

The Secure America and Orderly Immigration Act of 2005

McCain-Kennedy-Kolbe-Flake-Gutierrez

Bill at a Glance

5/12/2005

Title I: Border Security

- Requires the development and implementation of border security initiatives, including information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other actions to secure the borders
- Establishes a Border Security Advisory Committee made up of various stakeholders in the border region to provide recommendations to the Department of Homeland Security regarding border enforcement
- Encourages the development of multilateral partnerships to establish a North American security perimeter and improve border security south of Mexico

Title II: State Criminal Alien Assistance

- Reauthorizes the State Criminal Alien Assistance Program that provides reimbursement to state and local governments for incarcerating undocumented aliens convicted of crimes
- Allows for funding to pay for additional criminal justice costs associated with undocumented immigrants charged or convicted of crimes

Title III: Essential Worker Visa Program

- Creates a new temporary visa to allow foreign workers to enter and fill available jobs that require few or no skills (the H-5A visa)
- Applicants must show that they have a job waiting in the U.S., pay a fee of \$500 in addition to application fees, and clear all security, medical, and other checks
- Requires updating of America's Job Bank to make sure job opportunities are seen first by American workers
- Initial cap on H-5A visas is set at 400,000, but the annual limit will be gradually adjusted up or down based on demand in subsequent years
- Visa is valid for three years, and can be renewed one time for a total of 6 years; at the end of the visa period the worker either has to return home or be in the pipeline for a green card
- Visa is portable, but if the worker loses his job he has to find another one within 60 days or return home
- Ensures that employers hiring temporary workers abide by applicable Federal, state and local labor, employment and tax laws
- Prohibits the hiring of temporary workers as independent contractors
- Protects temporary workers from abuse by foreign labor contractors or employers
- Gives temporary workers and U.S. workers remedies for violations of their rights
- An employer can sponsor the H-5A visa holder for a green card, or after accumulating four years of work in H-5A status, the worker can apply to adjust status on his/her own
- Sets up a task force to evaluate the H-5A program and recommend improvements
- Appropriations are authorized to carry out this program for each fiscal year beginning with the year of the enactment through seven years after implementation of the visa program

Title IV: Enforcement

- Creates a new electronic work authorization system that will ultimately replace the paper-based, fraud-prone I-9 system, to be phased in gradually
- When operational, the system will be applied universally and cannot be used to discriminate against job applicants
- Individuals will have the right to review and correct their own records; data privacy protections are in place
- Immigration-related documents and US-VISIT will be upgraded to require biometric verification of travelers
- The Department of Labor will have new authority to conduct random audits of employers and ensure compliance with labor laws; also includes new worker protections and enhanced fines for illegal employment practices

TITLE V: Promoting Circular Migration Patterns

- Requires foreign countries to enter into migration agreements with the U.S. that help control the flow of their citizens to jobs in the U.S., with emphasis on encouraging the re-integration of citizens returning home
- Encourages the U.S. government to partner with Mexico to promote economic opportunity back home and reduce the pressure to immigrate to the U.S.
- Encourages the U.S. government to partner with Mexico on health care access so that the U.S. is not unfairly impacted with the costs of administering health care to Mexican nationals

Title VI: Family Unity and Backlog Reduction

- Immediate relatives of U.S. citizens are not counted against the 480,000 annual cap on family-sponsored green cards, thereby providing additional visas to the family preference categories
- The current per-country limit on green cards is raised slightly to clear up backlogs
- Income requirements for sponsoring a family member for a green card are changed from 125% of the federal poverty guidelines to 100%, and other obstacles are removed to ensure fairness
- The employment-based categories are revised to provide additional visas for employers who need to hire permanent workers, and the annual cap is raised from 140,000 to 290,000
- Immigrant visas lost due to processing delays are recaptured for future allotments

Title VII: Adjustment of Status for H-5B Non-Immigrants

- Undocumented immigrants in the U.S. on date of introduction can register for a temporary visa (H-5B), valid for six years
- Applicants have to show work history, clean criminal record, and that they are not a security problem to be eligible for a temporary visa
- They will receive work and travel authorization
- Their spouses and children are also eligible
- In order to qualify for permanent status, workers will have to meet a future work requirement, clear additional security/background checks, pay substantial fines and application fees (\$2000 or more per adult) as well as back taxes, and meet English/civics requirements

Title VIII: Protection Against Immigration Fraud

- Attempts to eliminate the exploitation of immigrants by *notarios* or other unlicensed immigration law practitioners by imposing new legal requirements on such individuals
- Allows immigrants defrauded by unauthorized legal representatives to file actions against their perpetrators

Title IX: Civics Integration

- Creates a public-private foundation under the USCIS Office of Citizenship to support programs that promote citizenship and to fund civics and English language instruction for immigrants
- Provides for new money to fund civic and English language instruction for immigrants

Title X: Promoting Access to Health Care

- Extends the authorization of federal reimbursements for hospitals that provide emergency care to undocumented immigrants; includes H-5A and H-5B workers in the program

Title XI: Miscellaneous

- Distributes the fees and fines paid by H-5A and H-5B workers among the DHS and DOS for processing, DHS for border security efforts, DOL for enforcement of labor laws, SSA for development of the employment eligibility confirmation system, hospitals to pay for uncompensated health care, and the USCIS Office of Citizenship for civic integration and English classes
- Requires the dissemination of information related to the provisions of this legislation
- Includes anti-discrimination protections for H-5A and H-5B visa holders