

“Save Our Small and Seasonal Businesses Act of 2005”
Section-by-Section Summary of the Provision Included in the Emergency
Supplemental Appropriations Package (H.R. 1268)

Section 401 Short Title:

This title is cited as the “Save Our Small and Seasonal Businesses Act of 2005”

Section 402 Numerical Limitations on H-2B Workers:

- This section provides for an exemption from the numerical cap for aliens who have already been counted toward the H-2B cap during any 1 of the previous 3 fiscal years. Such an alien will be considered a “returning worker.”
- In addition to the information and evidence to support the H-2B petition, a petition for a returning worker must include: the returning worker’s full name and certification to DHS that the alien is a returning worker.
- The H-2B visa or grant of nonimmigrant status for a returning worker will only be approved if DOS confirms that the alien is a returning worker. For aliens that are visa exempt or seeking to change to H-2B status, DHS will handle the confirmation.
- This exemption takes effect as if enacted on October 1, 2004 and, the **exemption expires on October 1, 2006**. Thus, fiscal years 2005 and 2006 are covered.
- **Implementation-** This section directs DHS to begin accepting and processing H-2B petitions no later than 14 days after the date of enactment (date the bill is signed into law by the President). This section also directs DHS to allocate additional H-2B numbers under the FY2005 cap based on statistical estimates and projections of “returning worker” derived from DOS data. This seems to indicate that cap-subject numbers will become free for FY2005.

Section 403 Fraud Prevention and Detection Fee:

- This section imposes a \$150 fraud prevention and detection fee on employers filing a H-2B petition.
- This provision takes effect 14 days after the date of enactment and applies to filings for a fiscal year after FY2005.

Section 404 Sanctions:

- This section allows the DHS, after notice and an opportunity for a hearing, to fine employers who exhibit a **substantial failure** to meet any conditions of the H-2B petition or otherwise provide such status to the H-2B employee. The term, "substantial failure," means *"the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition."* This fine may also be

imposed for a **willful misrepresentation** of a material fact in such H-2B petitions by employers.

- The fines imposed may be: administrative remedies or other remedies under law, including civil monetary penalties in an amount not to exceed \$10,000.00 per violation, as the DHS deems appropriate. In determining the penalty levels, the highest are reserved for willful failures to meet any conditions of the petition that involve harm to U.S. workers.
- Employers may also be subject to denial of H-2B petitions and immigrant petitions filed for a period of at least one year but not more than five years as an additional penalty. *This statement is not expressed as a bar from filing, but rather a discretionary right to deny for a period of time.*
- The DHS may delegate the penalty responsibilities under this provision to DOL, with the agreement of the Secretary of Labor.
- Effective Date: October 1, 2005

Section 405 Allocation of H-2B Visas or H-2B Nonimmigrant Status During a Fiscal Year:

- Reallocates the 66,000 H-2B numerical limits so that no more than 33,000 numbers can be used during the first 6 months of the fiscal year.

Sections 406 Submission to Congress on Information Regarding H-2B Nonimmigrants:

- Beginning no later than March 1, 2006, this section requires DOS and DHS on a semi-annual basis to provide to the House and Senate Judiciary Committees the number of aliens who during the preceding year were issued H-2B visas (or otherwise obtained H-2B status) or had such a visa or status revoked or otherwise terminated.
- Beginning in FY 2007, this section requires DOS and DHS to submit on an annual basis to the House and Senate Judiciary Committees the following information on H-2B workers:
 - Country of origin;
 - Occupations;
 - Compensation paid;
 - Number of H-2Bs who had such a visa or had status expire or be revoked or otherwise terminated during each month of the fiscal year; and
 - Number of aliens provided H-2B status for the present and preceding fiscal year.
- If DHS determines that information maintained by DOS is required for the required reports, DOS must to provide the information to DHS upon request.

Section 407 Exemption from Administrative Procedure Act:

This section exempts sections 402, 403 and 405 from the Administrative Procedure Act.

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