

*Ed Kennedy* S.L.C.

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5/22/06  
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AMENDMENT NO.

Calendar No.

Purpose: To enhance the enforcement of labor protections for United States workers and guest workers.

IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.

S. 2611

**AMENDMENT No. 4106**

T By *Kennedy* l for

To: *S. 2611*

Re *15* and

Page(s)

GPO: 2004 97-290(Mac)

AMENDMENT intended to be proposed by Mr. KENNEDY

Viz.

1 At the end, insert the following:

2 **TITLE VIII—LABOR**

3 **PROTECTIONS**

4 SEC. 801. SHORT TITLE.

5 This title may be cited as the “Enhanced Enforce-  
6 ment of Labor Protections for United States Workers and  
7 Guest Workers Act”.

1 **SEC. 802. VIOLATIONS OF THE FAIR LABOR STANDARDS**  
2 **ACT OF 1938.**

3 Section 16 of the Fair Labor Standards Act of 1938  
4 (29 U.S.C. 216) is amended—

5 (1) in subsection (b), by striking “equal amount  
6 as liquidated damages” the first place it appears and  
7 inserting “amount equal to twice the amount of such  
8 unpaid minimum wages or unpaid overtime com-  
9 pensation, as the case may be, as liquidated dam-  
10 ages”; and

11 (2) in subsection (e)—

12 (A) by striking “\$10,000” and inserting  
13 “\$50,000”; and

14 (B) by striking “\$1,000” and inserting  
15 “\$10,000”.

16 **SEC. 803. VIOLATIONS OF THE OCCUPATIONAL SAFETY AND**  
17 **HEALTH ACT.**

18 (a) **CIVIL PENALTIES.**—Section 17 of the Occupa-  
19 tional Safety and Health Act of 1970 (29 U.S.C. 666)  
20 is amended—

21 (1) in subsection (a)—

22 (A) by striking “\$70,000” and inserting  
23 “\$100,000”;

24 (B) by striking “\$5,000” and inserting  
25 “\$7,000”; and

1           (C) by adding at the end the following: “If  
2           such a violation causes the death of an em-  
3           ployee, such civil penalty amounts shall be in-  
4           creased to not more than \$250,000 for such  
5           violation, but not less than \$50,000 for such  
6           violation.”;

7           (2) in subsection (b)—

8           (A) by striking “\$7,000” and inserting  
9           “\$10,000”; and

10           (B) by adding at the end the following: “If  
11           such a violation causes the death of an em-  
12           ployee, such civil penalty amount shall be in-  
13           creased to not more than \$50,000 for such vio-  
14           lation, but not less than \$20,000 for such viola-  
15           tion.”;

16           (3) in subsection (c)—

17           (A) by striking “\$7,000” and inserting  
18           “\$10,000”; and

19           (B) by adding at the end the following: “If  
20           such a violation causes the death of an em-  
21           ployee, such civil penalty amount shall be in-  
22           creased to not more than \$50,000 for such vio-  
23           lation, but not less than \$20,000 for such viola-  
24           tion.”;

25           (4) in subsection (d)—

1 (A) by striking “\$7,000” and inserting  
2 “\$10,000”; and

3 (B) by adding at the end the following: “If  
4 such a violation causes the death of an em-  
5 ployee, such civil penalty amount shall be in-  
6 creased to not more than \$50,000 for such vio-  
7 lation, but not less than \$20,000 for such viola-  
8 tion.”; and

9 (5) in subsection (i), by striking “\$7,000” and  
10 inserting “\$10,000”.

11 (b) CRIMINAL PENALTIES.—

12 (1) IN GENERAL.—Section 17 of the Occupa-  
13 tional Safety and Health Act of 1970 (29 U.S.C.  
14 666) (as amended by subsection (a)) is further  
15 amended—

16 (A) in subsection (e)—

17 (i) by striking “fine of not more than  
18 \$10,000” and inserting “fine in accordance  
19 with section 3571 of title 18, United  
20 States Code,”;

21 (ii) by striking “six months” and in-  
22 sserting “10 years”;

23 (iii) by inserting “under this sub-  
24 section or subsection (i)” after “first con-  
25 viction of such person”;

1 (iv) by striking “fine of not more than  
2 \$20,000” and inserting “fine in accordance  
3 with section 3571 of title 18, United  
4 States Code,”; and

5 (v) by striking “one year” and insert-  
6 ing “20 years”;

7 (B) in subsection (f), by striking “fine of  
8 not more than \$1,000 or by imprisonment for  
9 not more than six months,” and inserting “fine  
10 in accordance with section 3571 of title 18,  
11 United States Code, or by imprisonment for not  
12 more than 2 years,”;

13 (C) in subsection (g), by striking “fine of  
14 not more than \$10,000, or by imprisonment for  
15 not more than six months,” and inserting “fine  
16 in accordance with section 3571 of title 18,  
17 United States Code, or by imprisonment for not  
18 more than 1 year,”;

19 (D) by redesignating subsections (i)  
20 through (l) as subsections (j) through (m), re-  
21 spectively; and

22 (E) by inserting after subsection (h) the  
23 following:

24 “(i) Any employer who willfully violates any standard,  
25 rule, or order promulgated pursuant to section 6, or any

1 regulation prescribed pursuant to this Act, and that viola-  
2 tion causes serious bodily injury to any employee but does  
3 not cause death to any employee, shall, upon conviction,  
4 be punished by a fine in accordance with section 3571 of  
5 title 18, United States Code, or by imprisonment for not  
6 more than 5 years, or by both, except that if the conviction  
7 is for a violation committed after a first conviction of such  
8 person under this subsection or subsection (e), punishment  
9 shall be by a fine in accordance with section 3571 of title  
10 18, United States Code, or by imprisonment for not more  
11 than 10 years, or by both.”.

12 (2) JURISDICTION FOR PROSECUTION UNDER  
13 STATE AND LOCAL CRIMINAL LAWS.—Section 17 of  
14 the Occupational Safety and Health Act of 1970 (29  
15 U.S.C. 666) (as amended by this section) is further  
16 amended by adding at the end the following:

17 “(n) Nothing in this Act shall preclude a State or  
18 local law enforcement agency from conducting criminal  
19 prosecutions in accordance with the laws of such State or  
20 locality.”.

21 (3) DEFINITION.—Section 3 of the Occupa-  
22 tional Safety and Health Act of 1970 (29 U.S.C.  
23 652) is amended by adding at the end the following:

24 “(15) The term ‘serious bodily injury’ means  
25 bodily injury that involves—

1 “(A) a substantial risk of death;

2 “(B) protracted unconsciousness;

3 “(C) protracted and obvious physical dis-  
4 figurement; or

5 “(D) protracted loss or protracted impair-  
6 ment, of the function of a bodily member,  
7 organ, or mental faculty.”.

8 **SEC. 804. STRENGTHENING ENFORCEMENT.**

9 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-  
10 TICES DURING ORGANIZING DRIVES.—

11 (1) IN GENERAL.—Section 10(l) of the National  
12 Labor Relations Act (29 U.S.C. 160(l)) is amend-  
13 ed—

14 (A) in the second sentence, by striking “If,  
15 after such” and inserting the following:

16 “(2) If, after such”; and

17 (B) by striking the first sentence and in-  
18 serting the following: “(1) Whenever it is  
19 charged that—

20 “(A)(i) any employer—

21 “(I) discharged or otherwise discrimi-  
22 nated against an employee in violation of  
23 subsection (a)(3) of section 8;

24 “(II) threatened to discharge or to  
25 otherwise discriminate against an employee

1 in violation of subsection (a)(1) of section  
2 8; or

3 “(III) engaged in any other unfair  
4 labor practice within the meaning of sub-  
5 section (a)(1) of section 8 that signifi-  
6 cantly interferes with, restrains, or coerces  
7 employees in the exercise of the rights  
8 guaranteed in section 7; and

9 “(ii) the discharge, discrimination, threat,  
10 or practice described in clause (i) occurred—

11 “(I) while employees of that employer  
12 were seeking representation by a labor or-  
13 ganization; or

14 “(II) during the period after a labor  
15 organization was recognized as a rep-  
16 resentative as described in section 9(a) and  
17 before the first collective bargaining agree-  
18 ment was entered into between the em-  
19 ployer and the representative; or

20 “(B) that any person has engaged in an unfair  
21 labor practice within the meaning of subparagraph  
22 (A), (B) or (C) of section 8(b)(4), section 8(b)(7),  
23 or section 8(e);

24 the preliminary investigation of such charge shall be made  
25 forthwith and given priority over all other cases except

1 cases of like character in the office where it is filed or  
2 to which it is referred.”.

3 (2) CONFORMING AMENDMENT.—Section 10(m)  
4 of the National Labor Relations (29 U.S.C. 160(m))  
5 is amended by inserting “under circumstances not  
6 described in section 10(l)(1)” after “section 8”.

7 (b) REMEDIES FOR VIOLATIONS.—

8 (1) BACKPAY.—Section 10(c) of the National  
9 Labor Relations Act (29 U.S.C. 160(c)) is amended  
10 by striking “*And provided further,*” and inserting  
11 “*Provided further,* That if the Board finds that an  
12 employer has discriminated against an employee in  
13 violation of section 8(a)(3) while employees of the  
14 employer were seeking representation by a labor or-  
15 ganization, or during the period after a labor organi-  
16 zation was recognized as a representative as de-  
17 scribed in section 9(a) and before the first collective  
18 bargaining agreement was entered into between the  
19 employer and the representative, the Board in such  
20 order shall award the employee an amount of back-  
21 pay and, in addition, 2 times that amount as liq-  
22 uidated damages: *Provided further,*”.

23 (2) CIVIL PENALTIES.—Section 12 of the Na-  
24 tional Labor Relations Act (29 U.S.C. 162) is  
25 amended—

1 (A) by striking “Any” and inserting “(a)

2 Any”; and

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

4 “(b) Any employer who willfully or repeatedly com-  
5 mits any unfair labor practice within the meaning of sub-  
6 section (a)(1) or (a)(3) of section 8 while employees of  
7 the employer were seeking representation by a labor orga-  
8 nization, or during the period after a labor organization  
9 was recognized as a representative as described in section  
10 9(a) and before the first collective bargaining contract was  
11 entered into between the employer and the representative  
12 shall be subject to, in addition to any make-whole remedy  
13 ordered, a civil penalty of not more than \$20,000 for each  
14 violation. In determining the amount of any penalty under  
15 this subsection, the Board shall consider the gravity of the  
16 unfair labor practice and the impact of the unfair labor  
17 practice on the charging party, on other persons seeking  
18 to exercise rights guaranteed by this Act, or on the public  
19 interest.”.

20 **SEC. 805. USE OF FEES.**

21 (a) **FEES PAID BY H-2C NONIMMIGRANTS.**—Section  
22 218A, as added by section 403(a)(1) of this Act, is amend-  
23 ed by striking subsection (l) and inserting the following:

24 “(l) **COLLECTION OF FEES.**—Fees collected under  
25 this section shall be allocated as follows:

1           “(1) 75 percent of such fees shall be deposited  
2           in the Treasury in accordance with section 286(c).

3           “(2) 25 percent of such fees shall be deposited  
4           in the Labor Law Enforcement Fund established in  
5           section 286(y).”.

6           (b) FEES PAID BY EMPLOYERS.—Section 218B, as  
7           added by section 404(a) of this Act, is amended by strik-  
8           ing subsection (a) and inserting the following:

9           “(a) GENERAL REQUIREMENTS.—

10           “(1) EMPLOYER REQUIREMENTS.—Each em-  
11           ployer who employs an H-2C nonimmigrant shall—

12           “(A) file a petition in accordance with sub-  
13           section (b); and

14           “(B) pay the appropriate fee, as deter-  
15           mined by the Secretary of Labor.

16           “(2) USE OF FEES.—The fees collected under  
17           paragraph (1)(B) shall be allocated as follows:

18           “(A) 75 percent of such fees shall be de-  
19           posited in the Treasury in accordance with sec-  
20           tion 286(c).

21           “(B) 25 percent of such fees shall be de-  
22           posited in the Labor Law Enforcement Fund  
23           established in section 286(y).”.

24           (c) LABOR LAW ENFORCEMENT FUND.—Section 286  
25           (8 U.S.C. 1356), as amended by sections 302 and 403(b),

1 is further amended by adding at the end the following new  
2 subsection:

3 “(y) LABOR LAW ENFORCEMENT FUND.—

4 “(1) IN GENERAL.—There is established in the  
5 general fund of the Treasury, a separate account,  
6 which shall be known as the ‘Labor Law Enforce-  
7 ment Fund’ (referred to in this subsection as the  
8 ‘Fund’).

9 “(2) DEPOSITS.—There shall be deposited as  
10 offsetting receipts into the Fund the fees described  
11 in section 218A(l)(2) or 218B(a)(2).

12 “(3) PURPOSE.—Amounts deposited in the  
13 Fund shall be made available to the Secretary of  
14 Labor to ensure that employers in industries in the  
15 United States that employ a high percentage of  
16 workers who are granted nonimmigrant status under  
17 section 101(a)(15)(H)(ii)(c) comply with the provi-  
18 sions of the Fair Labor Standards Act of 1938, the  
19 Occupational Safety and Health Act of 1970, and  
20 section 218B(b)(2), including ensuring such compli-  
21 ance by random audits of such employers.

22 “(4) AVAILABILITY OF FUNDS.—Amounts de-  
23 posited into the Fund shall remain available until  
24 expended and shall be refunded out of the Fund by

1 the Secretary of the Treasury, at least on a quar-  
2 terly basis, to the Secretary of Labor.”.

3 **SEC. 806. PROTECTION FOR WHISTLEBLOWERS.**

4 Section 218A, as added by section 403(a)(1) of this  
5 Act, is amended by striking subparagraph (A) of sub-  
6 section (f)(3) and inserting the following:

7 “(A) IN GENERAL.—

8 “(i) PERIOD OF UNEMPLOYMENT.—

9 Except as provided in clause (ii) and in  
10 subsection (e), the period of authorized ad-  
11 mission of an H-2C nonimmigrant shall  
12 terminate if the alien is unemployed for a  
13 period of 60 or more consecutive days.

14 “(ii) EXTENSION OF PERIOD.—

15 “(I) AUTHORITY.—The Secretary  
16 of Labor may extend the 60-day pe-  
17 riod referred to in clause (i), if the  
18 alien has filed a complaint with the  
19 Secretary of Labor that alleges that a  
20 violation of a Federal labor law by the  
21 alien’s employer caused the alien’s un-  
22 employment.

23 “(II) DETERMINATION.—Not  
24 later than 45 days after a complaint  
25 referred to in subclause (I) is filed,

1                   the Secretary of Labor shall make a  
2                   determination whether an extension  
3                   under subclause (I) is warranted to  
4                   resolve the complaint.”.

5 **SEC. 807. LIABILITY IN CERTAIN CASES BASED ON IMMI-**  
6                   **GRATION STATUS.**

7           Notwithstanding any other provision of law, an alien  
8 who is subject to an unlawful employment practice by an  
9 employer may not be denied backpay or other monetary  
10 relief for such unlawful employment practice on the basis  
11 of the alien’s immigration status.

12 **SEC. 808. DEPARTMENT OF LABOR BILINGUAL STAFF RE-**  
13                   **QUIREMENT.**

14           (a) **REQUIREMENT FOR BILINGUAL STAFF.**—The  
15 Secretary of Labor shall make every effort to ensure that,  
16 not later than 5 years after the date of enactment of this  
17 Act, not less than 25 percent of the investigative staff of  
18 the Department of Labor shall be fluent in a language  
19 in addition to English. The requirement of this section  
20 shall not be grounds for the termination of any employee  
21 employed by the Department of Labor on the date of en-  
22 actment of this Act, nor for the reduction of any staff lev-  
23 els in the Department of Labor as of such date.

24           (b) **ANNUAL REPORT.**—The Secretary of Labor shall  
25 submit to the Committee on Health, Education, Labor,

1 and Pensions of the Senate and the Committee on Edu-  
2 cation and the Workforce of the House of Representatives  
3 an annual report on the progress made to carry out sub-  
4 section (a).