

108TH CONGRESS
1ST SESSION

H. R. 3534

To enhance border enforcement, improve homeland security, remove incentives for illegal immigration, and establish a guest worker program.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2003

Mr. TANCREDO (for himself, Mr. DEAL of Georgia, Mr. DUNCAN, Mr. HEFLEY, and Mr. HERGER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Government Reform, Education and the Workforce, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance border enforcement, improve homeland security, remove incentives for illegal immigration, and establish a guest worker program.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Enforcement
5 and Revolving Employment to Assist Laborers Act of
6 2003” or the “BE REAL Act of 2003”.

1 **TITLE I—BORDER**
2 **ENFORCEMENT**
3 **Subtitle A—Improving Homeland**
4 **Security**

5 **SEC. 101. SENSE OF CONGRESS REGARDING USE OF MILI-**
6 **TARY TO GUARD LAND BORDERS OF THE**
7 **UNITED STATES.**

8 It is the sense of Congress that the President should
9 deploy United States military troops to perform support
10 functions along the southern and northern United States
11 land borders until such time as additional Border Patrol
12 agents authorized under this Act are hired and deployed.

13 **SEC. 102. USE OF ARMY AND AIR FORCE TO SECURE THE**
14 **BORDER.**

15 Section 1385 of title 18, United States Code, is
16 amended by inserting after “execute the laws” the fol-
17 lowing: “other than at or near a border of the United
18 States in order to prevent aliens, terrorists, and drug
19 smugglers from entering the United States”.

20 **SEC. 103. INCREASE IN FULL-TIME BORDER PATROL**
21 **AGENTS.**

22 Subject to the availability of appropriations, the Sec-
23 retary of Homeland Security shall increase the number of
24 full-time Border Patrol agents to 20,000 by fiscal year
25 2008. There are authorized to be appropriated such sums

1 as may be necessary for additional resources for support
2 personnel and equipment for the activities of the new Bor-
3 der Patrol personnel.

4 **SEC. 104. INCREASE IN FULL-TIME BCBP IMMIGRATION IN-**
5 **SPECTORS.**

6 Subject to the availability of appropriations, the Sec-
7 retary of Homeland Security shall increase by 2,000 the
8 number of full-time Bureau of Customs and Border Pro-
9 tection immigration inspectors by the end of fiscal year
10 2006. There are authorized to be appropriated such sums
11 as may be necessary for such additional resources for sup-
12 port personnel and equipment for inspections as may be
13 necessary to implement such increase in inspectors.

14 **SEC. 105. INCREASE IN FULL-TIME 1811-SERIES BICE SPE-**
15 **CIAL AGENTS.**

16 Subject to the availability of appropriations, the Sec-
17 retary of Homeland Security shall increase the number of
18 full-time 1811-series Bureau of Immigration and Customs
19 Enforcement special agents devoted to the immigration
20 function to 4,500 by the end of the fiscal year 2006. There
21 are authorized to be appropriated such sums as may be
22 necessary for such additional resources for support per-
23 sonnel, training, equipment, and case funds for investiga-
24 tions as may be necessary to implement such increase in
25 the number of special agents.

1 **SEC. 106. INCREASE IN FULL-TIME DETENTION AND RE-**
2 **MOVAL OFFICERS.**

3 Subject to the availability of appropriations, the Sec-
4 retary of Homeland Security shall increase by 2,000 the
5 number of full-time detention and removal officers by the
6 end of the fiscal year 2006. There are authorized to be
7 appropriated such sums as may be necessary for addi-
8 tional resources for support personnel and equipment for
9 removals to implement such increase in personnel.

10 **SEC. 107. FUNCTIONS OF DETENTION AND REMOVAL OFFI-**
11 **CERS.**

12 Notwithstanding any other provision of law, detention
13 and removal officers of the Department of Homeland Se-
14 curity at the GS-9 and GS-11 levels are authorized to
15 perform interior patrol functions, including locating, de-
16 taining, and transporting alien who have overstayed their
17 visas, alien absconders, and aliens apprehended by state
18 or local authorities.

19 **SEC. 108. SUSPENSION OF VISA WAIVER PROGRAM.**

20 Notwithstanding any other provision of law, the visa
21 waiver program for certain visitors established under sec-
22 tion 217 of the Immigration and Nationality Act shall be
23 suspended until the Secretary of Homeland Security deter-
24 mines and certifies to the Congress that—

25 (1) the automated entry-exit system authorized
26 under section 110 of the Illegal Immigration Reform

1 and Immigrant Responsibility Act of 1996 (8 U.S.C.
2 1221 note) is fully implemented and functional,

3 (2) all United States ports of entry have func-
4 tional biometric machine readers,

5 (3) all countries which participate in the visa
6 waiver program under section 217 of the Immigra-
7 tion and Nationality Act issue to nationals of such
8 countries machine-readable biometric passports.

9 **SEC. 109. CIVIL AND CRIMINAL PENALTIES FOR NON-**
10 **IMMIGRANT VISA OVERSTAYS.**

11 (a) **IN GENERAL.**—The Immigration and Nationality
12 Act is amended by inserting after section 275 the following
13 new section:

14 “**CRIMINAL PENALTIES FOR UNLAWFUL PRESENCE IN**
15 **THE UNITED STATES**

16 “**SEC. 275A.** Any alien who fails to depart the United
17 States within 30 days after the expiration of a non-
18 immigrant visa and is not in other lawful status under
19 this Act shall be fined under title 18, United States Code,
20 imprisoned not more than one year, or both.”.

21 (b) **CLERICAL AMENDMENT.**—The table of contents
22 for the Immigration and Nationality Act is amended by
23 inserting after the item relating to section 275 the fol-
24 lowing:

“Sec. 275A. Criminal penalties for unlawful presence in the United States.”.

1 **SEC. 110. CIVIL AND CRIMINAL PENALTIES FOR DOCU-**
2 **MENTS FRAUD AND FALSE CLAIMS OF CITI-**
3 **ZENSHIP.**

4 (a) **PENALTIES FOR DOCUMENT FRAUD.**—Section
5 274C(d)(3) of the Immigration and Nationality Act (8
6 U.S.C. 1324c(d)(3)) is amended—

7 (1) in subparagraph (A), by striking “\$250 and
8 not more than \$2,000” and inserting “\$500 and not
9 more than \$4,000”; and

10 (2) in subparagraph (B), by striking “\$2,000
11 and not more than \$5,000” and inserting “\$4,000
12 and not more than \$10,000”.

13 (b) **FRAUD AND FALSE STATEMENTS.**—Chapter 47
14 of title 18, United States Code, is amended—

15 (1) in section 1015, by striking “five years”
16 and inserting “10 years”; and

17 (2) in section 1028(b)—

18 (A) in paragraph (1), by striking “15
19 years” and inserting “20 years”;

20 (B) in paragraph (2), by striking “three
21 years” and inserting “six years”;

22 (C) in paragraph (3), by striking “20
23 years” and inserting “25 years”;

24 (D) in paragraph (4), by striking “25
25 years” and inserting “30 years”; and

1 (E) in paragraph (6), by striking “one
2 year” and inserting “two years”.

3 **SEC. 111. INCREASE IN CAPACITY OF DETENTION FACILI-**
4 **TIES.**

5 Subject to the availability of appropriations, the Sec-
6 retary of Homeland Security is authorized to double by
7 the end of the fiscal year 2006 the capacity of facilities
8 that were available at the end of the fiscal year 2001 for
9 the detention of aliens under the immigration laws of the
10 United States.

11 **SEC. 112. SECURE AND VERIFIABLE IDENTIFICATION RE-**
12 **QUIRED FOR FEDERAL PUBLIC BENEFITS.**

13 In the provision in the United States of a Federal
14 public benefit or service, including a law enforcement serv-
15 ice, that requires the recipient to produce identification,
16 no Federal agency, commission, or other entity within the
17 executive, legislative, or judicial branch of the Federal
18 Government may accept, recognize, or rely on (or author-
19 ize the acceptance or recognition of, or the reliance on)
20 any identification document, unless the document was
21 issued by a Federal or State authority and is subject to
22 verification by a Federal law enforcement, intelligence, or
23 homeland security agency.

1 **SEC. 113. REQUIREMENT OF UNITED STATES CITIZENSHIP**
2 **FOR CERTAIN FEDERAL EMPLOYEES AND**
3 **THE PRACTICE OF IMMIGRATION LAW IN THE**
4 **UNITED STATES.**

5 (a) POSITIONS IN THE DEPARTMENT OF HOMELAND
6 SECURITY.—Notwithstanding any other provision of law,
7 employees of the Department of Homeland Security in po-
8 sitions in the Bureau of Customs and Border Protection,
9 the Bureau of Immigration and Customs Enforcement,
10 and the Bureau of Citizenship and Immigration Services
11 shall be citizens of the United States.

12 (b) POSITIONS IN THE DEPARTMENT OF STATE.—
13 Notwithstanding any other provision of law, employees of
14 the Department of State in positions in consular affairs
15 offices shall be citizens of the United States.

16 **SEC. 114. FINGERPRINTING OF APPLICANTS FOR UNITED**
17 **STATES PASSPORTS.**

18 Section 1 of title IX of the Act of June 15, 1917
19 (22 U.S.C. 213) is amended—

20 (1) by inserting “(a)” before “Before a pass-
21 port”;

22 (2) by adding at the end the following:

23 “(b) No new or replacement United States passport
24 may be issued to any applicant on or after January 1,
25 2006 unless—

1 “(1) the applicant has been fingerprinted elec-
2 tronically; and

3 “(2) the applicant’s fingerprints have been
4 checked against the National Crime Information
5 Center database of the Federal Bureau of Investiga-
6 tion.”.

7 **SEC. 115. VISA TERM COMPLIANCE BONDS.**

8 (a) DEFINITIONS.—For purposes of this section:

9 (1) VISA TERM COMPLIANCE BOND.—The term
10 “visa term compliance bond” means a written
11 suretyship undertaking entered into by an alien indi-
12 vidual seeking admission to the United States of
13 America on a nonimmigrant visa whose performance
14 is guaranteed by a bail agent.

15 (2) SURETYSHIP UNDERTAKING.—The term
16 “suretyship undertaking” means a written agree-
17 ment, executed by a bail agent, which binds all par-
18 ties to its certain terms and conditions and which
19 provides obligations for the visa applicant while
20 under the bond and penalties for forfeiture to ensure
21 the obligations of the principal under the agreement.

22 (3) BAIL AGENT.—The term “bail agent”
23 means any individual properly licensed, approved,
24 and appointed by power of attorney to execute or

1 countersign bail bonds in connection with judicial
2 proceedings and who receives a premium.

3 (4) SURETY.—The term “surety” means an en-
4 tity, as defined by, and that is in compliance with,
5 sections 9304 through 9308 of title 31, United
6 States Code, that agrees—

7 (A) to guarantee the performance, where
8 appropriate, of the principal under a visa term
9 compliance bond;

10 (B) to perform as required in the event of
11 a forfeiture; and

12 (C) to pay over the principal (penal) sum
13 of the bond for failure to perform.

14 (b) ISSUANCE OF BOND.—A consular officer may re-
15 quire an applicant for a nonimmigrant visa, as a condition
16 for granting such application, to obtain a visa term com-
17 pliance bond.

18 (c) VALIDITY, EXPIRATION, RENEWAL, AND CAN-
19 CELLATION OF BONDS.—

20 (1) VALIDITY.—A visa term compliance bond
21 undertaking is valid if it—

22 (A) states the full, correct, and proper
23 name of the alien principal;

24 (B) states the amount of the bond;

1 (C) is guaranteed by a surety and
2 countersigned by an attorney-in-fact who is
3 properly appointed;

4 (D) is an original signed document;

5 (E) is filed with the Secretary of Home-
6 land Security along with the original application
7 for a visa; and

8 (F) is not executed by electronic means.

9 (2) EXPIRATION.—A visa term compliance bond
10 undertaking shall expire at the earliest of—

11 (A) 1 year from the date of issue;

12 (B) at the expiration, cancellation, or sur-
13 render of the visa; or

14 (C) immediately upon nonpayment of the
15 premium.

16 (3) RENEWAL.—The bond may be renewed—

17 (A) annually with payment of proper pre-
18 mium at the option of the bail agent or surety;
19 and

20 (B) provided there has been no breach of
21 conditions, default, claim, or forfeiture of the
22 bond.

23 (4) CANCELLATION.—The bond shall be can-
24 celed and the surety and bail agent exonerated—

25 (A) for nonrenewal;

1 (B) if the surety or bail agent provides
2 reasonable evidence that there was misrepresenta-
3 tion or fraud in the application for the bond;

4 (C) upon termination of the visa;

5 (D) upon death, incarceration of the prin-
6 cipal, or the inability of the surety to produce
7 the principal for medical reasons;

8 (E) if the principal is detained in any city,
9 State, country, or political subdivision thereof;

10 (F) if the principal departs from the
11 United States of America for any reason with-
12 out permission of the Secretary of Homeland
13 Security and the surety or bail agent; or

14 (G) if the principal is surrendered by the
15 surety.

16 (5) EFFECT OF EXPIRATION OR CANCELLA-
17 TION.—When a visa term compliance bond expires
18 without being immediately renewed, or is canceled,
19 the nonimmigrant status of the alien shall be re-
20 voked immediately.

21 (6) SURRENDER OF PRINCIPAL; FORFEITURE
22 OF BOND PREMIUM.—

23 (A) SURRENDER.—At any time before a
24 breach of any of the conditions of the bond, the
25 surety or bail agent may surrender the prin-

1 ciproal, or the principal may surrender, to any
2 Bureau of Immigration and Customs Enforcement
3 or Bureau of Customs and Border Protection
4 office or facility.

5 (B) FORFEITURE OF BOND PREMIUM.—A
6 principal may be surrendered without the re-
7 turn of any bond premium if the visa holder—

8 (i) changes address without notifying
9 the surety or bail agent and the Secretary
10 of Homeland Security in writing at least
11 60 days prior to such change;

12 (ii) changes schools, jobs, or occupa-
13 tions without written permission of the
14 surety, bail agent, and such Secretary;

15 (iii) conceals himself or herself;

16 (iv) fails to report to such Secretary
17 as required at least annually; or

18 (v) violates the contract with the bail
19 agent or surety, commits any act that may
20 lead to a breach of the bond, or otherwise
21 violates any other obligation or condition
22 of the visa established by such Secretary.

23 (7) CERTIFIED COPY OF UNDERTAKING OR
24 WARRANT TO ACCOMPANY SURRENDER.—

1 (A) IN GENERAL.—A person desiring to
2 make a surrender of the visa holder—

3 (i) shall have the right to petition any
4 Federal court for an arrest warrant for the
5 arrest of the visa holder;

6 (ii) shall forthwith be provided a cer-
7 tified copy of the arrest warrant and the
8 undertaking; and

9 (iii) shall have the right to pursue, ap-
10 prehend, detain, and deliver the visa hold-
11 er, together with the certified copy of the
12 arrest warrant and the undertaking, to any
13 official or facility of the Bureau of Immi-
14 gration and Customs Enforcement or Bu-
15 reau of Customs and Border Protection or
16 any detention facility authorized to hold
17 Federal detainees.

18 (B) EFFECTS OF DELIVERY.—Upon deliv-
19 ery of a person under subparagraph (A)(iii)—

20 (i) the official to whom the delivery is
21 made shall detain the visa holder in cus-
22 tody and issue a written certificate of sur-
23 render; and

24 (ii) the court issuing the warrant de-
25 scribed in subparagraph (A)(i) and the

1 Secretary of Homeland Security shall im-
2 mediately exonerate the surety and bail
3 agent from any further liability on the
4 bond.

5 (8) FORM OF BOND.—A visa term compliance
6 bond shall in all cases state the following and be se-
7 cured by a surety:

8 “(A) BREACH OF BOND; PROCEDURE, FOR-
9 FEITURE, NOTICE.—

10 “(i) If a visa holder violates any con-
11 ditions of the visa or the visa bond the
12 Secretary of Homeland Security shall—

13 “(I) order the visa canceled;

14 “(II) immediately obtain a war-
15 rant for the visa holder’s arrest;

16 “(III) order the bail agent and
17 surety to take the visa holder into
18 custody and surrender the visa holder
19 to such Secretary; and

20 “(IV) mail notice to the bail
21 agent and surety via certified mail re-
22 turn receipt at each of the addresses
23 in the bond.

24 “(ii) A bail agent or surety shall have
25 full and complete access to any and all in-

1 formation, electronic or otherwise, in the
2 care, custody, and control of the United
3 States Government or any State or local
4 government or any subsidiary or police
5 agency thereof regarding the visa holder
6 needed to comply with section 116 of the
7 Border Enforcement and Revolving Em-
8 ployment to Assist Laborers Act of 2003
9 that the court issuing the warrant believes
10 is crucial in locating the visa holder.

11 “(iii) If the visa holder is later ar-
12 rested, detained, or otherwise located out-
13 side the United States and the outlying
14 possessions of the United States (as de-
15 fined in section 101(a) of the Immigration
16 and Nationality Act), such Secretary
17 shall—

18 “(I) order that the bail agent and
19 surety are completely exonerated, and
20 the bond canceled and terminated;
21 and

22 “(II) if such Secretary has issued
23 an order under clause (i), the surety
24 may request, by written, properly filed
25 motion, reinstatement of the bond.

1 This subclause may not be construed
2 to prevent such Secretary from revok-
3 ing or resetting a higher bond.

4 “(iv) The bail agent or surety must—

5 “(I) produce the visa bond hold-
6 er; or

7 “(II)(aa) prove within 180 days
8 that producing the bond holder was
9 prevented—

10 “(aaa) by the bond holder’s
11 illness or death;

12 “(bbb) because the bond
13 holder is detained in custody in
14 any city, State, country, or polit-
15 ical subdivision thereof;

16 “(ccc) because the bond
17 holder has left the United States
18 or its outlying possessions (as de-
19 fined in section 101(a) of the Im-
20 migration and Nationality Act (8
21 U.S.C. 1101(a)); or

22 “(ddd) because required no-
23 tice was not given to the bail
24 agent or surety; and

1 “(bb) prove within 180 days that
2 the inability to produce the bond hold-
3 er was not with the consent or conniv-
4 ance of the bail agent or sureties.

5 “(v) If the bail agent or surety does
6 not comply with the terms of this bond
7 within 60 days after the mailing of the no-
8 tice required under subparagraph
9 (A)(i)(IV), a portion of the face value of
10 the bond shall be assessed as a penalty
11 against the surety.

12 “(vi) If compliance occurs more than
13 60 days but no more than 90 days after
14 the mailing of the notice, the amount as-
15 sessed shall be one-third of the face value
16 of the bond.

17 “(vii) If compliance occurs more than
18 90 days, but no more than 180 days, after
19 the mailing of the notice, the amount as-
20 sessed shall be two-thirds of the face value
21 of the bond.

22 “(viii) If compliance does not occur
23 within 180 days after the mailing of the
24 notice, the amount assessed shall be 100
25 percent of the face value of the bond.

1 “(ix) All penalty fees shall be paid by
2 the surety within 45 days after the end of
3 such 180-day period.

4 “(B) Such Secretary may waive the pen-
5 alty fees or extend the period for payment or
6 both, if—

7 “(i) a written request is filed with the
8 Secretary; and

9 “(ii) the bail agent or surety provides
10 evidence satisfactory to the Secretary that
11 diligent efforts were made to effect compli-
12 ance of the visa holder.

13 “(C) COMPLIANCE; EXONERATION; LIMITA-
14 TION OF LIABILITY.—

15 “(i) COMPLIANCE.—The bail agent or
16 surety shall have the absolute right to lo-
17 cate, apprehend, arrest, detain, and sur-
18 render any visa holder, wherever he or she
19 may be found, who violates any of the
20 terms and conditions of the visa or bond.

21 “(ii) EXONERATION.—Upon satisfying
22 any of the requirements of the bond, the
23 surety shall be completely exonerated.

1 “(iii) LIMITATION OF LIABILITY.—
2 The total liability on any undertaking shall
3 not exceed the face amount of the bond.”.

4 **SEC. 116. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.**

5 Section 236(a)(2) of the Immigration and Nationality
6 Act (8 U.S.C. 1226(a)(2)) is amended to read as follows:

7 “(2) subject to section 241(a)(8), may release
8 the alien on bond of at least \$10,000, with security
9 approved by, and containing conditions prescribed
10 by, the Secretary of Homeland Security, but the
11 Secretary shall not release the alien on or to his own
12 recognizance unless an order of an immigration
13 judge expressly finds that the alien is not a flight
14 risk and is not a threat to the United States; and”.

15 **SEC. 117. DETENTION OF ALIENS DELIVERED BY BONDS-**
16 **MEN.**

17 (a) IN GENERAL.—Section 241(a) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1231(a)) is amended
19 by adding at the end the following:

20 “(8) EFFECT OF PRODUCTION OF ALIEN BY
21 BONDSMAN.—Notwithstanding any other provision
22 of law, the Secretary of Homeland Security shall
23 take into custody any alien subject to a final order
24 of removal, and cancel any bond previously posted
25 for the alien, if the alien is produced within the pre-

1 scribed time limit by the obligor on the bond. The
2 obligor on the bond shall be deemed to have substan-
3 tially performed all conditions imposed by the terms
4 of the bond, and shall be released from liability on
5 the bond, if the alien is produced within such time
6 limit.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on the date of the enact-
9 ment of this act and shall apply to all immigration bonds
10 posted before, on, or after the date of the enactment of
11 this Act.

12 **SEC. 118. SOCIAL SECURITY CARDS.**

13 (a) IMPROVEMENTS TO CARD.—

14 (1) IN GENERAL.—For purposes of carrying out
15 section 274A of the Immigration and Nationality
16 Act, the Commissioner of Social Security (in this
17 section referred to as the “Commissioner”) shall
18 make such improvements to the physical design,
19 technical specifications, and materials of the social
20 security account number card as are necessary to
21 ensure that it is a genuine official document and
22 that it offers the best possible security against coun-
23 terfeiting, forgery, alteration, and misuse.

1 (2) PERFORMANCE STANDARDS.—In making
2 the improvements required in paragraph (1), the
3 Commissioner shall—

4 (A) make the card as secure against coun-
5 terfeiting as the 100 dollar Federal Reserve
6 note, with a rate of counterfeit detection com-
7 parable to the 100 dollar Federal Reserve note;
8 and

9 (B) make the card as secure against fraud-
10 ulent use as a United States passport.

11 (3) DEFINITION.—In this section, the term “se-
12 cured social security account number card” means a
13 social security account number card issued in ac-
14 cordance with the requirements of this paragraph.

15 (4) EFFECTIVE DATE.—All social security ac-
16 count number cards issued after January 1, 2005,
17 whether new or replacement, shall be secured social
18 security account number cards.

19 **SEC. 119. BIRTH CERTIFICATES.**

20 Subsection (a) of section 656 of the Illegal Immigra-
21 tion Reform and Immigrant Responsibility Act of 1996
22 (5 U.S.C. 301 note) is amended to read as follows:

23 “(a) BIRTH CERTIFICATES.—

24 “(1) LIMITATION ON ACCEPTANCE.—(A) No
25 Federal agency, including but not limited to the So-

1 cial Security Administration and the Department of
2 State, and no State agency that issues driver’s li-
3 censes or identification documents, may accept for
4 any official purpose a copy of a birth certificate, as
5 defined in paragraph (5), unless it is issued by a
6 State or local authorized custodian of record and it
7 conforms to standards described in subparagraph
8 (B).

9 “(B) The standards described in this subpara-
10 graph are those set forth in regulations promulgated
11 by the Federal agency designated by the President,
12 after consultation with such other Federal agencies
13 as the President shall designate and with State vital
14 statistics offices, and shall—

15 “(i) include but not be limited to—

16 “(I) certification by the agency
17 issuing the birth certificate; and

18 “(II) use of safety paper, the seal of
19 the issuing agency, and other features de-
20 signed to limit tampering, counterfeiting,
21 and photocopying, or otherwise duplicating,
22 for fraudulent purposes;

23 “(ii) not require a single design to which
24 the official birth certificate copies issued by
25 each State must conform; and

1 “(iii) accommodate the differences between
2 the States in the manner and form in which
3 birth records are stored and in how birth cer-
4 tificate copies are produced from such records.

5 “(2) LIMITATION ON ISSUANCE.—(A) If one or
6 more of the conditions described in subparagraph
7 (B) is present, no State or local government agency
8 may issue an official copy of a birth certificate per-
9 taining to an individual unless the copy prominently
10 notes that such individual is deceased.

11 “(B) The conditions described in this subpara-
12 graph include—

13 “(i) the presence on the original birth cer-
14 tificate of a notation that the individual is de-
15 ceased, or

16 “(ii) actual knowledge by the issuing agen-
17 cy that the individual is deceased obtained
18 through information provided by the Social Se-
19 curity Administration, by an interstate system
20 of birth-death matching, or otherwise.

21 “(3) GRANTS TO STATES.—(A)(i) The Sec-
22 retary of Health and Human Services, in consulta-
23 tion with other agencies designated by the President,
24 shall establish a fund, administered through the Na-
25 tional Center for Health Statistics, to provide grants

1 to the States to encourage them to develop the capa-
2 bility to match birth and death records, within each
3 State and among the States, and to note the fact
4 of death on the birth certificates of deceased per-
5 sons. In developing the capability described in the
6 preceding sentence, States shall focus first on per-
7 sons who were born after 1950.

8 “(ii) Such grants shall be provided in propor-
9 tion to population and in an amount needed to pro-
10 vide a substantial incentive for the States to develop
11 such capability.

12 “(B) The Secretary of Health and Human
13 Services shall establish a fund, administered through
14 the National Center for Health Statistics, to provide
15 grants to the States for a project in each of 5 States
16 to demonstrate the feasibility of a system by which
17 each such State’s office of vital statistics would be
18 provided, within 24 hours, sufficient information to
19 establish the fact of death of every individual dying
20 in such State.

21 “(C) There are authorized to be appropriated to
22 the Department of Health and Human Services such
23 amounts as may be necessary to provide the grants
24 described in subparagraphs (A) and (B).

1 “(4) REPORT.—(A) Not later than one year
2 after the date of the enactment of this Act, the Sec-
3 retary of Health and Human Services shall submit
4 a report to the Congress on ways to reduce the
5 fraudulent obtaining and the fraudulent use of birth
6 certificates, including any such use to obtain a social
7 security account number or a State or Federal docu-
8 ment related to identification or immigration.

9 “(B) Not later than one year after the date of
10 enactment of this Act, the agency designated by the
11 President in paragraph (1)(B) shall submit a report
12 setting forth, and explaining, the regulations de-
13 scribed in such paragraph.

14 “(C) There are authorized to be appropriated to
15 the Department of Health and Human Services such
16 amounts as may be necessary for the preparation of
17 the report described in subparagraph (A).

18 “(5) CERTIFICATE OF BIRTH.—As used in this
19 section, the term ‘birth certificate’ means a certifi-
20 cate of birth of—

21 “(A) a person born in the United States,

22 or

23 “(B) a person born abroad who is a citizen
24 or national of the United States at birth, whose
25 birth is registered in the United States.

1 “(6) EFFECTIVE DATES.—

2 “(A) Except as otherwise provided in sub-
3 paragraph (B) and in paragraph (4), this sub-
4 section shall take effect two years after the en-
5 actment of the Border Enforcement and Revolv-
6 ing Employment to Assist Laborers Act of
7 2003.

8 “(B) Paragraph (1)(A) shall take effect
9 two years after the submission of the report de-
10 scribed in paragraph (4)(B).”.

11 **Subtitle B—Removing the**
12 **Incentives to Illegal Migration**

13 **SEC. 141. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
14 **ESS AND ELIMINATION OF EXAMINATION OF**
15 **DOCUMENTATION REQUIREMENT.**

16 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
17 is amended—

18 (1) in subsection (a)(1)(A), by striking “for a
19 fee”;

20 (2) in subsection (a)(3)—

21 (A) by inserting “(A)” after
22 “DEFENSE.—”; and

23 (B) by adding at the end the following:

24 “(B) FAILURE TO SEEK AND OBTAIN
25 VERIFICATION.—In the case of a hiring of an indi-

1 vidual for employment in the United States by a
2 person or entity, the following requirements apply:

3 “(i) FAILURE TO SEEK VERIFICATION.—

4 “(I) IN GENERAL.—If the person or
5 entity has not made an inquiry, under the
6 mechanism established under subsection
7 (b)(4), seeking verification of the identity,
8 social security number, and work eligibility
9 of the individual, by not later than the end
10 of 3 working days (as specified by the Sec-
11 retary of Homeland Security) after the
12 date of the hiring, the defense under sub-
13 paragraph (A) shall not be considered to
14 apply with respect to any employment after
15 such 3 working days, except as provided in
16 subclause (II).

17 “(II) SPECIAL RULE FOR FAILURE OF
18 VERIFICATION MECHANISM.—If such a per-
19 son or entity in good faith attempts to
20 make an inquiry during such 3 working
21 days in order to qualify for the defense
22 under subparagraph (A) and the
23 verification mechanism has registered that
24 not all inquiries were responded to during
25 such time, the person or entity can make

1 an inquiry until the end of the first subse-
2 quent working day in which the verification
3 mechanism registers no nonresponses and
4 qualify for such defense.

5 “(ii) FAILURE TO OBTAIN
6 VERIFICATION.—If the person or entity has
7 made the inquiry described in clause (i)(I) but
8 has not received an appropriate verification of
9 such identity, number, and work eligibility
10 under such mechanism within the time period
11 specified under subsection (b)(4)(B) after the
12 time the verification inquiry was received, the
13 defense under subparagraph (A) shall not be
14 considered to apply with respect to any employ-
15 ment after the end of such time period.”;

16 (3) in subsection (b)(1)—

17 (A) by amending the paragraph heading to
18 read as follows:

19 “(1) ATTESTATION.—”; and

20 (B) by amending subparagraph (A) to read
21 as follows:

22 “(A) IN GENERAL.—The person or entity
23 must attest, under penalty of perjury and on a
24 form designated or established by the Secretary
25 of Homeland Security by regulation, that it has

1 verified that the individual is not an unauthor-
2 ized alien by obtaining from the individual the
3 individual’s social security account number and
4 recording the number on the form (if the indi-
5 vidual claims to have been issued such a num-
6 ber), and, if the individual does not attest to
7 United States citizenship under paragraph (2),
8 obtaining such identification or authorization
9 number established by the Department of
10 Homeland Security for the alien as the Sec-
11 retary may specify, and recording such number
12 on the form.”;

13 (4) in subsection (b)(2), by adding at the end
14 the following: “The individual must also provide that
15 individual’s social security account number (if the
16 individual claims to have been issued such a num-
17 ber), and, if the individual does not attest to United
18 States citizenship under this paragraph, such identi-
19 fication or authorization number established by the
20 Department of Homeland Security for the alien as
21 the Secretary of Homeland Security may specify.”;
22 and

23 (5) by amending subsection (b)(3) to read as
24 follows:

1 “(3) RETENTION OF VERIFICATION FORM AND
2 VERIFICATION.—

3 “(A) IN GENERAL.—After completion of
4 such form in accordance with paragraphs (1)
5 and (2), the person or entity must—

6 “(i) retain the form and make it avail-
7 able for inspection by officers of the De-
8 partment of Homeland Security, the Spe-
9 cial Counsel for Immigration-Related Un-
10 fair Employment Practices, or the Depart-
11 ment of Labor during a period beginning
12 on the date of the hiring, recruiting, or re-
13 ferral of the individual and ending—

14 “(I) in the case of the recruiting
15 or referral for a fee (without hiring)
16 of an individual, three years after the
17 date of the recruiting or referral; and

18 “(II) in the case of the hiring of
19 an individual, the later of—

20 “(aa) three years after the
21 date of such hiring; or

22 “(bb) one year after the
23 date the individual’s employment
24 is terminated; and

1 “(ii) make an inquiry, as provided in
2 paragraph (4), using the verification sys-
3 tem to seek verification of the identity and
4 employment eligibility of an individual, by
5 not later than the end of 3 working days
6 (as specified by the Secretary of Homeland
7 Security) after the date of the hiring (or
8 recruitment or referral, as the case may
9 be).

10 “(B) VERIFICATION.—

11 “(i) VERIFICATION RECEIVED.—If the
12 person or other entity receives an appro-
13 priate verification of an individual’s iden-
14 tity and work eligibility under the
15 verification system within the time period
16 specified, the person or entity shall record
17 on the form an appropriate code that is
18 provided under the system and that indi-
19 cates a final verification of such identity
20 and work eligibility of the individual.

21 “(ii) TENTATIVE NONVERIFICATION
22 RECEIVED.—If the person or other entity
23 receives a tentative nonverification of an
24 individual’s identity or work eligibility
25 under the verification system within the

1 time period specified, the person or entity
2 shall so inform the individual for whom the
3 verification is sought. If the individual does
4 not contest the nonverification within the
5 time period specified, the nonverification
6 shall be considered final. The person or en-
7 tity shall then record on the form an ap-
8 propriate code which has been provided
9 under the system to indicate a tentative
10 nonverification. If the individual does con-
11 test the nonverification, the individual shall
12 utilize the process for secondary
13 verification provided under paragraph (4).
14 The nonverification will remain tentative
15 until a final verification or nonverification
16 is provided by the verification system with-
17 in the time period specified. In no case
18 shall an employer terminate employment of
19 an individual because of a failure of the in-
20 dividual to have identity and work eligi-
21 bility confirmed under this section until a
22 nonverification becomes final. Nothing in
23 this clause shall apply to a termination of
24 employment for any reason other than be-
25 cause of such a failure.

1 “(iii) FINAL VERIFICATION OR
2 NONVERIFICATION RECEIVED.—If a final
3 verification or nonverification is provided
4 by the verification system regarding an in-
5 dividual, the person or entity shall record
6 on the form an appropriate code that is
7 provided under the system and that indi-
8 cates a verification or nonverification of
9 identity and work eligibility of the indi-
10 vidual.

11 “(iv) EXTENSION OF TIME.—If the
12 person or other entity in good faith at-
13 tempts to make an inquiry during such 3
14 working days and the verification system
15 has registered that not all inquiries were
16 received during such time, the person or
17 entity may make an inquiry in the first
18 subsequent working day in which the
19 verification system registers that it has re-
20 ceived all inquiries. If the verification sys-
21 tem cannot receive inquiries at all times
22 during a day, the person or entity merely
23 has to assert that the entity attempted to
24 make the inquiry on that day for the pre-
25 vious sentence to apply to such an inquiry,

1 and does not have to provide any addi-
2 tional proof concerning such inquiry.

3 “(v) CONSEQUENCES OF
4 NONVERIFICATION.—If the person or other
5 entity has received a final nonverification
6 regarding an individual, the person or enti-
7 ty shall terminate employment (or recruit-
8 ment or referral) of the individual.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect 2 years after the date of
11 the enactment of this Act. Retention of form requirements
12 under section 274A(b)(3) of the Immigration and Nation-
13 ality Act, as in effect before such effective date, shall re-
14 main in effect as if this section had not been enacted for
15 forms completed before such effective date.

16 **SEC. 142. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
17 **TEM.**

18 (a) IN GENERAL.—Section 274A(b)(4) (8 U.S.C.
19 1324a(b)(4)) is amended to read as follows:

20 “(4) EMPLOYMENT ELIGIBILITY VERIFICATION
21 SYSTEM.—

22 “(A) IN GENERAL.—The Secretary of
23 Homeland Security shall establish a verification
24 system through which the Secretary (or a des-

1 ignee of the Secretary, which may be a non-
2 governmental entity)—

3 “(i) responds to inquiries made by
4 persons at any time through a toll-free
5 telephone line or other toll-free electronic
6 media concerning an individual’s identity
7 and whether the individual is authorized to
8 be employed; and

9 “(ii) maintains records of the inquir-
10 ies that were made, of verifications pro-
11 vided (or not provided), and of the codes
12 provided to inquirers as evidence of their
13 compliance with their obligations under
14 this section.

15 To the extent practicable, the Secretary shall
16 seek to establish such a system using one or
17 more nongovernmental entities.

18 “(B) INITIAL RESPONSE.—The verification
19 system shall provide verification or a tentative
20 nonverification of an individual’s identity and
21 employment eligibility within 3 working days of
22 the initial inquiry. If providing verification or
23 tentative nonverification, the verification system
24 shall provide an appropriate code indicating
25 such verification or such nonverification.

1 “(C) SECONDARY VERIFICATION PROCESS
2 IN CASE OF TENTATIVE NONVERIFICATION.—In
3 cases of tentative nonverification, the Secretary
4 of Homeland Security shall specify, in consulta-
5 tion with the Commissioner of Social Security,
6 an available secondary verification process to
7 confirm the validity of information provided and
8 to provide a final verification or nonverification
9 within 7 working days after the date of the ten-
10 tentative nonverification. When final verification or
11 nonverification is provided, the verification sys-
12 tem shall provide an appropriate code indicating
13 such verification or nonverification.

14 “(D) DESIGN AND OPERATION OF SYS-
15 TEM.—The verification system shall be designed
16 and operated—

17 “(i) to maximize its reliability and
18 ease of use by persons and other entities
19 consistent with insulating and protecting
20 the privacy and security of the underlying
21 information;

22 “(ii) to respond to all inquiries made
23 by such persons and entities on whether
24 individuals are authorized to be employed

1 and to register all times when such inquir-
2 ies are not received;

3 “(iii) with appropriate administrative,
4 technical, and physical safeguards to pre-
5 vent unauthorized disclosure of personal
6 information; and

7 “(iv) to have reasonable safeguards
8 against the system’s resulting in unlawful
9 discriminatory practices based on national
10 origin or citizenship status, including—

11 “(I) the selective or unauthorized
12 use of the system to verify eligibility;

13 “(II) the use of the system prior
14 to an offer of employment; or

15 “(III) the exclusion of certain in-
16 dividuals from consideration for em-
17 ployment as a result of a perceived
18 likelihood that additional verification
19 will be required, beyond what is re-
20 quired for most job applicants.

21 “(E) RESPONSIBILITIES OF THE COMMIS-
22 SIONER OF SOCIAL SECURITY.—As part of the
23 verification system, the Commissioner of Social
24 Security, in consultation with the entity respon-
25 sible for administration of the system, shall es-

1 establish a reliable, secure method, which, within
2 the time periods specified under subparagraphs
3 (B) and (C), verifies, for each individual whose
4 identity and employment eligibility must be con-
5 firmed under this section, the individual’s name
6 and social security account number, the cor-
7 respondence of the name and number, and
8 whether the social security number presented is
9 valid for employment. The Commissioner shall
10 not disclose or release social security informa-
11 tion (other than such verification or
12 nonverification). If, in carrying out this sub-
13 paragraph, the Commissioner becomes aware of
14 a suspicious pattern of use of a social security
15 account number, the Commissioner shall inves-
16 tigate such suspicious pattern, or shall notify
17 the Secretary of Homeland Security of it. Noth-
18 ing in the Social Security Act or any other pro-
19 vision of law shall be construed to prevent the
20 Commissioner from so notifying the Secretary.
21 Upon receipt of such notification, the Secretary
22 shall investigate in lieu of the Commissioner.

23 “(F) RESPONSIBILITIES OF THE SEC-
24 RETARY OF HOMELAND SECURITY.—As part of
25 the verification system, the Secretary of Home-

1 land Security, in consultation with the entity
2 responsible for administration of the system,
3 shall establish a reliable, secure method, which,
4 within the time periods specified under sub-
5 paragraphs (B) and (C), compares the name
6 and alien identification or authorization number
7 which are provided in an inquiry against such
8 information maintained by the Secretary in
9 order to validate (or not validate) the informa-
10 tion provided, the correspondence of the name
11 and number, and whether the alien is author-
12 ized to be employed in the United States.

13 “(G) UPDATING INFORMATION.—The
14 Commissioner of Social Security and the Sec-
15 retary of Homeland Security shall update their
16 information in a manner that promotes the
17 maximum accuracy and shall provide a process
18 for the prompt correction of erroneous informa-
19 tion, including instances in which it is brought
20 to their attention in the secondary verification
21 process described in subparagraph (C).

22 “(H) LIMITATION ON USE OF THE
23 VERIFICATION SYSTEM AND ANY RELATED SYS-
24 TEMS.—Nothing in this paragraph shall be con-
25 strued to authorize, directly or indirectly, the

1 issuance or use of national identification cards
2 or the establishment of a national identification
3 card.

4 “(I) FEDERAL TORT CLAIMS ACT.—If an
5 individual alleges that the individual would not
6 have been dismissed from a job but for an error
7 of the verification mechanism, the individual
8 may seek compensation only through the mech-
9 anism of the Federal Tort Claims Act, and in-
10 junctive relief to correct such error. No class
11 action may be brought under this subpara-
12 graph.

13 “(J) PROTECTION FROM LIABILITY FOR
14 ACTIONS TAKEN ON THE BASIS OF INFORMA-
15 TION.—No person or entity shall be civilly or
16 criminally liable for any action taken in good
17 faith reliance on information provided through
18 the employment eligibility verification mecha-
19 nism established under this paragraph.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect 2 years after the date of
22 the enactment of this Act.

23 **SEC. 143. ADJUSTMENT OF STATUS APPLICATIONS.**

24 Section 245 of the Immigration and Nationality Act
25 (8 U.S.C. 1255) is amended—

1 (1) by striking subsections (a) through (i) and
2 subsection (k);

3 (2) by redesignating subsections (j), (l) and (m)
4 as subsections (b), (c) and (d), respectively; and

5 (3) by inserting before subsection (b) (as so re-
6 designated) the following:

7 “(a) Except as provided in subsection (b), (c), or (d), no
8 alien inspected and admitted to the United States on a
9 nonimmigrant visa or who entered the United States with-
10 out inspection may seek to adjust his status to that of
11 an alien lawfully admitted for permanent residence while
12 the alien is physically present in the United States.”.

13 **SEC. 144. REVOCATION OF TEMPORARY STATUS.**

14 (a) **TERMINATION OF ASYLUM.**—Section 208(c)(2) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1158(c)(2)) is amended by striking “may be terminated
17 if the Attorney General” and inserting “shall be termi-
18 nated if the Secretary of Homeland Security”.

19 (b) **ALIENS ELIGIBLE FOR TEMPORARY PROTECTED**
20 **STATUS.**—Section 244(c) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1254a(c)) is amended—

22 (1) in subparagraph (3)—

23 (A) by striking “except as provided in
24 paragraph (4) and permitted in subsection
25 (f)(3),”; and

1 (B) by inserting before the comma at the
2 end “, except where a brief trip abroad is re-
3 quired by emergency and authorized prior to
4 the alien’s travel by the Secretary of Homeland
5 Security or is due to extenuating circumstances
6 outside the control of the alien”; and

7 (2) by striking paragraph (4) and redesignating
8 paragraphs (5) and (6) as paragraphs (4) and (5),
9 respectively.

10 (c) **BENEFITS AND STATUS DURING PERIOD OF**
11 **TEMPORARY PROTECTED STATUS.**—Section 244(f) of the
12 Immigration and Nationality Act (8 U.S.C. 1254a(f)) is
13 amended—

14 (1) by adding “and” at the end of paragraph
15 (2);

16 (2) by striking paragraph (3); and

17 (3) by redesignating paragraph (4) as para-
18 graph (5).

19 **SEC. 145. REPEAL OF AMNESTY PROVISION.**

20 (a) **IN GENERAL.**—Section 249 of the Immigration
21 and Nationality Act (8 U.S.C. 1259) is repealed.

22 (b) **CLERICAL AMENDMENT.**—The table of contents
23 for the Immigration and Nationality Act is amended by
24 striking the item relating to section 249.

1 **SEC. 146. PROHIBITION ON ISSUANCE OF INDIVIDUAL TAX-**
2 **PAYER IDENTIFICATION NUMBER TO ALIENS**
3 **UNLAWFULLY PRESENT.**

4 Section 6109(c) of the Internal Revenue Code of
5 1986 (26 U.S.C. 6109(c)) is amended—

6 (1) by inserting “(1)” before “For purposes of
7 this section,”; and

8 (2) by adding at the end the following:

9 “(2) the Secretary is required to verify with the
10 Bureau of Citizenship and Immigration Services
11 that the applicant for any identifying number, other
12 than a Social Security account number, to be as-
13 signed by the Secretary is lawfully present in the
14 United States.”.

15 **TITLE II—REVOLVING EMPLOY-**
16 **MENT TO ASSIST LABORERS**
17 **Subtitle A—Prerequisites to Guest**
18 **Worker Program**

19 **SEC. 201. CERTIFICATIONS.**

20 (a) SECRETARY OF HOMELAND SECURITY.—Prior to
21 the implementation of the program described in subtitle
22 B, the Secretary of Homeland Security, in consultation
23 with the Attorney General and the Secretary of State,
24 shall certify to the Congress the following:

25 (1) The integrated entry and exit data system
26 required under section 110 of the Illegal Immigra-

1 tion Reform and Immigrant Responsibility Act of
2 1996 (8 U.S.C. 1221 note) and section 302 of the
3 Enhanced Border Security and Visa Entry Reform
4 Act of 2002 (8 U.S.C. 1731) is fully implemented
5 and functional, all ports of entry have functional bio-
6 metric machine readers, and the entry into and de-
7 parture from the United States of all noncitizens is
8 recorded.

9 (2) All noncitizens already in the United States
10 legally, and all aliens authorized to enter the United
11 States, have been issued biometric, machine-readable
12 travel or entry documents, as required by section
13 303 of the Enhanced Border Security and Visa
14 Entry Reform Act of 2002 (8 U.S.C. 1732).

15 (3) Neither immigrant nor nonimmigrant visas
16 are issued to nationals of foreign states that refuse
17 to permit the return of their nationals who are or-
18 dered removed from the United States.

19 (4) The electronic employment eligibility
20 verification system described in section 274A(b)(4)
21 of the Immigration and Nationality Act (as amended
22 by section 142 of this Act) is fully implemented and
23 functional and all employers in the United States
24 have access to the system.

1 (5) All 20,000 of the Border Patrol agents au-
2 thorized in section 103 have been trained and de-
3 ployed, or, if the number of full time Border Patrol
4 agents is less than 20,000, that United States mili-
5 tary personnel are deployed to support the Border
6 Patrol in such numbers as to bring the number of
7 full-time border enforcement personnel in the field to
8 20,000.

9 (6) The Chimera system required under section
10 202(a)(2) of the Enhanced Border Security and Visa
11 Entry Reform Act of 2002 (8 U.S.C, 1722(a)(2)) is
12 fully implemented and functional and includes dig-
13 ital fingerprints and photographs of all aliens grant-
14 ed admission to the United States and all aliens or-
15 dered removed or granted voluntary departure from
16 the United States.

17 (7) All databases maintained by the Bureaus of
18 Citizenship and Immigration Services, Customs and
19 Border Protection, and Immigration and Customs
20 Enforcement that contain information on noncitizens
21 are interoperable and compatible with the Chimera
22 system.

23 (8) The number of alien absconders in the
24 United States is fewer than 1,000.

1 (9) Section 287(g) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1357(g)) has been fully im-
3 plemented and Bureau of Immigration and Customs
4 Enforcement employees respond to every request by
5 State or local law enforcement authorities to pick up
6 illegal aliens located by those authorities.

7 (10) Bureau of Immigration and Customs En-
8 forcement agents are performing random worksite
9 inspections of at least 2 percent of United States
10 businesses annually, and that such inspections focus
11 primarily on industries that tend to hire illegal
12 aliens.

13 (11) The number of aliens who overstay non-
14 immigrant visas, but are not removed from the
15 United States, is fewer than 5,000.

16 (b) ADMINISTRATOR OF ENVIRONMENTAL PROTEC-
17 TION AGENCY.—Prior to the implementation of the pro-
18 gram described in subtitle B, the Administrator of the En-
19 vironmental Protection Agency shall certify to the Con-
20 gress that neither current levels of illegal immigration, nor
21 the guest worker program established in subtitle B, will
22 significantly affect the quality of the human environment
23 (as such term is used in section 102(C) of the National
24 Environmental Policy Act of 1969 (42 U.S.C. 4332(C)))
25 in the United States.

1 **Subtitle B—The Guest Worker**
2 **Program**

3 **SEC. 210. NEW NONIMMIGRANT WORKER CATEGORY.**

4 (a) IN GENERAL.—Section 101(a)(15)(H) of the Im-
5 migration and Nationality Act is amended to read as fol-
6 lows:

7 “(H) an alien having a residence in a foreign
8 country which the alien has no intention of aban-
9 doning who is coming temporarily to the United
10 States to perform skilled or unskilled work for which
11 qualified and lawfully present workers are not avail-
12 able in the United States, and with respect to whom
13 the Secretary of Labor determines and certifies to
14 the Secretary of Homeland Security that the intend-
15 ing employer has filed with the Secretary an applica-
16 tion under section 212(n)(1);”.

17 (b) ADMISSION OF NONIMMIGRANTS.—Section
18 214(g) of the Immigration and Nationality Act (8 U.S.C.
19 1184(g)) is amended to read as follows:

20 “(g)(1) In the case of a nonimmigrant described in
21 section 101(a)(15)(H), the period of authorized admission
22 as such a nonimmigrant may not exceed 365 days during
23 a 2-year period. Such visas may be renewed upon expira-
24 tion of such 2-year period.

1 “(2) Such a nonimmigrant may not be permitted to
2 change or adjust to any other immigrant or nonimmigrant
3 classification or status.

4 “(3) The alien spouse and children of such a non-
5 immigrant may not, under section 101(a)(15)(H), accom-
6 pany or follow to join the nonimmigrant.”.

7 **SEC. 211. INTERNET-BASED JOB POSTING SYSTEM.**

8 (a) **IN GENERAL.**—The Secretary of Labor shall cre-
9 ate an Internet-based job posting system to which all State
10 employment agencies and all United States businesses are
11 able to acquire password-protected access to permit direct
12 posting of job openings throughout the United States.

13 (b) **USE OF EMPLOYER IDENTIFICATION NUMBER.**—
14 The system shall use the employer identification number
15 to identify an employer and to track use of the system.

16 (c) **RESUMES OF CITIZENS AND RESIDENT**
17 **ALIENS.**—Each resume submitted electronically by a
18 United States citizen, or an alien lawfully residing in the
19 United States, with respect to a posted job shall include
20 the employer’s employer identification number. An elec-
21 tronic copy of each such resume shall be sent to the De-
22 partment of Labor, in addition to the copy that is sent
23 directly to the employer.

24 (d) **MAINTENANCE OF DATA.**—All job announce-
25 ments posted on the system shall be maintained in ar-

1 chives that include the date of the initial posting, the num-
2 ber of resumes sent in response to the announcement, the
3 date on which the position was filled, and whether it was
4 filled by a United States citizen, an alien lawfully admitted
5 to the United States for permanent residence, an alien
6 otherwise lawfully residing in the United States, a non-
7 immigrant described in section 101(a)(15)(H) of the Im-
8 migration and Nationality Act (as amended by section 210
9 of this Act), or another individual. This data shall be up-
10 dated in real time and shall be available to the public in
11 a searchable format.

12 (e) USE OF DATA.—The Secretary of Labor may use
13 posted job announcements, and any resumes submitted
14 through the job posting system, as evidence of compliance
15 or noncompliance by employers using the system to ensure
16 that employers do not hire nonimmigrants described in
17 section 101(a)(15)(H) of the Immigration and Nationality
18 Act (as amended by section 210 of this Act) unless quali-
19 fied and lawfully present workers are not available in the
20 United States.

21 (f) REPORTS; CESSATION OF LABOR CERTIFI-
22 CATIONS BASED ON UNEMPLOYMENT RATE.—The Sec-
23 retary of Labor shall publish a quarterly report, utilizing
24 the data included in the job posting system, indicating the
25 percentage of new hires, by occupation and geographic re-

1 gion (as defined by the Secretary), who are nonimmigrants
2 described in section 101(a)(15)(H) of the Immigration
3 and Nationality Act (as amended by section 210 of this
4 Act) and the unemployment rate by occupation and geo-
5 graphic region. If the unemployment rate rises above 5
6 percent in a particular occupational category in a geo-
7 graphic region in which more than 15 percent of new hires
8 are such nonimmigrants, no applications under section
9 212(n)(1) of such Act (as amended by section 212(g) of
10 this Act) for such nonimmigrants for that occupation and
11 region shall be approved until the unemployment rate falls
12 below five percent. The Secretary shall reassess the pre-
13 vailing wage for that occupation in that geographic area
14 to ensure that it reflects changed market conditions prior
15 to resuming approvals of such applications, and all new
16 applications must reflect the revised prevailing wage.

17 (g) EFFECTIVE DATE.—This section shall take effect
18 on the date on which the certifications required under sec-
19 tion 201 are made.

20 **SEC. 212. REQUIREMENTS FOR PROSPECTIVE EMPLOYERS**
21 **OF H NONIMMIGRANTS.**

22 (a) IN GENERAL.—An employer seeking to hire a
23 nonimmigrant described in section 101(a)(15)(H) of the
24 Immigration and Nationality Act (as amended by section
25 210 of this Act) shall post an announcement of the job

1 for which the alien is sought on the Internet-based job
2 bank described in section 211.

3 (b) FEE.—Such an employer shall pay a fee of \$10
4 per announcement posted. Such fees shall be placed by
5 the Secretary of Labor in a fund to be established and
6 used to maintain the Internet-based job bank described
7 in section 211. Any amounts from such fund not used for
8 system maintenance shall be used to investigate abuses by
9 employers of the authority to hire a nonimmigrant de-
10 scribed in section 101(a)(15)(H) of the Immigration and
11 Nationality Act (as amended by section 210 of this Act).

12 (c) ANNOUNCEMENT CONTENTS.—Each announce-
13 ment shall list, at a minimum, the following:

14 (1) The employer identification number.

15 (2) The name, contact information, and de-
16 scription of the employer.

17 (3) A description of the job.

18 (4) A description of all specific skills or experi-
19 ence required to perform the job.

20 (5) The wage rate or salary being offered for
21 the job, which shall be at least 100 percent of the
22 prevailing wage rate for the occupation, as deter-
23 mined by the “Occupational Employment Survey” of
24 the Bureau of Labor Statistics.

1 (6) The benefits package being offered for the
2 job.

3 (d) MINIMUM POSTING PERIOD.—Each announce-
4 ment shall be posted for a minimum period of 14 days
5 before an employer may seek authorization to hire a non-
6 immigrant described in section 101(a)(15)(H) of the Im-
7 migration and Nationality Act (as amended by section 210
8 of this Act).

9 (e) REQUIRED ESCROW OF RETURN TRANSPOR-
10 TATION COSTS.—An employer of a nonimmigrant de-
11 scribed in section 101(a)(15)(H) of the Immigration and
12 Nationality Act (as amended by section 210 of this Act)
13 shall place into an escrow account at the time of hiring
14 sufficient funds to transport the nonimmigrant back to the
15 home country when the job ends or when the period of
16 authorized admission as such a nonimmigrant expires.

17 (f) REQUIRED PROVISION OF HEALTH INSUR-
18 ANCE.—An employer of a nonimmigrant described in sec-
19 tion 101(a)(15)(H) of the Immigration and Nationality
20 Act (as amended by section 210 of this Act) shall provide
21 such nonimmigrant with health insurance that meets ex-
22 isting minimum Federal and State requirements, as appli-
23 cable.

1 (g) AMENDMENTS TO IMMIGRATION AND NATION-
2 ALITY ACT.—Section 212(n) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1182(n)) is amended as follows:

4 (1) By striking “H–1B nonimmigrants” each
5 place such term appears and inserting “H non-
6 immigrants”.

7 (2) In paragraph (1), by adding at the end the
8 following:

9 “(H) The employer has not laid off or fired (ex-
10 cept for cause) any United States citizen or legally
11 resident alien worker performing the announced job
12 or an equivalent job in the 6 months immediately
13 preceding the date of application and that the em-
14 ployer will not lay off or fire (except for cause) any
15 such worker in the 6 months immediately following
16 the date of application. If the employer, due to un-
17 foreseen financial or economic circumstances, must
18 lay off a United States citizen or legally resident
19 alien worker during the 6 months following applica-
20 tion for an H nonimmigrant, the employer will ter-
21 minate the H nonimmigrant prior to laying off a
22 United States citizen or legally resident alien worker
23 performing an equivalent job.”.

24 (3) In paragraph (1)(A)(i)(II), by striking “,
25 and” and inserting “, as determined by the Occupa-

1 tional Employment Survey of the Bureau of Labor
2 Statistics, and”.

3 (4) In paragraph (1)(G)(I)—

4 (A) by striking, “(G)(i) In the case of an
5 application described in subparagraph (E)(ii),
6 subject to clause (ii), the” and inserting “(G)
7 The”; and

8 (B) by striking clause (ii).

9 (5) In paragraph (2)(C)—

10 (A) in clause (i)(I), by striking “\$1,000”
11 and inserting “\$2,000”;

12 (B) in clause (ii)(I), by striking “\$5,000”
13 and inserting “\$10,000”;

14 (C) in clause (iii)(I), by striking
15 “\$35,000” and inserting “\$70,000”; and

16 (D) in clause (vi)(III), by striking
17 “\$1,000” and inserting “\$2,000”.

18 (6) In paragraph (5)(E)(i), by striking
19 “\$5,000” and inserting “\$10,000”.

20 (7) By striking—

21 (A) the final sentence of paragraph
22 (1)(E)(ii);

23 (B) “exempt” in paragraph (2)(E);

24 (C) paragraph (3)(B); and

1 (D) in paragraph (3)(C), “subparagraph
2 (A)—” through “(ii)” and inserting “subpara-
3 graph (A),”.

4 **SEC. 213. REQUIREMENTS FOR ALIENS APPLYING FOR H**
5 **NONIMMIGRANT STATUS.**

6 (a) IN GENERAL.—Section 214(g) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1184(g), as amended
8 by section 210(b), is further amended by adding at the
9 end the following:

10 “(4) Aliens applying for nonimmigrant status under
11 section 101(a)(15)(H) shall be physically present in the
12 country of the alien’s residence and shall apply at a United
13 States embassy, consular office, or other designated State
14 Department post.

15 “(5) Such aliens shall pay a visa processing fee in
16 an amount determined under section 281.

17 “(6) Such aliens shall file an application that includes
18 a listing of their education, job skills and prior employ-
19 ment history, along with supporting documentation and
20 references.

21 “(7) Such aliens do not have to be applying for a
22 specific job that is open, but rather shall apply to be added
23 to a database of workers who are already processed and
24 waiting for a job to open that matches their skills set.
25 Aliens approved for such status shall remain in the foreign

1 country of residence until such time as an employer is ap-
2 proved to hire such a worker and finds that a particular
3 approved alien meets the needs of the particular job open-
4 ing.

5 “(8) The Secretary of State shall verify that the edu-
6 cation and work history provided by such an alien is accu-
7 rate, prior to the alien’s name being added to the database
8 of approved prospective nonimmigrants under section
9 101(a)(15)(H).

10 “(9) Such aliens shall submit to fingerprinting and
11 photographing by Department of State or Homeland Se-
12 curity personnel so that the data may be added to the Chi-
13 mera system required under section 202(a)(2) of the En-
14 hanced Border Security and Visa Entry Reform Act of
15 2002. Such identifying information shall be entered into
16 the Chimera system before a nonimmigrant visa under
17 section 101(a)(15)(H) may be issued. Such aliens shall
18 undergo criminal background and health checks to ensure
19 admissibility under section 212(a).

20 “(10) Any alien who violates a term or condition of
21 the alien’s admission as a nonimmigrant under section
22 101(a)(15)(H), including failure to leave the United
23 States at the termination of the period of authorized ad-
24 mission, shall be barred from receiving any immigrant or
25 nonimmigrant visa for a period of 10 years.

1 “(11) Aliens applying for nonimmigrant status under
2 section 101(a)(15)(H) shall sign a legally enforceable affi-
3 davit attesting that they—

4 “(A) understand that they will not be per-
5 mitted to change or adjust to any other immi-
6 grant or nonimmigrant classification or status
7 while present in the United States;

8 “(B) waive eligibility for any Federal,
9 State or local non-emergency public assistance
10 for which they might otherwise be eligible dur-
11 ing their tenure as such a nonimmigrant; and

12 “(C) understand the penalties for failing to
13 abide by the terms of their admission as such
14 a nonimmigrant.

15 “(12) Aliens who apply for renewal of nonimmigrant
16 status under section 101(a)(15)(H) shall undergo new
17 criminal background and health checks before the renewal
18 may be granted.”.

19 (b) SPECIAL RULE ON CITIZENSHIP AT BIRTH FOR
20 CHILDREN OF H NONIMMIGRANTS.—Notwithstanding
21 title III of the Immigration and Nationality Act (8 U.S.C.
22 1401 et seq.), or any other law, a child born in the United
23 States to a parent who is a nonimmigrant described in
24 section 101(a)(15)(H) of the Immigration and Nationality
25 Act (as amended by section 210 of this Act) shall not be

1 a national or citizen of the United States at birth unless
2 the other parent is a citizen of the United States or an
3 alien lawfully admitted to the United States for permanent
4 residence.

5 **SEC. 214. DATABASE OF APPROVED PROSPECTIVE H NON-**
6 **IMMIGRANTS.**

7 Section 214(g) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(g), as amended by sections 210(b) and
9 213(a), is further amended by adding at the end the fol-
10 lowing:

11 “(13) The Secretary of Labor shall establish and
12 maintain a database of all nonimmigrant visa applicants
13 under section 101(a)(15)(H) who are approved by the De-
14 partment of State. Such database shall include all identi-
15 fying information and all information regarding job skills
16 and employment history, as collected by such Department.
17 Once the Secretary of Labor approves an employer’s appli-
18 cation under section 212(n)(1), such Secretary shall make
19 available to the employer a list of aliens who are available
20 and approved by the Department of State to fill the open
21 job position, as described in the announcement posted by
22 the employer on the Internet-based job posting system es-
23 tablished under section 211 of the BE REAL Act of 2003.
24 No employer shall have access to any information included
25 in the database regarding such visa applicants until after

1 such application is approved. The Secretary of State shall
2 transmit to the Secretary of Labor all information regard-
3 ing the identity, job skills, and employment history of an
4 alien not later than 7 days after the date on which the
5 Secretary of State determines that the alien has satisfied
6 all the requirements established in paragraphs (4) through
7 (12).”.

8 **SEC. 215. EFFECTIVE DATE.**

9 Except as otherwise provided in this subtitle, this
10 subtitle, and the amendments made by this subtitle, shall
11 take effect 1 year after the date on which the certifications
12 required by section 210 are made.

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