-
10 imum wage;

11 “(ii) 115 percent of the Federal min-
12 imum wage; or

13 “(iii) the actual wage level paid by the
14 employer to all other individuals in the job.

15 “(B) SPECIAL RULES.—

16 “(i) ALTERNATE WAGE PAYMENT SYS-
17 TEMS.—An employer can utilize a piece
18 rate or other alternative wage payment
19 system so long as the employer guarantees
20 each worker a wage rate that equals or ex-
21 ceeds the amount required under subpara-
22 graph (A) for the total hours worked in
23 each pay period. Compensation from a
24 piece rate or other alternative wage pay-
25 ment system shall include time spent dur-

1 ing rest breaks, moving from job to job,
2 clean up, or any other nonproductive time,
3 provided that such time does not exceed 20
4 percent of the total hours in the work day.

5 “(ii) MEAT OR POULTRY PROC-
6 ESSING.—Each employer petitioning for
7 H-2C workers under this subsection who
8 will perform agricultural labor or services
9 consisting of meat or poultry processing
10 will offer the H-2C workers, during the
11 period of authorized employment as H-2C
12 workers, wages that are at least the great-
13 est of—

14 “(I) the applicable State or local
15 minimum wage;

16 “(II) 150 percent of the Federal
17 minimum wage;

18 “(III) the prevailing wage level
19 for the occupational classification in
20 the area of employment; or

21 “(IV) the actual wage level paid
22 by the employer to all other individ-
23 uals in the job.

24 “(3) EMPLOYMENT GUARANTEE.—

25 “(A) IN GENERAL.—

1 “(i) REQUIREMENT.—Each employer
2 petitioning for workers under this sub-
3 section shall guarantee to offer the H-2C
4 workers and United States workers per-
5 forming the same job employment for the
6 hourly equivalent of not less than 50 per-
7 cent of the work hours set forth in the
8 work contract.

9 “(ii) FAILURE TO MEET GUAR-
10 ANTEE.—If an employer affords the
11 United States workers or the H-2C work-
12 ers less employment than that required
13 under this subparagraph, the employer
14 shall pay such workers the amount which
15 the workers would have earned if the work-
16 ers had worked for the guaranteed number
17 of hours.

18 “(B) CALCULATION OF HOURS.—Any
19 hours which workers fail to work, up to a max-
20 imum of the number of hours specified in the
21 work contract for a work day, when the workers
22 have been offered an opportunity to do so, and
23 all hours of work actually performed (including
24 voluntary work in excess of the number of
25 hours specified in the work contract in a work

1 day) may be counted by the employer in calcu-
2 lating whether the period of guaranteed employ-
3 ment has been met.

4 “(C) LIMITATION.—If the workers aban-
5 don employment before the end of the work
6 contract period, or are terminated for cause,
7 the workers are not entitled to the 50 percent
8 guarantee described in subparagraph (A).

9 “(D) TERMINATION OF EMPLOYMENT.—

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

22 “(ii) REQUIREMENTS.—If a worker’s
23 employment is terminated under clause (i),
24 the employer shall—

1 “(I) fulfill the employment guar-
2 antee in subparagraph (A) for the
3 work days that have elapsed during
4 the period beginning on the first work
5 day and ending on the date on which
6 such employment is terminated;

7 “(II) make efforts to transfer the
8 worker to other comparable employ-
9 ment acceptable to the worker; and

10 “(III) not later than 72 hours
11 after termination, notify the Secretary
12 of Agriculture of such termination
13 and stating the nature of the contract
14 impossibility.

15 “(k) NONDELEGATION.—The Department of Agri-
16 culture and the Department of Homeland Security shall
17 not delegate their investigatory, enforcement, or adminis-
18 trative functions relating to this section or section 218B
19 to other agencies or departments of the Federal Govern-
20 ment.

21 “(l) COMPLIANCE WITH BIO-SECURITY PROTO-
22 COLS.—Except in the case of an imminent threat to health
23 or safety, any personnel from a Federal agency or Federal
24 grantee seeking to determine the compliance of an em-
25 ployer with the requirements of this section or section

1 218B shall, when visiting such employer's place of employ-
2 ment, make their presence known to the employer and
3 sign-in in accordance with reasonable bio-security proto-
4 cols before proceeding to any other area of the place of
5 employment.

6 “(m) LIMITATION ON H-2C WORKERS' STAY IN STA-
7 TUS.—

8 “(1) MAXIMUM PERIOD.—The maximum con-
9 tinuous period of authorized stay as an H-2C work-
10 er (including any extensions) is 36 months.

11 “(2) REQUIREMENT TO REMAIN OUTSIDE THE
12 UNITED STATES.—In the case of H-2C workers
13 whose maximum continuous period of authorized
14 status as H-2C workers (including any extensions)
15 have expired, the aliens may not again be eligible to
16 be H-2C workers until they remain outside the
17 United States for a continuous period equal to at
18 least the lesser of $\frac{1}{12}$ of the duration of their pre-
19 vious period of authorized status as H-2C workers
20 or 60 days.

21 “(3) EXCEPTIONS.—

22 “(A) The Secretary of Homeland Security
23 shall deduct absences from the United States
24 that take place during an H-2C worker's period
25 of authorized status from the period that the

1 alien is required to remain outside the United
2 States under paragraph (2), if the alien or the
3 alien's employer requests such a deduction, and
4 provides clear and convincing proof that the
5 alien qualifies for such a deduction. Such proof
6 shall consist of evidence such as arrival and de-
7 parture records, copies of tax returns, and
8 records of employment abroad.

9 “(B) There is no maximum continuous pe-
10 riod of authorized status as set forth in para-
11 graph (1) or a requirement to remain outside
12 the United States as set forth in paragraph (2)
13 for H-2C workers employed as a shepherd,
14 goatherder, in the range production of livestock,
15 or who return to the workers' permanent resi-
16 dence outside the United States each day.

17 “(n) PERIOD OF ADMISSION.—

18 “(1) IN GENERAL.—In addition to the max-
19 imum continuous period of authorized status, work-
20 ers' authorized period of admission shall include—

21 “(A) a period of not more than 7 days
22 prior to the beginning of authorized employ-
23 ment as H-2C workers for the purpose of travel
24 to the place of employment; and

1 “(B) a period of not more than 14 days
2 after the conclusion of their authorized employ-
3 ment for the purpose of departure from the
4 United States or a period of not more than 30
5 days following the employment for the purpose
6 of seeking a subsequent offer of employment by
7 an employer pursuant to a petition under this
8 section (or pursuant to at-will employment
9 under section 218B during such times as that
10 section is in effect) if they have not reached
11 their maximum continuous period of authorized
12 employment under subsection (m) (subject to
13 the exceptions in subsection (m)(3)) unless they
14 accept subsequent offers of employment as H-
15 2C workers or are otherwise lawfully present.

16 “(2) FAILURE TO DEPART.—H-2C workers
17 who do not depart the United States within the peri-
18 ods referred to in paragraph (1) or, as applicable,
19 paragraph (3), will be considered to have failed to
20 maintain nonimmigrant status as H-2C workers and
21 shall be subject to removal under section
22 237(a)(1)(C)(i). Such aliens shall be considered to
23 be inadmissible pursuant to section 212(a)(9)(B)(i)
24 for having been unlawfully present, with the aliens
25 considered to have been unlawfully present for 181

1 days as of the 15th day following their period of em-
2 ployment for the purpose of departure or as of the
3 31st day following their period of employment for
4 the purpose of seeking subsequent offers of employ-
5 ment.

6 “(3) APPLICATION FOR MAXIMUM PERIOD.—
7 Notwithstanding the duration of the work requested
8 by the employer petitioning for the admission of an
9 H-2C worker, if the alien is granted a visa, at the
10 request of the alien, the term of the visa shall be for
11 the maximum period described in subsection (m)(1),
12 except that if such an alien is unable to secure sub-
13 sequent employment 30 days after the conclusion of
14 their authorized employment, the alien shall be re-
15 quired to depart the United States as described in
16 paragraph (1)(B).

17 “(o) ABANDONMENT OF EMPLOYMENT.—

18 “(1) REPORT BY EMPLOYER.—Not later than
19 72 hours after an employer learns of the abandon-
20 ment of employment by H-2C workers before the
21 conclusion of their work contracts, the employer
22 shall notify the Secretary of Agriculture and the
23 Secretary of Homeland Security of such abandon-
24 ment.

1 “(2) REPLACEMENT OF ALIENS.—An employer
2 may designate eligible aliens to replace H–2C work-
3 ers who abandon employment notwithstanding the
4 numerical limitation found in section 214(g)(1)(C).

5 “(p) CHANGE TO H–2C STATUS.—

6 “(1) WAIVER.—In the case of an alien de-
7 scribed in paragraph (2), the Secretary of Homeland
8 Security shall waive the grounds of inadmissibility
9 under paragraphs (5)(A), (6)(A), (6)(C), (7), (9)(B),
10 and (9)(C) of section 212(a), and the grounds of de-
11 portability under paragraphs (1)(A) (with respect to
12 the grounds of inadmissibility waived under this
13 paragraph), (1)(B), (1)(C), (3)(A), and (3)(C) of
14 section 237(a), with respect to conduct that occurred
15 prior to the alien first receiving status as an H–2C
16 worker, solely in order to provide the alien with such
17 status.

18 “(2) ALIEN DESCRIBED.—An alien described in
19 this paragraph is an alien who—

20 “(A) was unlawfully present in the United
21 States on June 26, 2018; and

22 “(B) performed agricultural labor or serv-
23 ices in the United States for at least 5.75 hours
24 during each of at least 180 days during the 2-
25 year period ending on June 26, 2018.

1 “(3) SPECIAL APPROVAL PROCEDURES.—Before
2 an alien described in paragraph (2) can be provided
3 with nonimmigrant status under section
4 101(a)(15)(H)(ii)(C), the alien must depart the
5 United States for a period during the interval be-
6 tween the date of issuance of final rules carrying out
7 the AG Act and the date that is 12 months after
8 such issuance. If such an alien is the beneficiary of
9 an approved H-2C petition, for the purpose of meet-
10 ing such requirement to depart the United States
11 before being provided with nonimmigrant status
12 under section 101(a)(15)(H)(ii)(C), the Secretary
13 shall authorize parole for the alien to travel to the
14 United States without a visa and shall issue an ap-
15 propriate document authorizing such travel. Prior to
16 authorizing parole for the alien, the Secretary shall
17 conduct an in person interview, as appropriate, and
18 a background check to determine that the alien is
19 not inadmissible to the United States under section
20 212(a) or deportable under section 237(a), except
21 with regard to the grounds of inadmissibility and
22 grounds of deportability waived under paragraph
23 (1).

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

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

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

9 “(A) IN GENERAL.—Notwithstanding the
10 Fair Labor Standards Act of 1938 (29 U.S.C.
11 201 et seq.) and State and local wage laws, all
12 employers of H–2C workers shall withhold from
13 the wages of all H–2C workers other than those
14 employed as shepherders, goatherders, in the
15 range production of livestock, or who return to
16 the their permanent residence outside the
17 United States each day, an amount equivalent
18 to 10 percent of the gross wages of each worker
19 in each pay period and, on behalf of each work-
20 er, transfer such withheld amount to the Trust
21 Fund.

22 “(B) JOBS THAT ARE NOT OF A TEM-
23 PORARY OR SEASONAL NATURE.—Employers of
24 H–2C workers employed in jobs that are not of
25 a temporary or seasonal nature, other than

1 those employed as a sheepherder, goatherder, or
2 in the range production of livestock, shall also
3 pay into the Trust Fund an amount equivalent
4 to the Federal tax on the wages paid to H-2C
5 workers that the employer would be obligated to
6 pay under chapters 21 and 23 of the Internal
7 Revenue Code of 1986 had the H-2C workers
8 been subject to such chapters.

9 “(3) DISTRIBUTION OF FUNDS.—Amounts paid
10 into the Trust Fund on behalf of an H-2C worker,
11 and held pursuant to paragraph (2)(A) and interest
12 earned thereon, shall be transferred from the Trust
13 Fund to the Secretary of Homeland Security, who
14 shall distribute them to the worker if the worker—

15 “(A) applies to the Secretary of Homeland
16 Security (or the designee of the Secretary) for
17 payment within 120 days of the expiration of
18 the alien’s last authorized stay in the United
19 States as an H-2C worker, for which they seek
20 amounts from the Trust Fund;

21 “(B) establishes to the satisfaction of the
22 Secretary of Homeland Security that they have
23 complied with the terms and conditions of the
24 H-2C program;

1 “(C) once approved by the Secretary of
2 Homeland Security for payment, physically ap-
3 pears at a United States embassy or consulate
4 in the worker’s home country; and

5 “(D) establishes their identity to the satis-
6 faction of the Secretary of Homeland Security.

7 “(4) ADMINISTRATIVE EXPENSES.—The
8 amounts paid into the Trust Fund and held pursu-
9 ant to paragraph (2)(B), and interest earned there-
10 on, shall be distributed annually to the Secretary of
11 Agriculture and the Secretary of Homeland Security
12 in amounts proportionate to the expenses incurred
13 by such officials in the administration and enforce-
14 ment of the terms of the H–2C program.

15 “(5) LAW ENFORCEMENT.—Notwithstanding
16 any other provision of law, amounts paid into the
17 Trust Fund under paragraph (2), and interest
18 earned thereon, that are not needed to carry out
19 paragraphs (3) and (4) shall, to the extent provided
20 in advance in appropriations Acts, be made available
21 until expended without fiscal year limitation to the
22 Secretary of Homeland Security to apprehend, de-
23 tain, and remove aliens inadmissible to or deportable
24 from the United States.

25 “(6) INVESTMENT OF TRUST FUND.—

1 “(A) IN GENERAL.—It shall be the duty of
2 the Secretary of the Treasury to invest such
3 portion of the Trust Fund as is not, in the Sec-
4 retary’s judgment, required to meet current
5 withdrawals. Such investments may be made
6 only in interest-bearing obligations of the
7 United States or in obligations guaranteed as to
8 both principal and interest by the United
9 States.

10 “(B) CREDITS TO TRUST FUND.—The in-
11 terest on, and the proceeds from the sale or re-
12 demption of, any obligations held in the Trust
13 Fund shall be credited to and form a part of
14 the Trust Fund.

15 “(C) REPORT TO CONGRESS.—It shall be
16 the duty of the Secretary of the Treasury to
17 hold the Trust Fund, and (after consultation
18 with the Secretary of Homeland Security) to re-
19 port to the Congress each year on the financial
20 condition and the results of the operations of
21 the Trust Fund during the preceding fiscal year
22 and on its expected condition and operations
23 during the next fiscal year. Such report shall be
24 printed as both a House and a Senate docu-

1 ment of the session of the Congress in which
2 the report is made.

3 “(r) PROCEDURES FOR SPECIAL PROCEDURES IN-
4 DUSTRIES.—

5 “(1) WORK LOCATIONS.—The Secretary of
6 Homeland Security shall permit an employer in a
7 special procedures industry or that engages in a for-
8 estry-related activity that does not operate at a sin-
9 gle fixed place of employment to provide, as part of
10 its petition, a list of places of employment, which—

11 “(A) may include an itinerary; and

12 “(B) may be subsequently amended at any
13 time by the employer, after notice to the Sec-
14 retary.

15 “(2) WAGES.—Notwithstanding subsection
16 (j)(2), the Secretary of Agriculture may establish
17 monthly, weekly, or biweekly wage rates for occupa-
18 tions in a Special Procedures Industry for a State
19 or other geographic area. For an employer in a Spe-
20 cial Procedures Industry that typically pays a
21 monthly wage, the Secretary shall require that H-
22 2C workers be paid not less frequently than monthly
23 and at a rate no less than the legally required
24 monthly cash wage in an amount as re-determined
25 annually by the Secretary.

1 “(3) ALLERGY LIMITATION.—An employer en-
2 gaged in the commercial beekeeping or pollination
3 services industry may require that job applicants be
4 free from bee-related allergies, including allergies to
5 pollen and bee venom.

6 “(s) FLEXIBILITY WITH RESPECT TO START
7 DATES.—Upon approval of a petition with regard to jobs
8 that are of a temporary or seasonal nature, the employer
9 may begin the employment of petitioned-for H–2C workers
10 up to ten months after the first date the employer requires
11 the labor or services of H–2C workers.

12 “(t) ADJUSTMENT OF STATUS.—In applying section
13 245 to an alien who is an H–2C worker who was the bene-
14 ficiary of a waiver under subsection (p)(1)—

15 “(1) such alien shall be deemed to have been in-
16 spected and admitted into the United States; and

17 “(2) in determining the alien’s admissibility as
18 an immigrant, paragraphs (5)(A), (6)(A), (6)(C),
19 (7), (9)(B), and (9)(C)(i)(I) of section 212(a) shall
20 not apply with respect to conduct that occurred prior
21 to the alien first receiving status as an H–2C work-
22 er.”.

23 “(b) AT-WILL EMPLOYMENT.—Chapter 2 of title II of
24 the Immigration and Nationality Act (8 U.S.C. 1181 et

1 seq.) is amended by inserting after section 218A (as in-
2 serted by subsection (a) of this section) the following:

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

5 “(a) IN GENERAL.—An employer that is designated
6 as a ‘registered agricultural employer’ pursuant to sub-
7 section (c) may employ aliens as H-2C workers. However,
8 an H-2C worker may only perform labor or services pur-
9 suant to this section if the worker is already lawfully
10 present in the United States as an H-2C worker, having
11 been admitted or otherwise provided nonimmigrant status
12 pursuant to section 218A, and has completed the period
13 of employment specified in the job offer the worker accept-
14 ed pursuant to section 218A or the employer has termi-
15 nated the worker’s employment pursuant to section
16 218A(j)(3)(D)(i). An H-2C worker who abandons the em-
17 ployment which was the basis for admission or status pur-
18 suant to section 218A may not perform labor or services
19 pursuant to this section until the worker has returned to
20 their home country, been readmitted as an H-2C worker
21 pursuant to section 218A and has completed the period
22 of employment specified in the job offer the worker accept-
23 ed pursuant to section 218A or the employer has termi-
24 nated the worker’s employment pursuant to section
25 218A(j)(3)(D)(i).

1 “(b) PERIOD OF STAY.—H–2C workers performing
2 at-will labor or services for a registered agricultural em-
3 ployer are subject to the period of admission, limitation
4 of stay in status, and requirement to remain outside the
5 United States contained in subsections (m) and (n) of sec-
6 tion 218A, except that subsection (m)(3)(A) does not
7 apply.

8 “(c) REGISTERED AGRICULTURAL EMPLOYERS.—
9 The Secretary of Agriculture shall establish a process to
10 accept and adjudicate applications by employers to be des-
11 ignated as registered agricultural employers. The Sec-
12 retary shall require, as a condition of approving the appli-
13 cation, the payment of a fee to recover the reasonable cost
14 of processing the application. The Secretary shall des-
15 ignate an employer as a registered agricultural employer
16 if the Secretary determines that the employer—

17 “(1) employs (or plans to employ) individuals
18 who perform agricultural labor or services;

19 “(2) has not been subject to debarment from
20 receiving temporary agricultural labor certifications
21 pursuant to section 101(a)(15)(H)(ii)(a) within the
22 last three years;

23 “(3) has not been subject to disqualification
24 from the employment of H–2C workers within the
25 last five years;

1 “(4) agrees to, if employing H–2C workers pur-
2 suant to this section, fulfill the attestations con-
3 tained in section 218A(b) as if it had submitted a
4 petition making those attestations (excluding sub-
5 section (j)(3) of such section) and not to employ H–
6 2C workers who have reached their maximum con-
7 tinuous period of authorized status under section
8 218A(m) (subject to the exceptions contained in sec-
9 tion 218A(m)(3)) or if the workers have complied
10 with the terms of section 218A(m)(2); and

11 “(5) agrees to notify the Secretary of Agri-
12 culture and the Secretary of Homeland Security
13 each time it employs H–2C workers pursuant to this
14 section within 72 hours of the commencement of em-
15 ployment and within 72 hours of the cessation of
16 employment.

17 “(d) LENGTH OF DESIGNATION.—An employer’s des-
18 ignation as a registered agricultural employer shall be
19 valid for 3 years, and the Secretary may extend such des-
20 ignation for additional 3-year terms upon the reapplication
21 of the employer. The Secretary shall revoke a designation
22 before the expiration of its 3-year term if the employer
23 is subject to disqualification from the employment of H–
24 2C workers subsequent to being designated as a registered
25 agricultural employer.

1 “(e) ENFORCEMENT.—The Secretary of Agriculture
2 shall be responsible for conducting investigations and au-
3 dits, including random audits, of employers to ensure com-
4 pliance with the requirements of this section. All monetary
5 fines levied against employers shall be paid to the Depart-
6 ment of Agriculture and used to enhance the Department
7 of Agriculture’s investigatory and audit abilities to ensure
8 compliance by employers with their obligations under this
9 section and section 218A. The Secretary of Agriculture’s
10 enforcement powers and an employer’s liability described
11 in subsections (h) through (i) of section 218A are applica-
12 ble to employers employing H–2C workers pursuant to
13 this section.”.

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

19 (d) NUMERICAL CAP.—Section 214(g)(1) of the Im-
20 migration and Nationality Act (8 U.S.C. 1184(g)(1)) is
21 amended—

22 (1) in subparagraph (A), by striking “or” at
23 the end;

24 (2) in subparagraph (B), by striking the period
25 at the end and inserting “; or”; and

1 (3) by adding at the end the following:

2 “(C) under section 101(a)(15)(H)(ii)(c)—

3 “(i) may not exceed 40,000 for aliens
4 issued visas or otherwise provided non-
5 immigrant status under such section for the
6 purpose of performing agricultural labor or
7 services consisting or meat or poultry proc-
8 essing;

9 “(ii) except as otherwise provided under
10 this subparagraph, may not exceed 410,000 for
11 aliens issued visas or otherwise provided non-
12 immigrant status under such section for the
13 purpose of performing agricultural labor or
14 services other than agricultural labor or services
15 consisting of meat or poultry processing;

16 “(iii) if the base allocation under clause (ii)
17 is exhausted during any fiscal year the base al-
18 location for that and subsequent fiscal years
19 shall be increased by the lesser of 10 percent or
20 a percentage representing the number of peti-
21 tioned-for aliens (as a percentage of the base al-
22 location) who would be eligible to be issued
23 visas or otherwise provided nonimmigrant sta-
24 tus described in that clause during that fiscal
25 year but for the base allocation being ex-

1 hausted, and if the increased base allocation is
2 itself exhausted during a subsequent fiscal year,
3 the base allocation for that and subsequent fis-
4 cal years shall be further increased by the lesser
5 of 10 percent or a percentage representing the
6 number of petitioned-for aliens (as a percentage
7 of the increased base allocation) who would be
8 eligible to be issued visas or otherwise provided
9 nonimmigrant status described in that clause
10 during that fiscal year but for the increased
11 base allocation being exhausted (subject to
12 clause (iv));

13 “(iv) if the base allocation under clause (ii)
14 is not exhausted during any fiscal year, the
15 base allocation under such clause for subse-
16 quent fiscal years shall be decreased by the
17 greater of 5 percent or a percentage rep-
18 resenting the unutilized portion of the base allo-
19 cation (as a percentage of the base allocation)
20 during that fiscal year, and if in a subsequent
21 fiscal year the decreased base allocation is itself
22 not exhausted, the base allocation for fiscal
23 years subsequent to that fiscal year shall be
24 further decreased by the greater of 5 percent or
25 a percentage representing the unutilized portion

1 of the decreased base allocation (as a percent-
2 age of the decreased base allocation) during
3 that fiscal year (subject to clause (iii) and ex-
4 cept that the base allocation shall not fall below
5 410,000);

6 “(v) for purposes of clause (ii), the numer-
7 ical limitations shall not apply to any alien—

8 “(I) who—

9 “(aa) was physically present in
10 the United States on June 26, 2018;
11 and

12 “(bb) performed agricultural
13 labor or services in the United States
14 for at least 5.75 hours during each of
15 at least 180 days during the 2-year
16 period ending on June 26, 2018; or

17 “(II) who has previously been issued a
18 visa or otherwise provided nonimmigrant
19 status pursuant to subclause (a) or (b) of
20 section 101(a)(15)(H)(ii), but only to the
21 extent that the alien is being petitioned for
22 by an employer pursuant to section
23 218A(b) who previously employed the alien
24 pursuant to subclause (a) or (b) of section

1 101(a)(15)(H)(ii) beginning no later than
2 June 26, 2018; and

3 “(vi) in the case that the Secretary of Ag-
4 riculture determines, in accordance with sub-
5 section (s), that there is a severe shortage of
6 available agricultural workers for a fiscal year,
7 the total number of aliens described in clause
8 (ii) who may be issued visas or otherwise pro-
9 vided nonimmigrant status under this para-
10 graph during that year shall be increased, in
11 addition to any increase under clause (iii), by—

12 “(I) for the first 2 fiscal years after
13 the effective date of this paragraph, a
14 number determined appropriate by the
15 Secretary; and

16 “(II) for any subsequent fiscal year,
17 by the lesser of 10 percent or a percentage
18 representing the number of petitioned-for
19 aliens (as a percentage of the base alloca-
20 tion) who would be eligible to be issued
21 visas or otherwise provided nonimmigrant
22 status described in that clause during that
23 fiscal year but for the base allocation or in-
24 creased base allocation, as appropriate,
25 being exhausted.”.

1 (e) SECRETARY OF AGRICULTURE REVIEW OF AGRICULTURAL WORK NEEDS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

5 “(s) SECRETARY OF AGRICULTURE REVIEW OF AGRICULTURAL WORK NEEDS.—The Secretary of Agriculture shall conduct a review, on a continual basis, of—

8 “(1) whether there are indicators of a shortage or surplus of workers performing agricultural labor or services;

11 “(2) the growth or contraction in the United States agricultural industry and whether such growth or contraction has increased or decreased the demand for workers to perform agricultural labor or services;

16 “(3) the level of unemployment and underemployment of United States workers (as defined in section 218A(a)(7)) in agricultural labor or services;

19 “(4) the number of H-2C workers (as defined in section 218A(a)(5)) who in the preceding fiscal year had to depart from the United States or be subject to removal under section 237(a)(1)(C)(i) because they could not find additional at-will employment within 30 days pursuant to section 218B; and

1 “(5) the estimated number of nonimmigrant ag-
2 ricultural workers issued a visa or otherwise pro-
3 vided nonimmigrant status pursuant to section
4 101(a)(15)(H)(ii)(a) or (c) during preceding fiscal
5 years who remain in the United States out of com-
6 pliance with the terms of their status.”.

7 (f) INTENT.—Section 214(b) of the Immigration and
8 Nationality Act (8 U.S.C. 1184(b)) is amended by striking
9 “section 101(a)(15)(H)(i) except subclause (b1) of such
10 section” and inserting “clause (i), except subclause (b1),
11 or (ii)(c) of section 101(a)(15)(H)”.

12 (g) CLERICAL AMENDMENT.—The table of contents
13 for the Immigration and Nationality Act (8 U.S.C. 1101
14 et seq.) is amended by inserting after the item relating
15 to section 218 the following:

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

16 **SEC. 6104. MEDIATION.**

17 Nonimmigrants having status under section
18 101(a)(15)(H)(ii)(c) of the Immigration and Nationality
19 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil
20 actions for damages against their employers, nor may any
21 other attorneys or individuals bring civil actions for dam-
22 ages on behalf of such nonimmigrants against the non-
23 immigrants’ employers, unless at least 90 days prior to
24 bringing an action a request has been made to the Federal
25 Mediation and Conciliation Service to assist the parties

1 in reaching a satisfactory resolution of all issues involving
2 all parties to the dispute and mediation has been at-
3 tempted.

4 **SEC. 6105. MIGRANT AND SEASONAL AGRICULTURAL**
5 **WORKER PROTECTION.**

6 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-
7 cultural Worker Protection Act (29 U.S.C.
8 1802(8)(B)(ii)) is amended by striking “under sections
9 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and
10 Nationality Act.” and inserting “under subclauses (a) and
11 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the
12 Immigration and Nationality Act.”.

13 **SEC. 6106. BINDING ARBITRATION.**

14 (a) **APPLICABILITY.**—H–2C workers may, as a condi-
15 tion of employment with an employer, be subject to man-
16 datory binding arbitration and mediation of any grievance
17 relating to the employment relationship. An employer shall
18 provide any such workers with notice of such condition of
19 employment at the time it makes job offers.

20 (b) **ALLOCATION OF COSTS.**—Any cost associated
21 with such arbitration and mediation process shall be
22 equally divided between the employer and the H–2C work-
23 ers, except that each party shall be responsible for the cost
24 of its own counsel, if any.

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

1 (1) The term “condition of employment” means
2 a term, condition, obligation, or requirement that is
3 part of the job offer, such as the term of employ-
4 ment, job responsibilities, employee conduct stand-
5 ards, and the grievance resolution process, and to
6 which applicants or prospective H–2C workers must
7 consent or accept in order to be hired for the posi-
8 tion.

9 (2) The term “H–2C worker” means a non-
10 immigrant described in section 218A(a)(5) of the
11 Immigration and Nationality Act, as added by this
12 title.

13 **SEC. 6107. COVERAGE THROUGH HEALTH EXCHANGES; RE-**
14 **QUIRED HEALTH INSURANCE COVERAGE.**

15 (a) **COVERAGE THROUGH HEALTH EXCHANGES.**—In
16 applying section 1312(f)(3) of the Patient Protection and
17 Affordable Care Act (42 U.S.C. 18032(f)(3)), an H–2C
18 worker (as defined in section 218A(a)(5) of the Immigra-
19 tion and Nationality Act, as added by this title) shall not
20 be treated as an individual who is, or is reasonably ex-
21 pected to be, a citizen or national of the United States
22 or an alien lawfully present in the United States.

23 (b) **REQUIREMENT REGARDING HEALTH INSURANCE**
24 **COVERAGE.**—

1 (1) IN GENERAL.—Notwithstanding the Fair
2 Labor Standards Act of 1938 (29 U.S.C. 201 et
3 seq.) and State and local wage laws, not later than
4 21 days after being issued a visa or otherwise pro-
5 vided nonimmigrant status under section
6 101(a)(15)(H)(ii)(c) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)), an alien
8 shall, in the case that qualifying health coverage is
9 offered in the State of employment or State of resi-
10 dence of such alien and the alien is eligible for such
11 coverage, for the period of employment specified in
12 section 218A(b)(1) of the Immigration and Nation-
13 ality Act, be enrolled under qualifying health cov-
14 erage.

15 (2) QUALIFYING HEALTH COVERAGE.—For pur-
16 poses of paragraph (1), the term “qualifying health
17 coverage means”, with respect to an alien described
18 in such paragraph, the higher of the following levels
19 of coverage applicable to such alien:

20 (A) At a minimum, catastrophic health in-
21 surance coverage that provides coverage of such
22 individual with respect to at least the State of
23 employment and State of residence of the alien.

24 (B) In the case of an alien whose State of
25 residence or State of employment requires such

1 an alien to maintain coverage under health in-
2 surance, such health insurance.

3 (3) FAILURE TO OBTAIN AND MAINTAIN COV-
4 ERAGE.—An H-2C worker under sections 218A or
5 218B of the Immigration and Nationality Act who
6 does not obtain and maintain the insurance coverage
7 to the extent required of such worker under para-
8 graph (1) will be considered to have failed to main-
9 tain nonimmigrant status under section
10 101(a)(15)(H)(ii)(c) of the Immigration and Nation-
11 ality Act and shall be subject to removal under sec-
12 tion 237(a)(1)(C)(i) of the Immigration and Nation-
13 ality Act (8 U.S.C. 1227(a)(1)(C)(i)).

14 **SEC. 6108. ESTABLISHMENT OF AN AGRICULTURAL WORK-**
15 **ER EMPLOYMENT POOL.**

16 The Secretary of Agriculture may establish an agri-
17 cultural worker employment pool and an electronic Inter-
18 net-based portal to assist H-2C workers (as such term
19 is defined in section 218A of the Immigration and Nation-
20 ality Act), prospective H-2C workers, and employers to
21 identify job opportunities in the H-2C program and will-
22 ing, able, and available workers for the program, respec-
23 tively, and may charge a fee for the use of such portal.

1 **SEC. 6109. PREVAILING WAGE.**

2 Section 212(p) of the Immigration and Nationality
3 Act (8 U.S.C. 1182(p)) is amended—

4 (1) in paragraph (1), by inserting after “sub-
5 sections (a)(5)(A), (n)(1)(A)(i)(II), and
6 (t)(1)(A)(i)(II)” the following: “of this section and
7 section 218A(j)(2)(B)(ii)”;

8 (2) in paragraph (3), by inserting after “sub-
9 sections (a)(5)(A), (n)(1)(A)(i)(II), and
10 (t)(1)(A)(i)(II)” the following: “of this section and
11 section 218A(j)(2)(B)(ii)”.

12 **SEC. 6110. PORTABILITY OF H-2C STATUS.**

13 Section 214(n)(1) of the Immigration and Nationality
14 Act (8 U.S.C. 1184(n)(1)) is amended by inserting after
15 “section 101(a)(15)(H)(i)(b)” the following: “or
16 101(a)(15)(H)(ii)(c)”.

17 **SEC. 6111. EFFECTIVE DATES; SUNSET; REGULATIONS.**

18 (a) EFFECTIVE DATES; REGULATIONS.—

19 (1) IN GENERAL.—Sections 6102 and 6104
20 through 6106 of this title, subsections (a) and (c)
21 through (f) of section 6103 of this title, and the
22 amendments made by the sections, shall take effect
23 on the date on which the Secretary issues the rules
24 under paragraph (3), and the Secretary of Home-
25 land Security shall accept petitions pursuant to sec-
26 tion 218A of the Immigration and Nationality Act,

1 as inserted by this Act, beginning no later than that
2 date. Sections 6107 and 6109 of this title shall take
3 effect on the date of the enactment of this Act.

4 (2) AT-WILL EMPLOYMENT.—Section 6103(b)
5 of this title and the amendments made by that sub-
6 section shall take effect when—

7 (A) it becomes unlawful for all persons or
8 other entities to hire, or to recruit or refer for
9 a fee, for employment in the United States an
10 individual (as provided in section 274A(a)(1) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1324a(a)(1))) without using the verification
13 system set forth in section 274A(d) of such Act,
14 as amended by section 7103 of title VII, to seek
15 verification of the employment eligibility of an
16 individual; and

17 (B) such verification system, in providing
18 confirmation of an individual's employment eli-
19 gibility, indicates whether an individual is eligi-
20 ble to be employed in all occupations or only to
21 perform agricultural labor or services as a non-
22 immigrant who has been issued a visa or other-
23 wise provided nonimmigrant status under sec-
24 tion 101(a)(15)(H)(ii)(C) of the Immigration
25 and Nationality Act.

1 (3) REGULATIONS.—Notwithstanding any other
2 provision of law, not later than the first day of the
3 seventh month that begins after the date of the en-
4 actment of this Act, the Secretary of Homeland Se-
5 curity shall issue final rules, on an interim or other
6 basis, to carry out this title.

7 (b) OPERATION AND SUNSET OF THE H-2A PRO-
8 GRAM.—

9 (1) APPLICATION OF EXISTING REGULA-
10 TIONS.—The Department of Labor H-2A program
11 regulations published at 73 Federal Register 77110
12 et seq. (2008) shall be in force for all petitions ap-
13 proved under sections 101(a)(15)(H)(ii)(a) and 218
14 of the Immigration and Nationality Act (8 U.S.C.
15 1101(a)(15)(h)(ii)(a); 8 U.S.C. 1188) beginning on
16 the date of the enactment of this Act, except that
17 the following, as in effect on such date, shall remain
18 in effect, and, to the extent that any rule published
19 at 73 Federal Register 77110 et seq. is in conflict,
20 such rule shall have no force and effect:

21 (A) Paragraph (a) and subparagraphs (1)
22 and (3) of paragraph (b) of section 655.200 of
23 title 20, Code of Federal Regulations.

1 (B) Section 655.201 of title 20, Code of
2 Federal Regulations, except the paragraphs en-
3 titled “Production of Livestock” and “Range”.

4 (C) Paragraphs (c), (d) and (e) of section
5 655.210 of title 20, Code of Federal Regula-
6 tions.

7 (D) Section 655.230 of title 20, Code of
8 Federal Regulations.

9 (E) Section 655.235 of title 20, Code of
10 Federal Regulations.

11 (F) The Special Procedures Labor Certifi-
12 cation Process for Employers in the Itinerant
13 Animal Shearing Industry under the H-2A
14 Program in effect under the Training and Em-
15 ployment Guidance Letter No. 17-06, Change
16 1, Attachment B, Section II, with an effective
17 date of October 1, 2011.

18 (2) SUNSET.—Beginning on the date that is
19 one year after the date on which employers can file
20 petitions pursuant to section 218A of the Immigra-
21 tion and Nationality Act, as added by section
22 6103(a) of this title, no new petitions under sections
23 101(a)(15)(H)(ii)(a) and 218 of the Immigration
24 and Nationality Act (8 U.S.C.

1 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be ac-
2 cepted.

3 **SEC. 6112. REPORT ON COMPLIANCE AND VIOLATIONS.**

4 (a) IN GENERAL.—Not later than 1 year after the
5 first day on which employers can file petitions pursuant
6 to section 218A of the Immigration and Nationality Act,
7 as added by section 6103(a) of this title, the Secretary
8 of Homeland Security, in consultation with the Secretary
9 of Agriculture, shall submit to the Committees on the Ju-
10 diciary of the House of Representatives and the Senate
11 a report on compliance by H–2C workers with the require-
12 ments of this title and the Immigration and Nationality
13 Act, as amended by this title. In the case of a violation
14 of a term or condition of the temporary agricultural work
15 visa program established by this title, the report shall
16 identify the provision or provisions of law violated.

17 (b) DEFINITION.—As used in this section, the term
18 “H–2C worker” means a nonimmigrant described in sec-
19 tion 218A(a)(4) of the Immigration and Nationality Act,
20 as added by section 6103(a) of this title.

21 **TITLE VII—LEGAL WORKFORCE**
22 **ACT**

23 **SEC. 7101. SHORT TITLE.**

24 This title may be cited as the “Legal Workforce Act”.

1 **SEC. 7102. EMPLOYMENT ELIGIBILITY VERIFICATION**
2 **PROCESS.**

3 (a) IN GENERAL.—Section 274A(b) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
5 to read as follows:

6 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
7 PROCESS.—

8 “(1) NEW HIRES, RECRUITMENT, AND REFER-
9 RAL.—The requirements referred to in paragraphs
10 (1)(B) and (3) of subsection (a) are, in the case of
11 a person or other entity hiring, recruiting, or refer-
12 ring an individual for employment in the United
13 States, the following:

14 “(A) ATTESTATION AFTER EXAMINATION
15 OF DOCUMENTATION.—

16 “(i) ATTESTATION.—During the
17 verification period (as defined in subpara-
18 graph (E)), the person or entity shall at-
19 test, under penalty of perjury and on a
20 form, including electronic and telephonic
21 formats, designated or established by the
22 Secretary by regulation not later than 6
23 months after the date of the enactment of
24 the Legal Workforce Act, that it has
25 verified that the individual is not an unau-
26 thorized alien by—

1 “(I) obtaining from the indi-
2 vidual the individual’s social security
3 account number or United States
4 passport number and recording the
5 number on the form (if the individual
6 claims to have been issued such a
7 number), and, if the individual does
8 not attest to United States nationality
9 under subparagraph (B), obtaining
10 such identification or authorization
11 number established by the Depart-
12 ment of Homeland Security for the
13 alien as the Secretary of Homeland
14 Security may specify, and recording
15 such number on the form; and

16 “(II) examining—

17 “(aa) a document relating to
18 the individual presenting it de-
19 scribed in clause (ii); or

20 “(bb) a document relating to
21 the individual presenting it de-
22 scribed in clause (iii) and a docu-
23 ment relating to the individual
24 presenting it described in clause
25 (iv).

1 “(ii) DOCUMENTS EVIDENCING EM-
2 PLOYMENT AUTHORIZATION AND ESTAB-
3 LISHING IDENTITY.—A document de-
4 scribed in this subparagraph is an individ-
5 ual’s—

6 “(I) unexpired United States
7 passport or passport card;

8 “(II) unexpired permanent resi-
9 dent card that contains a photograph;

10 “(III) unexpired employment au-
11 thorization card that contains a pho-
12 tograph;

13 “(IV) in the case of a non-
14 immigrant alien authorized to work
15 for a specific employer incident to sta-
16 tus, a foreign passport with Form I-
17 94 or Form I-94A, or other docu-
18 mentation as designated by the Sec-
19 retary specifying the alien’s non-
20 immigrant status as long as the pe-
21 riod of status has not yet expired and
22 the proposed employment is not in
23 conflict with any restrictions or limita-
24 tions identified in the documentation;

1 “(V) passport from the Fed-
2 erated States of Micronesia (FSM) or
3 the Republic of the Marshall Islands
4 (RMI) with Form I-94 or Form I-
5 94A, or other documentation as des-
6 ignated by the Secretary, indicating
7 nonimmigrant admission under the
8 Compact of Free Association Between
9 the United States and the FSM or
10 RMI; or

11 “(VI) other document designated
12 by the Secretary of Homeland Secu-
13 rity, if the document—

14 “(aa) contains a photograph
15 of the individual and biometric
16 identification data from the indi-
17 vidual and such other personal
18 identifying information relating
19 to the individual as the Secretary
20 of Homeland Security finds, by
21 regulation, sufficient for purposes
22 of this clause;

23 “(bb) is evidence of author-
24 ization of employment in the
25 United States; and

1 “(cc) contains security fea-
2 tures to make it resistant to tam-
3 pering, counterfeiting, and fraud-
4 ulent use.

5 “(iii) DOCUMENTS EVIDENCING EM-
6 PLOYMENT AUTHORIZATION.—A document
7 described in this subparagraph is an indi-
8 vidual’s social security account number
9 card (other than such a card which speci-
10 fies on the face that the issuance of the
11 card does not authorize employment in the
12 United States).

13 “(iv) DOCUMENTS ESTABLISHING
14 IDENTITY OF INDIVIDUAL.—A document
15 described in this subparagraph is—

16 “(I) an individual’s unexpired
17 driver’s license or identification card if
18 it was issued by a State or American
19 Samoa and contains a photograph and
20 information such as name, date of
21 birth, gender, height, eye color, and
22 address;

23 “(II) an individual’s unexpired
24 U.S. military identification card;

1 “(III) an individual’s unexpired
2 Native American tribal identification
3 document issued by a tribal entity rec-
4 ognized by the Bureau of Indian Af-
5 fairs; or

6 “(IV) in the case of an individual
7 under 18 years of age, a parent or
8 legal guardian’s attestation under
9 penalty of law as to the identity and
10 age of the individual.

11 “(v) AUTHORITY TO PROHIBIT USE OF
12 CERTAIN DOCUMENTS.—If the Secretary of
13 Homeland Security finds, by regulation,
14 that any document described in clause (i),
15 (ii), or (iii) as establishing employment au-
16 thorization or identity does not reliably es-
17 tablish such authorization or identity or is
18 being used fraudulently to an unacceptable
19 degree, the Secretary may prohibit or place
20 conditions on its use for purposes of this
21 paragraph.

22 “(vi) SIGNATURE.—Such attestation
23 may be manifested by either a handwritten
24 or electronic signature.

1 “(B) INDIVIDUAL ATTESTATION OF EM-
2 PLOYMENT AUTHORIZATION.—During the
3 verification period (as defined in subparagraph
4 (E)), the individual shall attest, under penalty
5 of perjury on the form designated or established
6 for purposes of subparagraph (A), that the indi-
7 vidual is a citizen or national of the United
8 States, an alien lawfully admitted for perma-
9 nent residence, or an alien who is authorized
10 under this Act or by the Secretary of Homeland
11 Security to be hired, recruited, or referred for
12 such employment. Such attestation may be
13 manifested by either a handwritten or electronic
14 signature. The individual shall also provide that
15 individual’s social security account number or
16 United States passport number (if the indi-
17 vidual claims to have been issued such a num-
18 ber), and, if the individual does not attest to
19 United States nationality under this subpara-
20 graph, such identification or authorization num-
21 ber established by the Department of Homeland
22 Security for the alien as the Secretary may
23 specify.

24 “(C) RETENTION OF VERIFICATION FORM
25 AND VERIFICATION.—

1 “(i) IN GENERAL.—After completion
2 of such form in accordance with subpara-
3 graphs (A) and (B), the person or entity
4 shall—

5 “(I) retain a paper, microfiche,
6 microfilm, or electronic version of the
7 form and make it available for inspec-
8 tion by officers of the Department of
9 Homeland Security, the Department
10 of Justice, or the Department of
11 Labor during a period beginning on
12 the date of the recruiting or referral
13 of the individual, or, in the case of the
14 hiring of an individual, the date on
15 which the verification is completed,
16 and ending—

17 “(aa) in the case of the re-
18 cruiting or referral of an indi-
19 vidual, 3 years after the date of
20 the recruiting or referral; and

21 “(bb) in the case of the hir-
22 ing of an individual, the later of
23 3 years after the date the
24 verification is completed or one
25 year after the date the individ-

1 ual’s employment is terminated;
2 and

3 “(II) during the verification pe-
4 riod (as defined in subparagraph (E)),
5 make an inquiry, as provided in sub-
6 section (d), using the verification sys-
7 tem to seek verification of the identity
8 and employment eligibility of an indi-
9 vidual.

10 “(ii) CONFIRMATION.—

11 “(I) CONFIRMATION RE-
12 CEIVED.—If the person or other entity
13 receives an appropriate confirmation
14 of an individual’s identity and work
15 eligibility under the verification sys-
16 tem within the time period specified,
17 the person or entity shall record on
18 the form an appropriate code that is
19 provided under the system and that
20 indicates a final confirmation of such
21 identity and work eligibility of the in-
22 dividual.

23 “(II) TENTATIVE NONCONFIRMA-
24 TION RECEIVED.—If the person or
25 other entity receives a tentative non-

1 confirmation of an individual's iden-
2 tity or work eligibility under the
3 verification system within the time pe-
4 riod specified, the person or entity
5 shall so inform the individual for
6 whom the verification is sought. If the
7 individual does not contest the non-
8 confirmation within the time period
9 specified, the nonconfirmation shall be
10 considered final. The person or entity
11 shall then record on the form an ap-
12 propriate code which has been pro-
13 vided under the system to indicate a
14 final nonconfirmation. If the indi-
15 vidual does contest the nonconfirma-
16 tion, the individual shall utilize the
17 process for secondary verification pro-
18 vided under subsection (d). The non-
19 confirmation will remain tentative
20 until a final confirmation or noncon-
21 firmation is provided by the
22 verification system within the time pe-
23 riod specified. In no case shall an em-
24 ployer terminate employment of an in-
25 dividual because of a failure of the in-

1 dividual to have identity and work eli-
2 gibility confirmed under this section
3 until a nonconfirmation becomes final.
4 Nothing in this clause shall apply to a
5 termination of employment for any
6 reason other than because of such a
7 failure. In no case shall an employer
8 rescind the offer of employment to an
9 individual because of a failure of the
10 individual to have identity and work
11 eligibility confirmed under this sub-
12 section until a nonconfirmation be-
13 comes final. Nothing in this subclause
14 shall apply to a rescission of the offer
15 of employment for any reason other
16 than because of such a failure.

17 “(III) FINAL CONFIRMATION OR
18 NONCONFIRMATION RECEIVED.—If a
19 final confirmation or nonconfirmation
20 is provided by the verification system
21 regarding an individual, the person or
22 entity shall record on the form an ap-
23 propriate code that is provided under
24 the system and that indicates a con-
25 firmation or nonconfirmation of iden-

1 tity and work eligibility of the indi-
2 vidual.

3 “(IV) EXTENSION OF TIME.—If
4 the person or other entity in good
5 faith attempts to make an inquiry
6 during the time period specified and
7 the verification system has registered
8 that not all inquiries were received
9 during such time, the person or entity
10 may make an inquiry in the first sub-
11 sequent working day in which the
12 verification system registers that it
13 has received all inquiries. If the
14 verification system cannot receive in-
15 quiries at all times during a day, the
16 person or entity merely has to assert
17 that the entity attempted to make the
18 inquiry on that day for the previous
19 sentence to apply to such an inquiry,
20 and does not have to provide any ad-
21 ditional proof concerning such inquiry.

22 “(V) CONSEQUENCES OF NON-
23 CONFIRMATION.—

24 “(aa) TERMINATION OR NO-
25 TIFICATION OF CONTINUED EM-

1 PLOYMENT.—If the person or
2 other entity has received a final
3 nonconfirmation regarding an in-
4 dividual, the person or entity
5 may terminate employment of the
6 individual (or decline to recruit
7 or refer the individual). If the
8 person or entity does not termi-
9 nate employment of the indi-
10 vidual or proceeds to recruit or
11 refer the individual, the person or
12 entity shall notify the Secretary
13 of Homeland Security of such
14 fact through the verification sys-
15 tem or in such other manner as
16 the Secretary may specify.

17 “(bb) FAILURE TO NO-
18 TIFY.—If the person or entity
19 fails to provide notice with re-
20 spect to an individual as required
21 under item (aa), the failure is
22 deemed to constitute a violation
23 of subsection (a)(1)(A) with re-
24 spect to that individual.

1 “(VI) CONTINUED EMPLOYMENT
2 AFTER FINAL NONCONFIRMATION.—If
3 the person or other entity continues to
4 employ (or to recruit or refer) an indi-
5 vidual after receiving final noncon-
6 firmation, a rebuttable presumption is
7 created that the person or entity has
8 violated subsection (a)(1)(A).

9 “(D) EFFECTIVE DATES OF NEW PROCE-
10 DURES.—

11 “(i) HIRING.—Except as provided in
12 clause (iii), the provisions of this para-
13 graph shall apply to a person or other enti-
14 ty hiring an individual for employment in
15 the United States as follows:

16 “(I) With respect to employers
17 having 10,000 or more employees in
18 the United States on the date of the
19 enactment of the Legal Workforce
20 Act, on the date that is 6 months
21 after the date of the enactment of
22 such Act.

23 “(II) With respect to employers
24 having 500 or more employees in the
25 United States, but less than 10,000

1 employees in the United States, on
2 the date of the enactment of the
3 Legal Workforce Act, on the date that
4 is 12 months after the date of the en-
5 actment of such Act.

6 “(III) With respect to employers
7 having 20 or more employees in the
8 United States, but less than 500 em-
9 ployees in the United States, on the
10 date of the enactment of the Legal
11 Workforce Act, on the date that is 18
12 months after the date of the enact-
13 ment of such Act.

14 “(IV) With respect to employers
15 having 1 or more employees in the
16 United States, but less than 20 em-
17 ployees in the United States, on the
18 date of the enactment of the Legal
19 Workforce Act, on the date that is 24
20 months after the date of the enact-
21 ment of such Act.

22 “(ii) RECRUITING AND REFERRING.—
23 Except as provided in clause (iii), the pro-
24 visions of this paragraph shall apply to a
25 person or other entity recruiting or refer-

1 ring an individual for employment in the
2 United States on the date that is 12
3 months after the date of the enactment of
4 the Legal Workforce Act.

5 “(iii) AGRICULTURAL LABOR OR SERV-
6 ICES.—With respect to an employee per-
7 forming agricultural labor or services, this
8 paragraph shall not apply with respect to
9 the verification of the employee until the
10 date that is 24 months after the date of
11 the enactment of the Legal Workforce Act.
12 An employee described in this clause shall
13 not be counted for purposes of clause (i).

14 “(iv) EXTENSIONS.—Upon request by
15 an employer having 50 or fewer employees,
16 the Secretary shall allow a one-time 6-
17 month extension of the effective date set
18 out in this subparagraph applicable to such
19 employer. Such request shall be made to
20 the Secretary and shall be made prior to
21 such effective date.

22 “(v) TRANSITION RULE.—Subject to
23 paragraph (4), the following shall apply to
24 a person or other entity hiring, recruiting,
25 or referring an individual for employment

1 in the United States until the effective
2 date or dates applicable under clauses (i)
3 through (iii):

4 “(I) This subsection, as in effect
5 before the enactment of the Legal
6 Workforce Act.

7 “(II) Subtitle A of title IV of the
8 Illegal Immigration Reform and Im-
9 migrant Responsibility Act of 1996 (8
10 U.S.C. 1324a note), as in effect be-
11 fore the effective date in section 7(c)
12 of the Legal Workforce Act.

13 “(III) Any other provision of
14 Federal law requiring the person or
15 entity to participate in the E-Verify
16 Program described in section 403(a)
17 of the Illegal Immigration Reform and
18 Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1324a note), as in effect be-
20 fore the effective date in section 7(c)
21 of the Legal Workforce Act, including
22 Executive Order 13465 (8 U.S.C.
23 1324a note; relating to Government
24 procurement).

25 “(E) VERIFICATION PERIOD DEFINED.—

1 “(i) IN GENERAL.—For purposes of
2 this paragraph:

3 “(I) In the case of recruitment or
4 referral, the term ‘verification period’
5 means the period ending on the date
6 recruiting or referring commences.

7 “(II) In the case of hiring, the
8 term ‘verification period’ means the
9 period beginning on the date on which
10 an offer of employment is extended
11 and ending on the date that is three
12 business days after the date of hire,
13 except as provided in clause (iii). The
14 offer of employment may be condi-
15 tioned in accordance with clause (ii).

16 “(ii) JOB OFFER MAY BE CONDI-
17 TIONAL.—A person or other entity may
18 offer a prospective employee an employ-
19 ment position that is conditioned on final
20 verification of the identity and employment
21 eligibility of the employee using the proce-
22 dures established under this paragraph.

23 “(iii) SPECIAL RULE.—Notwith-
24 standing clause (i)(II), in the case of an
25 alien who is authorized for employment

1 and who provides evidence from the Social
2 Security Administration that the alien has
3 applied for a social security account num-
4 ber, the verification period ends three busi-
5 ness days after the alien receives the social
6 security account number.

7 “(2) REVERIFICATION FOR INDIVIDUALS WITH
8 LIMITED WORK AUTHORIZATION.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), a person or entity shall
11 make an inquiry, as provided in subsection (d),
12 using the verification system to seek
13 reverification of the identity and employment
14 eligibility of all individuals with a limited period
15 of work authorization employed by the person
16 or entity during the three business days after
17 the date on which the employee’s work author-
18 ization expires as follows:

19 “(i) With respect to employers having
20 10,000 or more employees in the United
21 States on the date of the enactment of the
22 Legal Workforce Act, beginning on the
23 date that is 6 months after the date of the
24 enactment of such Act.

1 “(ii) With respect to employers having
2 500 or more employees in the United
3 States, but less than 10,000 employees in
4 the United States, on the date of the en-
5 actment of the Legal Workforce Act, be-
6 ginning on the date that is 12 months
7 after the date of the enactment of such
8 Act.

9 “(iii) With respect to employers hav-
10 ing 20 or more employees in the United
11 States, but less than 500 employees in the
12 United States, on the date of the enact-
13 ment of the Legal Workforce Act, begin-
14 ning on the date that is 18 months after
15 the date of the enactment of such Act.

16 “(iv) With respect to employers hav-
17 ing 1 or more employees in the United
18 States, but less than 20 employees in the
19 United States, on the date of the enact-
20 ment of the Legal Workforce Act, begin-
21 ning on the date that is 24 months after
22 the date of the enactment of such Act.

23 “(B) AGRICULTURAL LABOR OR SERV-
24 ICES.—With respect to an employee performing
25 agricultural labor or services, or an employee

1 recruited or referred by a farm labor contractor
2 (as defined in section 3 of the Migrant and Sea-
3 sonal Agricultural Worker Protection Act (29
4 U.S.C. 1801)), subparagraph (A) shall not
5 apply with respect to the reverification of the
6 employee until the date that is 24 months after
7 the date of the enactment of the Legal Work-
8 force Act. For purposes of the preceding sen-
9 tence, the term ‘agricultural labor or services’
10 has the meaning given such term by the Sec-
11 retary of Agriculture in regulations and in-
12 cludes agricultural labor as defined in section
13 3121(g) of the Internal Revenue Code of 1986,
14 agriculture as defined in section 3(f) of the
15 Fair Labor Standards Act of 1938 (29 U.S.C.
16 203(f)), the handling, planting, drying, packing,
17 packaging, processing, freezing, or grading
18 prior to delivery for storage of any agricultural
19 or horticultural commodity in its unmanufac-
20 tured state, all activities required for the prepa-
21 ration, processing, or manufacturing of a prod-
22 uct of agriculture (as such term is defined in
23 such section 3(f)) for further distribution, and
24 activities similar to all the foregoing as they re-
25 late to fish or shellfish facilities. An employee

1 described in this subparagraph shall not be
2 counted for purposes of subparagraph (A).

3 “(C) REVERIFICATION.—Paragraph
4 (1)(C)(ii) shall apply to reverifications pursuant
5 to this paragraph on the same basis as it ap-
6 plies to verifications pursuant to paragraph (1),
7 except that employers shall—

8 “(i) use a form designated or estab-
9 lished by the Secretary by regulation for
10 purposes of this paragraph; and

11 “(ii) retain a paper, microfiche, micro-
12 film, or electronic version of the form and
13 make it available for inspection by officers
14 of the Department of Homeland Security,
15 the Department of Justice, or the Depart-
16 ment of Labor during the period beginning
17 on the date the reverification commences
18 and ending on the date that is the later of
19 3 years after the date of such reverification
20 or 1 year after the date the individual’s
21 employment is terminated.

22 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

23 “(A) ON A MANDATORY BASIS FOR CER-
24 TAIN EMPLOYEES.—

1 “(i) IN GENERAL.—Not later than the
2 date that is 6 months after the date of the
3 enactment of the Legal Workforce Act, an
4 employer shall make an inquiry, as pro-
5 vided in subsection (d), using the
6 verification system to seek verification of
7 the identity and employment eligibility of
8 any individual described in clause (ii) em-
9 ployed by the employer whose employment
10 eligibility has not been verified under the
11 E-Verify Program described in section
12 403(a) of the Illegal Immigration Reform
13 and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1324a note).

15 “(ii) INDIVIDUALS DESCRIBED.—An
16 individual described in this clause is any of
17 the following:

18 “(I) An employee of any unit of
19 a Federal, State, or local government.

20 “(II) An employee who requires a
21 Federal security clearance working in
22 a Federal, State or local government
23 building, a military base, a nuclear
24 energy site, a weapons site, or an air-
25 port or other facility that requires

1 workers to carry a Transportation
2 Worker Identification Credential
3 (TWIC).

4 “(III) An employee assigned to
5 perform work in the United States
6 under a Federal contract, except that
7 this subclause—

8 “(aa) is not applicable to in-
9 dividuals who have a clearance
10 under Homeland Security Presi-
11 dential Directive 12 (HSPD 12
12 clearance), are administrative or
13 overhead personnel, or are work-
14 ing solely on contracts that pro-
15 vide Commercial Off The Shelf
16 goods or services as set forth by
17 the Federal Acquisition Regu-
18 latory Council, unless they are
19 subject to verification under sub-
20 clause (II); and

21 “(bb) only applies to con-
22 tracts over the simple acquisition
23 threshold as defined in section
24 2.101 of title 48, Code of Federal
25 Regulations.

1 “(B) ON A MANDATORY BASIS FOR MUL-
2 TIPLE USERS OF SAME SOCIAL SECURITY AC-
3 COUNT NUMBER.—In the case of an employer
4 who is required by this subsection to use the
5 verification system described in subsection (d),
6 or has elected voluntarily to use such system,
7 the employer shall make inquiries to the system
8 in accordance with the following:

9 “(i) The Commissioner of Social Secu-
10 rity shall notify annually employees (at the
11 employee address listed on the Wage and
12 Tax Statement) who submit a social secu-
13 rity account number to which more than
14 one employer reports income and for which
15 there is a pattern of unusual multiple use.
16 The notification letter shall identify the
17 number of employers to which income is
18 being reported as well as sufficient infor-
19 mation notifying the employee of the proc-
20 ess to contact the Social Security Adminis-
21 tration Fraud Hotline if the employee be-
22 lieves the employee’s identity may have
23 been stolen. The notice shall not share in-
24 formation protected as private, in order to
25 avoid any recipient of the notice from

1 being in the position to further commit or
2 begin committing identity theft.

3 “(ii) If the person to whom the social
4 security account number was issued by the
5 Social Security Administration has been
6 identified and confirmed by the Commis-
7 sioner, and indicates that the social secu-
8 rity account number was used without
9 their knowledge, the Secretary and the
10 Commissioner shall lock the social security
11 account number for employment eligibility
12 verification purposes and shall notify the
13 employers of the individuals who wrong-
14 fully submitted the social security account
15 number that the employee may not be
16 work eligible.

17 “(iii) Each employer receiving such
18 notification of an incorrect social security
19 account number under clause (ii) shall use
20 the verification system described in sub-
21 section (d) to check the work eligibility sta-
22 tus of the applicable employee within 10
23 business days of receipt of the notification.

24 “(C) ON A VOLUNTARY BASIS.—Subject to
25 paragraph (2), and subparagraphs (A) through

1 (C) of this paragraph, beginning on the date
2 that is 30 days after the date of the enactment
3 of the Legal Workforce Act, an employer may
4 make an inquiry, as provided in subsection (d),
5 using the verification system to seek verification
6 of the identity and employment eligibility of any
7 individual employed by the employer. If an em-
8 ployer chooses voluntarily to seek verification of
9 any individual employed by the employer, the
10 employer shall seek verification of all individ-
11 uals employed at the same geographic location
12 or, at the option of the employer, all individuals
13 employed within the same job category, as the
14 employee with respect to whom the employer
15 seeks voluntarily to use the verification system.
16 An employer's decision about whether or not
17 voluntarily to seek verification of its current
18 workforce under this subparagraph may not be
19 considered by any government agency in any
20 proceeding, investigation, or review provided for
21 in this Act.

22 “(D) VERIFICATION.—Paragraph
23 (1)(C)(ii) shall apply to verifications pursuant
24 to this paragraph on the same basis as it ap-

1 plies to verifications pursuant to paragraph (1),
2 except that employers shall—

3 “(i) use a form designated or estab-
4 lished by the Secretary by regulation for
5 purposes of this paragraph; and

6 “(ii) retain a paper, microfiche, micro-
7 film, or electronic version of the form and
8 make it available for inspection by officers
9 of the Department of Homeland Security,
10 the Department of Justice, or the Depart-
11 ment of Labor during the period beginning
12 on the date the verification commences and
13 ending on the date that is the later of 3
14 years after the date of such verification or
15 1 year after the date the individual’s em-
16 ployment is terminated.

17 “(4) EARLY COMPLIANCE.—

18 “(A) FORMER E-VERIFY REQUIRED USERS,
19 INCLUDING FEDERAL CONTRACTORS.—Notwith-
20 standing the deadlines in paragraphs (1) and
21 (2), beginning on the date of the enactment of
22 the Legal Workforce Act, the Secretary is au-
23 thorized to commence requiring employers re-
24 quired to participate in the E-Verify Program
25 described in section 403(a) of the Illegal Immi-

1 gration Reform and Immigrant Responsibility
2 Act of 1996 (8 U.S.C. 1324a note), including
3 employers required to participate in such pro-
4 gram by reason of Federal acquisition laws
5 (and regulations promulgated under those laws,
6 including the Federal Acquisition Regulation),
7 to commence compliance with the requirements
8 of this subsection (and any additional require-
9 ments of such Federal acquisition laws and reg-
10 ulation) in lieu of any requirement to partici-
11 pate in the E-Verify Program.

12 “(B) FORMER E-VERIFY VOLUNTARY
13 USERS AND OTHERS DESIRING EARLY COMPLI-
14 ANCE.—Notwithstanding the deadlines in para-
15 graphs (1) and (2), beginning on the date of
16 the enactment of the Legal Workforce Act, the
17 Secretary shall provide for the voluntary com-
18 pliance with the requirements of this subsection
19 by employers voluntarily electing to participate
20 in the E-Verify Program described in section
21 403(a) of the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (8 U.S.C.
23 1324a note) before such date, as well as by
24 other employers seeking voluntary early compli-
25 ance.

1 “(5) COPYING OF DOCUMENTATION PER-
2 MITTED.—Notwithstanding any other provision of
3 law, the person or entity may copy a document pre-
4 sented by an individual pursuant to this subsection
5 and may retain the copy, but only (except as other-
6 wise permitted under law) for the purpose of com-
7 plying with the requirements of this subsection.

8 “(6) LIMITATION ON USE OF FORMS.—A form
9 designated or established by the Secretary of Home-
10 land Security under this subsection and any infor-
11 mation contained in or appended to such form, may
12 not be used for purposes other than for enforcement
13 of this Act and any other provision of Federal crimi-
14 nal law.

15 “(7) GOOD FAITH COMPLIANCE.—

16 “(A) IN GENERAL.—Except as otherwise
17 provided in this subsection, a person or entity
18 is considered to have complied with a require-
19 ment of this subsection notwithstanding a tech-
20 nical or procedural failure to meet such require-
21 ment if there was a good faith attempt to com-
22 ply with the requirement.

23 “(B) EXCEPTION IF FAILURE TO CORRECT
24 AFTER NOTICE.—Subparagraph (A) shall not
25 apply if—

1 “(i) the failure is not de minimus;

2 “(ii) the Secretary of Homeland Secu-
3 rity has explained to the person or entity
4 the basis for the failure and why it is not
5 de minimus;

6 “(iii) the person or entity has been
7 provided a period of not less than 30 cal-
8 endar days (beginning after the date of the
9 explanation) within which to correct the
10 failure; and

11 “(iv) the person or entity has not cor-
12 rected the failure voluntarily within such
13 period.

14 “(C) EXCEPTION FOR PATTERN OR PRAC-
15 TICE VIOLATORS.—Subparagraph (A) shall not
16 apply to a person or entity that has or is engag-
17 ing in a pattern or practice of violations of sub-
18 section (a)(1)(A) or (a)(2).

19 “(8) SINGLE EXTENSION OF DEADLINES UPON
20 CERTIFICATION.—In a case in which the Secretary
21 of Homeland Security has certified to the Congress
22 that the employment eligibility verification system
23 required under subsection (d) will not be fully oper-
24 ational by the date that is 6 months after the date
25 of the enactment of the Legal Workforce Act, each

1 deadline established under this section for an em-
2 ployer to make an inquiry using such system shall
3 be extended by 6 months. No other extension of such
4 a deadline shall be made except as authorized under
5 paragraph (1)(D)(iv).”.

6 (b) DATE OF HIRE.—Section 274A(h) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1324a(h)) is
8 amended by adding at the end the following:

9 “(4) DEFINITION OF DATE OF HIRE.—As used
10 in this section, the term ‘date of hire’ means the
11 date of actual commencement of employment for
12 wages or other remuneration, unless otherwise speci-
13 fied.”.

14 **SEC. 7103. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
15 **TEM.**

16 Section 274A(d) of the Immigration and Nationality
17 Act (8 U.S.C. 1324a(d)) is amended to read as follows:

18 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
19 TEM.—

20 “(1) IN GENERAL.—Patterned on the employ-
21 ment eligibility confirmation system established
22 under section 404 of the Illegal Immigration Reform
23 and Immigrant Responsibility Act of 1996 (8 U.S.C.
24 1324a note), the Secretary of Homeland Security
25 shall establish and administer a verification system

1 through which the Secretary (or a designee of the
2 Secretary, which may be a nongovernmental enti-
3 ty)—

4 “(A) responds to inquiries made by per-
5 sons at any time through a toll-free telephone
6 line and other toll-free electronic media con-
7 cerning an individual’s identity and whether the
8 individual is authorized to be employed; and

9 “(B) maintains records of the inquiries
10 that were made, of verifications provided (or
11 not provided), and of the codes provided to in-
12 quirers as evidence of their compliance with
13 their obligations under this section.

14 “(2) INITIAL RESPONSE.—The verification sys-
15 tem shall provide confirmation or a tentative non-
16 confirmation of an individual’s identity and employ-
17 ment eligibility within 3 working days of the initial
18 inquiry. If providing confirmation or tentative non-
19 confirmation, the verification system shall provide an
20 appropriate code indicating such confirmation or
21 such nonconfirmation.

22 “(3) SECONDARY CONFIRMATION PROCESS IN
23 CASE OF TENTATIVE NONCONFIRMATION.—In cases
24 of tentative nonconfirmation, the Secretary shall
25 specify, in consultation with the Commissioner of

1 Social Security, an available secondary verification
2 process to confirm the validity of information pro-
3 vided and to provide a final confirmation or noncon-
4 firmation not later than 10 working days after the
5 date on which the notice of the tentative noncon-
6 firmation is received by the employee. The Secretary,
7 in consultation with the Commissioner, may extend
8 this deadline once on a case-by-case basis for a pe-
9 riod of 10 working days, and if the time is extended,
10 shall document such extension within the verification
11 system. The Secretary, in consultation with the
12 Commissioner, shall notify the employee and em-
13 ployer of such extension. The Secretary, in consulta-
14 tion with the Commissioner, shall create a standard
15 process of such extension and notification and shall
16 make a description of such process available to the
17 public. When final confirmation or nonconfirmation
18 is provided, the verification system shall provide an
19 appropriate code indicating such confirmation or
20 nonconfirmation.

21 “(4) DESIGN AND OPERATION OF SYSTEM.—
22 The verification system shall be designed and oper-
23 ated—

24 “(A) to maximize its reliability and ease of
25 use by persons and other entities consistent

1 with insulating and protecting the privacy and
2 security of the underlying information;

3 “(B) to respond to all inquiries made by
4 such persons and entities on whether individ-
5 uals are authorized to be employed and to reg-
6 ister all times when such inquiries are not re-
7 ceived;

8 “(C) with appropriate administrative, tech-
9 nical, and physical safeguards to prevent unau-
10 thorized disclosure of personal information;

11 “(D) to have reasonable safeguards against
12 the system’s resulting in unlawful discrimina-
13 tory practices based on national origin or citi-
14 zenship status, including—

15 “(i) the selective or unauthorized use
16 of the system to verify eligibility; or

17 “(ii) the exclusion of certain individ-
18 uals from consideration for employment as
19 a result of a perceived likelihood that addi-
20 tional verification will be required, beyond
21 what is required for most job applicants;

22 “(E) to maximize the prevention of iden-
23 tity theft use in the system; and

24 “(F) to limit the subjects of verification to
25 the following individuals:

1 “(i) Individuals hired, referred, or re-
2 cruited, in accordance with paragraph (1)
3 or (4) of subsection (b).

4 “(ii) Employees and prospective em-
5 ployees, in accordance with paragraph (1),
6 (2), (3), or (4) of subsection (b).

7 “(iii) Individuals seeking to confirm
8 their own employment eligibility on a vol-
9 untary basis.

10 “(5) RESPONSIBILITIES OF COMMISSIONER OF
11 SOCIAL SECURITY.—As part of the verification sys-
12 tem, the Commissioner of Social Security, in con-
13 sultation with the Secretary of Homeland Security
14 (and any designee of the Secretary selected to estab-
15 lish and administer the verification system), shall es-
16 tablish a reliable, secure method, which, within the
17 time periods specified under paragraphs (2) and (3),
18 compares the name and social security account num-
19 ber provided in an inquiry against such information
20 maintained by the Commissioner in order to validate
21 (or not validate) the information provided regarding
22 an individual whose identity and employment eligi-
23 bility must be confirmed, the correspondence of the
24 name and number, and whether the individual has
25 presented a social security account number that is

1 not valid for employment. The Commissioner shall
2 not disclose or release social security information
3 (other than such confirmation or nonconfirmation)
4 under the verification system except as provided for
5 in this section or section 205(c)(2)(I) of the Social
6 Security Act.

7 “(6) RESPONSIBILITIES OF SECRETARY OF
8 HOMELAND SECURITY.—

9 “(A) IN GENERAL.—As part of the
10 verification system, the Secretary of Homeland
11 Security (in consultation with any designee of
12 the Secretary selected to establish and admin-
13 ister the verification system), shall establish a
14 reliable, secure method, which, within the time
15 periods specified under paragraphs (2) and (3),
16 compares the name and alien identification or
17 authorization number (or any other information
18 as determined relevant by the Secretary) which
19 are provided in an inquiry against such infor-
20 mation maintained or accessed by the Secretary
21 in order to validate (or not validate) the infor-
22 mation provided, the correspondence of the
23 name and number, whether the alien is author-
24 ized to be employed in the United States, or to
25 the extent that the Secretary determines to be

1 feasible and appropriate, whether the records
2 available to the Secretary verify the identity or
3 status of a national of the United States.

4 “(B) AGRICULTURAL LABORERS.—The
5 Secretary of Homeland Security shall ensure
6 that, by the date that is 24 months after the
7 date of the enactment of the Legal Workforce
8 Act, whenever the verification system provides
9 confirmation of an individual’s employment eli-
10 gibility, it indicates whether the individual is el-
11 igible to be employed in all occupations or only
12 to perform agricultural labor or services as a
13 nonimmigrant who has been issued a visa or
14 otherwise provided nonimmigrant status under
15 section 101(a)(15)(H)(ii)(C).

16 “(7) UPDATING INFORMATION.—The Commis-
17 sioner of Social Security and the Secretary of Home-
18 land Security shall update their information in a
19 manner that promotes the maximum accuracy and
20 shall provide a process for the prompt correction of
21 erroneous information, including instances in which
22 it is brought to their attention in the secondary
23 verification process described in paragraph (3).

1 “(8) LIMITATION ON USE OF THE
2 VERIFICATION SYSTEM AND ANY RELATED SYS-
3 TEMS.—

4 “(A) NO NATIONAL IDENTIFICATION
5 CARD.—Nothing in this section shall be con-
6 strued to authorize, directly or indirectly, the
7 issuance or use of national identification cards
8 or the establishment of a national identification
9 card.

10 “(B) CRITICAL INFRASTRUCTURE.—The
11 Secretary may authorize or direct any person or
12 entity responsible for granting access to, pro-
13 tecting, securing, operating, administering, or
14 regulating part of the critical infrastructure (as
15 defined in section 1016(e) of the Critical Infra-
16 structure Protection Act of 2001 (42 U.S.C.
17 5195c(e))) to use the verification system to the
18 extent the Secretary determines that such use
19 will assist in the protection of the critical infra-
20 structure.

21 “(9) REMEDIES.—If an individual alleges that
22 the individual would not have been dismissed from
23 a job but for an error of the verification mechanism,
24 the individual may seek compensation only through
25 the mechanism of the Federal Tort Claims Act, and

1 injunctive relief to correct such error. No class ac-
2 tion may be brought under this paragraph.”.

3 **SEC. 7104. RECRUITMENT, REFERRAL, AND CONTINUATION**
4 **OF EMPLOYMENT.**

5 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
6 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-
7 MENT.—Section 274A(a) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1324a(a)) is amended—

- 9 (1) in paragraph (1)(A), by striking “for a fee”;
10 (2) in paragraph (1), by amending subpara-
11 graph (B) to read as follows:

12 “(B) to hire, continue to employ, or to re-
13 cruit or refer for employment in the United
14 States an individual without complying with the
15 requirements of subsection (b).”; and

- 16 (3) in paragraph (2), by striking “after hiring
17 an alien for employment in accordance with para-
18 graph (1),” and inserting “after complying with
19 paragraph (1),”.

20 (b) DEFINITION.—Section 274A(h) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
22 by this title, is further amended by adding at the end the
23 following:

- 24 “(5) DEFINITION OF RECRUIT OR REFER.—As
25 used in this section, the term ‘refer’ means the act

1 of sending or directing a person who is in the United
2 States or transmitting documentation or information
3 to another, directly or indirectly, with the intent of
4 obtaining employment in the United States for such
5 person. Only persons or entities referring for remun-
6 eration (whether on a retainer or contingency
7 basis) are included in the definition, except that
8 union hiring halls that refer union members or non-
9 union individuals who pay union membership dues
10 are included in the definition whether or not they re-
11 ceive remuneration, as are labor service entities or
12 labor service agencies, whether public, private, for-
13 profit, or nonprofit, that refer, dispatch, or other-
14 wise facilitate the hiring of laborers for any period
15 of time by a third party. As used in this section, the
16 term ‘recruit’ means the act of soliciting a person
17 who is in the United States, directly or indirectly,
18 and referring the person to another with the intent
19 of obtaining employment for that person. Only per-
20 sons or entities referring for remuneration (whether
21 on a retainer or contingency basis) are included in
22 the definition, except that union hiring halls that
23 refer union members or nonunion individuals who
24 pay union membership dues are included in this defi-
25 nition whether or not they receive remuneration, as

1 are labor service entities or labor service agencies,
2 whether public, private, for-profit, or nonprofit that
3 recruit, dispatch, or otherwise facilitate the hiring of
4 laborers for any period of time by a third party.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date that is 1 year
7 after the date of the enactment of this Act, except that
8 the amendments made by subsection (a) shall take effect
9 6 months after the date of the enactment of this Act inso-
10 far as such amendments relate to continuation of employ-
11 ment.

12 **SEC. 7105. GOOD FAITH DEFENSE.**

13 Section 274A(a)(3) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as
15 follows:

16 “(3) GOOD FAITH DEFENSE.—

17 “(A) DEFENSE.—An employer (or person
18 or entity that hires, employs, recruits, or refers
19 (as defined in subsection (h)(5)), or is otherwise
20 obligated to comply with this section) who es-
21 tablishes that it has complied in good faith with
22 the requirements of subsection (b)—

23 “(i) shall not be liable to a job appli-
24 cant, an employee, the Federal Govern-
25 ment, or a State or local government,

1 under Federal, State, or local criminal or
2 civil law for any employment-related action
3 taken with respect to a job applicant or
4 employee in good-faith reliance on informa-
5 tion provided through the system estab-
6 lished under subsection (d); and

7 “(ii) has established compliance with
8 its obligations under subparagraphs (A)
9 and (B) of paragraph (1) and subsection
10 (b) absent a showing by the Secretary of
11 Homeland Security, by clear and con-
12 vincing evidence, that the employer had
13 knowledge that an employee is an unau-
14 thorized alien.

15 “(B) MITIGATION ELEMENT.—For pur-
16 poses of subparagraph (A)(i), if an employer
17 proves by a preponderance of the evidence that
18 the employer uses a reasonable, secure, and es-
19 tablished technology to authenticate the identity
20 of the new employee, that fact shall be taken
21 into account for purposes of determining good
22 faith use of the system established under sub-
23 section (d).

24 “(C) FAILURE TO SEEK AND OBTAIN
25 VERIFICATION.—Subject to the effective dates

1 and other deadlines applicable under subsection
2 (b), in the case of a person or entity in the
3 United States that hires, or continues to em-
4 ploy, an individual, or recruits or refers an indi-
5 vidual for employment, the following require-
6 ments apply:

7 “(i) FAILURE TO SEEK
8 VERIFICATION.—

9 “(I) IN GENERAL.—If the person
10 or entity has not made an inquiry,
11 under the mechanism established
12 under subsection (d) and in accord-
13 ance with the timeframes established
14 under subsection (b), seeking
15 verification of the identity and work
16 eligibility of the individual, the de-
17 fense under subparagraph (A) shall
18 not be considered to apply with re-
19 spect to any employment, except as
20 provided in subclause (II).

21 “(II) SPECIAL RULE FOR FAIL-
22 URE OF VERIFICATION MECHANISM.—
23 If such a person or entity in good
24 faith attempts to make an inquiry in
25 order to qualify for the defense under

1 subparagraph (A) and the verification
2 mechanism has registered that not all
3 inquiries were responded to during the
4 relevant time, the person or entity can
5 make an inquiry until the end of the
6 first subsequent working day in which
7 the verification mechanism registers
8 no nonresponses and qualify for such
9 defense.

10 “(ii) FAILURE TO OBTAIN
11 VERIFICATION.—If the person or entity
12 has made the inquiry described in clause
13 (i)(I) but has not received an appropriate
14 verification of such identity and work eligi-
15 bility under such mechanism within the
16 time period specified under subsection
17 (d)(2) after the time the verification in-
18 quiry was received, the defense under sub-
19 paragraph (A) shall not be considered to
20 apply with respect to any employment after
21 the end of such time period.”.

22 **SEC. 7106. PREEMPTION AND STATES' RIGHTS.**

23 Section 274A(h)(2) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
25 follows:

1 “(2) PREEMPTION.—

2 “(A) SINGLE, NATIONAL POLICY.—The
3 provisions of this section preempt any State or
4 local law, ordinance, policy, or rule, including
5 any criminal or civil fine or penalty structure,
6 insofar as they may now or hereafter relate to
7 the hiring, continued employment, or status
8 verification for employment eligibility purposes,
9 of unauthorized aliens.

10 “(B) STATE ENFORCEMENT OF FEDERAL
11 LAW.—

12 “(i) BUSINESS LICENSING.—A State,
13 locality, municipality, or political subdivi-
14 sion may exercise its authority over busi-
15 ness licensing and similar laws as a pen-
16 alty for failure to use the verification sys-
17 tem described in subsection (d) to verify
18 employment eligibility when and as re-
19 quired under subsection (b).

20 “(ii) GENERAL RULES.—A State, at
21 its own cost, may enforce the provisions of
22 this section, but only insofar as such State
23 follows the Federal regulations imple-
24 menting this section, applies the Federal
25 penalty structure set out in this section,

1 and complies with all Federal rules and
2 guidance concerning implementation of this
3 section. Such State may collect any fines
4 assessed under this section. An employer
5 may not be subject to enforcement, includ-
6 ing audit and investigation, by both a Fed-
7 eral agency and a State for the same viola-
8 tion under this section. Whichever entity,
9 the Federal agency or the State, is first to
10 initiate the enforcement action, has the
11 right of first refusal to proceed with the
12 enforcement action. The Secretary must
13 provide copies of all guidance, training,
14 and field instructions provided to Federal
15 officials implementing the provisions of
16 this section to each State.”.

17 **SEC. 7107. REPEAL.**

18 (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal
19 Immigration Reform and Immigrant Responsibility Act of
20 1996 (8 U.S.C. 1324a note) is repealed.

21 (b) **REFERENCES.**—Any reference in any Federal
22 law, Executive order, rule, regulation, or delegation of au-
23 thority, or any document of, or pertaining to, the Depart-
24 ment of Homeland Security, Department of Justice, or the
25 Social Security Administration, to the employment eligi-

1 bility confirmation system established under section 404
2 of the Illegal Immigration Reform and Immigrant Respon-
3 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
4 refer to the employment eligibility confirmation system es-
5 tablished under section 274A(d) of the Immigration and
6 Nationality Act, as amended by this title.

7 (c) EFFECTIVE DATE.—This section shall take effect
8 on the date that is 24 months after the date of the enact-
9 ment of this Act.

10 (d) CLERICAL AMENDMENT.—The table of sections,
11 in section 1(d) of the Illegal Immigration Reform and Im-
12 migrant Responsibility Act of 1996, is amended by strik-
13 ing the items relating to subtitle A of title IV.

14 **SEC. 7108. PENALTIES.**

15 Section 274A of the Immigration and Nationality Act
16 (8 U.S.C. 1324a) is amended—

17 (1) in subsection (e)(1)—

18 (A) by striking “Attorney General” each
19 place such term appears and inserting “Sec-
20 retary of Homeland Security”; and

21 (B) in subparagraph (D), by striking
22 “Service” and inserting “Department of Home-
23 land Security”;

24 (2) in subsection (e)(4)—

1 (A) in subparagraph (A), in the matter be-
2 fore clause (i), by inserting “, subject to para-
3 graph (10),” after “in an amount”;

4 (B) in subparagraph (A)(i), by striking
5 “not less than \$250 and not more than
6 \$2,000” and inserting “not less than \$2,500
7 and not more than \$5,000”;

8 (C) in subparagraph (A)(ii), by striking
9 “not less than \$2,000 and not more than
10 \$5,000” and inserting “not less than \$5,000
11 and not more than \$10,000”;

12 (D) in subparagraph (A)(iii), by striking
13 “not less than \$3,000 and not more than
14 \$10,000” and inserting “not less than \$10,000
15 and not more than \$25,000”; and

16 (E) by moving the margin of the continu-
17 ation text following subparagraph (B) two ems
18 to the left and by amending subparagraph (B)
19 to read as follows:

20 “(B) may require the person or entity to
21 take such other remedial action as is appro-
22 priate.”;

23 (3) in subsection (e)(5)—

24 (A) in the paragraph heading, strike “PA-
25 PERWORK”;

1 (B) by inserting “, subject to paragraphs
2 (10) through (12),” after “in an amount”;

3 (C) by striking “\$100” and inserting
4 “\$1,000”;

5 (D) by striking “\$1,000” and inserting
6 “\$25,000”; and

7 (E) by adding at the end the following:
8 “Failure by a person or entity to utilize the em-
9 ployment eligibility verification system as re-
10 quired by law, or providing information to the
11 system that the person or entity knows or rea-
12 sonably believes to be false, shall be treated as
13 a violation of subsection (a)(1)(A).”;

14 (4) by adding at the end of subsection (e) the
15 following:

16 “(10) EXEMPTION FROM PENALTY FOR GOOD
17 FAITH VIOLATION.—In the case of imposition of a
18 civil penalty under paragraph (4)(A) with respect to
19 a violation of subsection (a)(1)(A) or (a)(2) for hir-
20 ing or continuation of employment or recruitment or
21 referral by person or entity and in the case of im-
22 position of a civil penalty under paragraph (5) for a
23 violation of subsection (a)(1)(B) for hiring or re-
24 cruitment or referral by a person or entity, the pen-
25 alty otherwise imposed may be waived or reduced if

1 the violator establishes that the violator acted in
2 good faith.

3 “(11) MITIGATION ELEMENT.—For purposes of
4 paragraph (4), the size of the business shall be
5 taken into account when assessing the level of civil
6 money penalty.

7 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR
8 CERTAIN VIOLATIONS.—

9 “(A) IN GENERAL.—If a person or entity
10 is determined by the Secretary of Homeland Se-
11 curity to be a repeat violator of paragraph
12 (1)(A) or (2) of subsection (a), or is convicted
13 of a crime under this section, such person or
14 entity may be considered for debarment from
15 the receipt of Federal contracts, grants, or co-
16 operative agreements in accordance with the de-
17 barment standards and pursuant to the debar-
18 ment procedures set forth in the Federal Acqui-
19 sition Regulation.

20 “(B) DOES NOT HAVE CONTRACT, GRANT,
21 AGREEMENT.—If the Secretary of Homeland
22 Security or the Attorney General wishes to have
23 a person or entity considered for debarment in
24 accordance with this paragraph, and such an
25 person or entity does not hold a Federal con-

1 tract, grant or cooperative agreement, the Sec-
2 retary or Attorney General shall refer the mat-
3 ter to the Administrator of General Services to
4 determine whether to list the person or entity
5 on the List of Parties Excluded from Federal
6 Procurement, and if so, for what duration and
7 under what scope.

8 “(C) HAS CONTRACT, GRANT, AGREE-
9 MENT.—If the Secretary of Homeland Security
10 or the Attorney General wishes to have a per-
11 son or entity considered for debarment in ac-
12 cordance with this paragraph, and such person
13 or entity holds a Federal contract, grant or co-
14 operative agreement, the Secretary or Attorney
15 General shall advise all agencies or departments
16 holding a contract, grant, or cooperative agree-
17 ment with the person or entity of the Govern-
18 ment’s interest in having the person or entity
19 considered for debarment, and after soliciting
20 and considering the views of all such agencies
21 and departments, the Secretary or Attorney
22 General may refer the matter to any appro-
23 priate lead agency to determine whether to list
24 the person or entity on the List of Parties Ex-

1 cluded from Federal Procurement, and if so, for
2 what duration and under what scope.

3 “(D) REVIEW.—Any decision to debar a
4 person or entity in accordance with this para-
5 graph shall be reviewable pursuant to part 9.4
6 of the Federal Acquisition Regulation.

7 “(13) OFFICE FOR STATE AND LOCAL GOVERN-
8 MENT COMPLAINTS.—The Secretary of Homeland
9 Security shall establish an office—

10 “(A) to which State and local government
11 agencies may submit information indicating po-
12 tential violations of subsection (a), (b), or
13 (g)(1) that were generated in the normal course
14 of law enforcement or the normal course of
15 other official activities in the State or locality;

16 “(B) that is required to indicate to the
17 complaining State or local agency within five
18 business days of the filing of such a complaint
19 by identifying whether the Secretary will fur-
20 ther investigate the information provided;

21 “(C) that is required to investigate those
22 complaints filed by State or local government
23 agencies that, on their face, have a substantial
24 probability of validity;

1 “(D) that is required to notify the com-
2 plaining State or local agency of the results of
3 any such investigation conducted; and

4 “(E) that is required to report to the Con-
5 gress annually the number of complaints re-
6 ceived under this paragraph, the States and lo-
7 calities that filed such complaints, and the reso-
8 lution of the complaints investigated by the Sec-
9 retary.”; and

10 (5) by amending paragraph (1) of subsection (f)
11 to read as follows:

12 “(1) CRIMINAL PENALTY.—Any person or enti-
13 ty which engages in a pattern or practice of viola-
14 tions of subsection (a)(1) or (2) shall be fined not
15 more than \$5,000 for each unauthorized alien with
16 respect to which such a violation occurs, imprisoned
17 for not more than 18 months, or both, notwith-
18 standing the provisions of any other Federal law re-
19 lating to fine levels.”.

20 **SEC. 7109. FRAUD AND MISUSE OF DOCUMENTS.**

21 Section 1546(b) of title 18, United States Code, is
22 amended—

23 (1) in paragraph (1), by striking “identification
24 document,” and inserting “identification document
25 or document meant to establish work authorization

1 (including the documents described in section
2 274A(b) of the Immigration and Nationality Act),”;
3 and

4 (2) in paragraph (2), by striking “identification
5 document” and inserting “identification document or
6 document meant to establish work authorization (in-
7 cluding the documents described in section 274A(b)
8 of the Immigration and Nationality Act),”.

9 **SEC. 7110. PROTECTION OF SOCIAL SECURITY ADMINIS-**
10 **TRATION PROGRAMS.**

11 (a) **FUNDING UNDER AGREEMENT.**—Effective for
12 fiscal years beginning on or after October 1, 2019, the
13 Commissioner of Social Security and the Secretary of
14 Homeland Security shall enter into and maintain an
15 agreement which shall—

16 (1) provide funds to the Commissioner for the
17 full costs of the responsibilities of the Commissioner
18 under section 274A(d) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1324a(d)), as amended by
20 this title, including (but not limited to)—

21 (A) acquiring, installing, and maintaining
22 technological equipment and systems necessary
23 for the fulfillment of the responsibilities of the
24 Commissioner under such section 274A(d), but

1 only that portion of such costs that are attrib-
2 utable exclusively to such responsibilities; and

3 (B) responding to individuals who contest
4 a tentative nonconfirmation provided by the em-
5 ployment eligibility verification system estab-
6 lished under such section;

7 (2) provide such funds annually in advance of
8 the applicable quarter based on estimating method-
9 ology agreed to by the Commissioner and the Sec-
10 retary (except in such instances where the delayed
11 enactment of an annual appropriation may preclude
12 such quarterly payments); and

13 (3) require an annual accounting and reconcili-
14 ation of the actual costs incurred and the funds pro-
15 vided under the agreement, which shall be reviewed
16 by the Inspectors General of the Social Security Ad-
17 ministration and the Department of Homeland Secu-
18 rity.

19 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
20 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
21 which the agreement required under subsection (a) for any
22 fiscal year beginning on or after October 1, 2019, has not
23 been reached as of October 1 of such fiscal year, the latest
24 agreement between the Commissioner and the Secretary
25 of Homeland Security providing for funding to cover the

1 costs of the responsibilities of the Commissioner under
2 section 274A(d) of the Immigration and Nationality Act
3 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
4 terim basis for such fiscal year until such time as an
5 agreement required under subsection (a) is subsequently
6 reached, except that the terms of such interim agreement
7 shall be modified by the Director of the Office of Manage-
8 ment and Budget to adjust for inflation and any increase
9 or decrease in the volume of requests under the employ-
10 ment eligibility verification system. In any case in which
11 an interim agreement applies for any fiscal year under this
12 subsection, the Commissioner and the Secretary shall, not
13 later than October 1 of such fiscal year, notify the Com-
14 mittee on Ways and Means, the Committee on the Judici-
15 ary, and the Committee on Appropriations of the House
16 of Representatives and the Committee on Finance, the
17 Committee on the Judiciary, and the Committee on Ap-
18 propriations of the Senate of the failure to reach the
19 agreement required under subsection (a) for such fiscal
20 year. Until such time as the agreement required under
21 subsection (a) has been reached for such fiscal year, the
22 Commissioner and the Secretary shall, not later than the
23 end of each 90-day period after October 1 of such fiscal
24 year, notify such Committees of the status of negotiations

1 between the Commissioner and the Secretary in order to
2 reach such an agreement.

3 **SEC. 7111. FRAUD PREVENTION.**

4 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
5 **NUMBERS.**—The Secretary of Homeland Security, in con-
6 sultation with the Commissioner of Social Security, shall
7 establish a program in which social security account num-
8 bers that have been identified to be subject to unusual
9 multiple use in the employment eligibility verification sys-
10 tem established under section 274A(d) of the Immigration
11 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
12 this title, or that are otherwise suspected or determined
13 to have been compromised by identity fraud or other mis-
14 use, shall be blocked from use for such system purposes
15 unless the individual using such number is able to estab-
16 lish, through secure and fair additional security proce-
17 dures, that the individual is the legitimate holder of the
18 number.

19 (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**
20 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of
21 Homeland Security, in consultation with the Commis-
22 sioner of Social Security, shall establish a program which
23 shall provide a reliable, secure method by which victims
24 of identity fraud and other individuals may suspend or
25 limit the use of their social security account number or

1 other identifying information for purposes of the employ-
2 ment eligibility verification system established under sec-
3 tion 274A(d) of the Immigration and Nationality Act (8
4 U.S.C. 1324a(d)), as amended by this title. The Secretary
5 may implement the program on a limited pilot program
6 basis before making it fully available to all individuals.

7 (c) ALLOWING PARENTS TO PREVENT THEFT OF
8 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
9 Security, in consultation with the Commissioner of Social
10 Security, shall establish a program which shall provide a
11 reliable, secure method by which parents or legal guard-
12 ians may suspend or limit the use of the social security
13 account number or other identifying information of a
14 minor under their care for the purposes of the employment
15 eligibility verification system established under 274A(d) of
16 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
17 as amended by this title. The Secretary may implement
18 the program on a limited pilot program basis before mak-
19 ing it fully available to all individuals.

20 **SEC. 7112. USE OF EMPLOYMENT ELIGIBILITY**
21 **VERIFICATION PHOTO TOOL.**

22 An employer or entity who uses the photo matching
23 tool, if required by the Secretary as part of the verification
24 system, shall match, either visually, or using facial rec-
25 ognition or other verification technology approved or re-

1 quired by the Secretary, the photo matching tool photo-
2 graph to the photograph on the identity or employment
3 eligibility document provided by the individual or to the
4 face of the employee submitting the document for employ-
5 ment verification purposes, or both, as determined by the
6 Secretary.

7 **SEC. 7113. IDENTITY AUTHENTICATION EMPLOYMENT ELI-**
8 **GIBILITY VERIFICATION PILOT PROGRAMS.**

9 Not later than 24 months after the date of the enact-
10 ment of this Act, the Secretary of Homeland Security,
11 after consultation with the Commissioner of Social Secu-
12 rity and the Director of the National Institute of Stand-
13 ards and Technology, shall establish by regulation not less
14 than 2 Identity Authentication Employment Eligibility
15 Verification pilot programs, each using a separate and dis-
16 tinct technology (the “Authentication Pilots”). The pur-
17 pose of the Authentication Pilots shall be to provide for
18 identity authentication and employment eligibility
19 verification with respect to enrolled new employees which
20 shall be available to any employer that elects to participate
21 in either of the Authentication Pilots. Any participating
22 employer may cancel the employer’s participation in the
23 Authentication Pilot after one year after electing to par-
24 ticipate without prejudice to future participation. The Sec-
25 retary shall report to the Committee on the Judiciary of

1 the House of Representatives and the Committee on the
2 Judiciary of the Senate the Secretary's findings on the
3 Authentication Pilots, including the authentication tech-
4 nologies chosen, not later than 12 months after com-
5 mencement of the Authentication Pilots.

6 **SEC. 7114. INSPECTOR GENERAL AUDITS.**

7 (a) IN GENERAL.—Not later than 1 year after the
8 date of the enactment of this Act, the Inspector General
9 of the Social Security Administration shall complete audits
10 of the following categories in order to uncover evidence
11 of individuals who are not authorized to work in the
12 United States:

13 (1) Workers who dispute wages reported on
14 their social security account number when they be-
15 lieve someone else has used such number and name
16 to report wages.

17 (2) Children's social security account numbers
18 used for work purposes.

19 (3) Employers whose workers present signifi-
20 cant numbers of mismatched social security account
21 numbers or names for wage reporting.

22 (b) SUBMISSION.—The Inspector General of the So-
23 cial Security Administration shall submit the audits com-
24 pleted under subsection (a) to the Committee on Ways and
25 Means of the House of Representatives and the Committee

1 on Finance of the Senate for review of the evidence of
2 individuals who are not authorized to work in the United
3 States. The Chairmen of those Committees shall then de-
4 termine information to be shared with the Secretary of
5 Homeland Security so that such Secretary can investigate
6 the unauthorized employment demonstrated by such evi-
7 dence.

8 **TITLE VIII—MISCELLANEOUS**
9 **IMMIGRATION PROVISIONS**

10 **SEC. 8101. AVAILABILITY OF H-2B VISAS.**

11 Section 214(g)(9)(A) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1184(g)(9)(A)) is amended by striking
13 “during fiscal year 2013, 2014, or 2015 shall not again
14 be counted toward such limitation during fiscal year
15 2016” and inserting “during one or more of the prior two
16 fiscal years shall not again be counted toward such limita-
17 tion during the current fiscal year”.

