

117TH CONGRESS  
1ST SESSION

# H. R. 865

To amend the Immigration and Nationality Act to improve the H–1B visa program, to repeal the diversity visa lottery program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2021

Mr. BROOKS (for himself, Mr. GAETZ, and Mr. GOODEN of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, 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

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## A BILL

To amend the Immigration and Nationality Act to improve the H–1B visa program, to repeal the diversity visa lottery program, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “American Jobs First Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—H-1B VISA PROGRAM

Sec. 101. Amendments to the Immigration and Nationality Act.

## TITLE II—NEW H-1B VISA REQUIREMENTS

Sec. 201. Bar on nondisparagement and nondisclosure agreements.

Sec. 202. United States Federal court jurisdiction over civil actions pertaining to misuse of the H-1B visa program.

## TITLE III—REPEAL OF OTHER PROVISIONS

Sec. 301. Repeal of the diversity visa lottery.

1     **TITLE I—H-1B VISA PROGRAM**

2     **SEC. 101. AMENDMENTS TO THE IMMIGRATION AND NA-**  
 3                             **TIONALITY ACT.**

4             (a) INADMISSIBLE ALIENS.—Section 212(n) of the  
 5 Immigration and Nationality Act (8 U.S.C. 1182(n)) is  
 6 amended to read as follows:

7             “(n) LABOR CONDITION APPLICATION.—

8                     “(1) IN GENERAL.—An alien may not be admit-  
 9 ted or provided status as an H-1B nonimmigrant in  
 10 an occupational classification unless the petitioner  
 11 employer has filed with the Secretary of Labor an  
 12 application stating the following:

13                             “(A) The petitioner employer—

14                                     “(i) is offering an annual wage to the  
 15 H-1B nonimmigrant that is the greater  
 16 of—

17   “(I) the annual wage that was  
 18 paid to the United States citizen or  
 19 lawful permanent resident employee  
 20 who did identical or similar work dur-

1           ing the 2 years before the petitioner  
2           employer filed such application; or

3                   “(II) \$110,000, if offered not  
4           later than 1 year after the date of the  
5           enactment of the American Jobs First  
6           Act of 2021, which amount shall be  
7           annually adjusted for inflation by July  
8           1 of each year;

9                   “(ii) will not require an H–1B non-  
10          immigrant to pay a penalty for ceasing em-  
11          ployment with the petitioner employer be-  
12          fore the date agreed to by the H–1B non-  
13          immigrant and the petitioner employer;

14                   “(iii) will not—

15                   “(I) require an alien who is the  
16          subject of a petition filed under para-  
17          graph (1) of section 214(c), for which  
18          a fee is imposed under paragraph (9)  
19          of such section, to reimburse, or oth-  
20          erwise to compensate, the petitioner  
21          employer for part or all of the cost of  
22          such fee;

23                   “(II) accept reimbursement or  
24          compensation for the fee described in  
25          subclause (I) from an H–1B non-

1 immigrant, even if such reimburse-  
2 ment or compensation is alleged to  
3 have been voluntarily given by the H-  
4 1B nonimmigrant;

5 “(III) deduct such amounts from  
6 an H-1B nonimmigrant’s pay before  
7 disbursement to such H-1B nonimmigrant  
8 for the purpose of covering the cost of  
9 such fee; or

10 “(IV) require an H-1B non-  
11 immigrant to pay any other amounts  
12 or fees for housing, vehicle use or  
13 rental, equipment use or rental, or  
14 other goods or services, unless the re-  
15 quirement of the payment of such  
16 amounts or fees is identical to the  
17 payments that are required by United  
18 States citizen or lawful permanent  
19 resident employees; and

20 “(iv) will—

21 “(I) after the employer has filed  
22 an application under this subsection  
23 and placed an H-1B nonimmigrant  
24 designated as a full-time employee on  
25 the petition filed under section

1           214(c)(1) and the nonimmigrant has  
2           entered into employment with the pe-  
3           titioner employer (in nonproductive  
4           status due to a decision by the peti-  
5           tioner employer, based on factors such  
6           as lack of work or due to the non-  
7           immigrant’s lack of a permit or li-  
8           cense), pay the nonimmigrant full-  
9           time wages in accordance with para-  
10          graph (1)(A) for all such nonproduc-  
11          tive time;

12                   “(II) after the employer has filed  
13                   an application under this subsection  
14                   and placed an H-1B nonimmigrant  
15                   designated as a part-time employee on  
16                   the petition filed under section  
17                   214(c)(1) and the nonimmigrant has  
18                   entered into employment with the pe-  
19                   titioner employer (in nonproductive  
20                   status under circumstances described  
21                   in subclause (I)), pay the non-  
22                   immigrant for such hours as are des-  
23                   ignated on such petition in accordance  
24                   with the rate of pay identified on such  
25                   petition; and

1           “(III) after the employer has  
2 filed an application under this sub-  
3 section, offer to an H-1B non-  
4 immigrant, during the nonimmigrant’s  
5 period of authorized employment, on  
6 the same basis, and in accordance  
7 with the same criteria, as the em-  
8 ployer offers to United States citizens  
9 or lawful permanent residents, bene-  
10 fits and eligibility for benefits, includ-  
11 ing—

12                   “(aa) the opportunity to  
13 participate in health, life, dis-  
14 ability, and other insurance  
15 plans;

16                   “(bb) the opportunity to  
17 participate in retirement and sav-  
18 ings plans; and

19                   “(cc) cash bonuses and  
20 noncash compensation, such as  
21 stock options (whether or not  
22 such compensation is based on  
23 performance).

24           “(B) With respect to workplace condi-  
25 tions—

1           “(i) there has not been an employee-  
2 initiated strike at any point during the 2-  
3 year period ending on the date on which  
4 the petitioner employer files the visa appli-  
5 cation that sought redress for salary, wage,  
6 or benefit concerns;

7           “(ii) there has not been a petitioner  
8 employer-initiated lockout at any point  
9 during the 2-year period ending on the  
10 date on which the petitioner employer filed  
11 such visa application; and

12           “(iii) no employee in the same or sub-  
13 stantially similar occupational classification  
14 for which the employer seeks H-1B non-  
15 immigrants, has been displaced, fur-  
16 loughed, terminated without cause, or oth-  
17 erwise involuntarily separated without  
18 cause in any way at any point during the  
19 2-year period ending on the date on which  
20 the petitioner employer filed such visa ap-  
21 plication.

22           “(C) The petitioner employer, at the time  
23 a visa application is filed—

24           “(i) has provided notice of the filing  
25 under this paragraph to the bargaining

1 representative of its employees in the occu-  
2 pational classification and area for which  
3 aliens are sought; or

4 “(ii) if such employees do not have a  
5 bargaining representative, has provided no-  
6 tice of filing in the occupational classifica-  
7 tion through methods such as—

8 “(I) physical posting in con-  
9 spicuous locations at the place of em-  
10 ployment; or

11 “(II) electronic notification to  
12 employees in the occupational classi-  
13 fication for which H-1B non-  
14 immigrants are sought.

15 “(D) The application contains—

16 “(i) the specific dollar value of the re-  
17 quired wage, in accordance with subpara-  
18 graph (A);

19 “(ii) the specific number of non-  
20 immigrant employees sought; and

21 “(iii) the occupational classification in  
22 which the nonimmigrant employees will be  
23 employed.

24 “(E)(i) The petitioner employer—



1           “(I) will not replace a United States  
2           citizen or lawful permanent resident with  
3           one or more nonimmigrants;

4           “(II) will not contract with any third  
5           party to provide a nonimmigrant to replace  
6           any United States citizen or lawful perma-  
7           nent resident; and

8           “(III) has not displaced, furloughed,  
9           terminated without cause, or otherwise in-  
10          voluntarily separated, and will not displace,  
11          furlough, terminate without cause, or oth-  
12          erwise involuntarily separate a United  
13          States citizen or lawful permanent resident  
14          employed by the petitioner employer during  
15          the 4-year period beginning on the date  
16          that is 2 years before the date on which  
17          the petitioner employer filed any visa peti-  
18          tion supported by the application.

19          “(ii) The 4-year period referred to in  
20          clause (i)(III) does not include any period of  
21          on-site, remote, teleconference-based, computer-  
22          based, or other virtual training of non-  
23          immigrants by or with employees of the peti-  
24          tioner employer.

1           “(F) The petitioner employer will not place  
2           an H-1B nonimmigrant employee with another  
3           employer (unless the petitioner employer, after  
4           diligent inquiry of the other employer, has no  
5           knowledge that, during the 4-year period begin-  
6           ning 2 years before the date on which the em-  
7           ployee was placed with the other employer, the  
8           other employer has displaced or intends to dis-  
9           place a United States citizen or lawful perma-  
10          nent resident employed by the other employer)  
11          if—

12                   “(i) the employee performs duties, in  
13                   whole or in part, at one or more worksites  
14                   owned, operated, or controlled by such  
15                   other employer; and

16                   “(ii) there are indicia of an employ-  
17                   ment relationship between the non-  
18                   immigrant and such other employer.

19           “(G) The petitioner employer, before filing  
20          an application under this paragraph—

21                   “(i) has documented specific steps to  
22                   recruit potential employees who are United  
23                   States citizens or lawful permanent resi-  
24                   dents using mainstream and industry-fo-  
25                   cused media and online advertising cam-

1           paigns, and offering wages that are at  
2           least as high as the wage requirements es-  
3           tablished for nonimmigrants in subpara-  
4           graph (A), in order to recruit such citizens  
5           and residents for the job or jobs for which  
6           the nonimmigrant or nonimmigrants is or  
7           are sought;

8           “(ii) has offered the job to any United  
9           States citizen or lawful permanent resident  
10          who applies and possesses the same or bet-  
11          ter qualifications for such jobs;

12          “(iii) despite the efforts specified in  
13          clauses (i) and (ii), has been unable to hire  
14          United States citizens or lawful permanent  
15          residents for any of such available jobs;

16          “(iv) has not intimidated, threatened,  
17          restrained, coerced, blacklisted, discharged,  
18          or in any other manner discriminated  
19          against an employee (including former em-  
20          ployees and applicants for employment) be-  
21          cause the employee—

22                  “(I) has disclosed information to  
23                  the petitioner employer, or to any  
24                  other person or entity, that the em-  
25                  ployee reasonably believes evidences a

1 violation of this subsection, or any  
2 rule or regulation pertaining to this  
3 subsection; or

4 “(II) cooperated, or sought to co-  
5 operate, in an investigation or other  
6 proceeding concerning the petitioner  
7 employer’s compliance or noncompli-  
8 ance with the requirements under this  
9 subsection or any rule or regulation  
10 pertaining to this subsection; and

11 “(v) has executed a sworn affidavit or  
12 other court-recognized statement that—

13 “(I) swears or affirms the truth  
14 of the information regarding such re-  
15 cruiting efforts; and

16 “(II) acknowledges that false  
17 statements made in such statement  
18 will subject the affiant to criminal  
19 prosecution under section 1621 of  
20 title 18, United States Code.

21 “(2) NOTIFICATION AND TRANSPARENCY RE-  
22 QUIREMENTS.—

23 “(A) IN GENERAL.—The petitioner em-  
24 ployer shall make available for examination its  
25 materials relating to its application to the Sec-

1           retary of Labor in accordance with paragraph  
2           (1).

3                   “(B) INTERNAL AND EXTERNAL PUBLICA-  
4           TION OF APPLICATION MATERIALS.—

5                           “(i) ELECTRONIC PUBLICATION.—Not  
6           later than 1 business day after the date on  
7           which an application is filed in accordance  
8           with paragraph (1), the petitioner em-  
9           ployer shall—

10                                   “(I) electronically mail a copy of  
11           such application and necessary accom-  
12           panying documentation to all employ-  
13           ees at all business locations and work-  
14           sites to ensure employer-wide em-  
15           ployee awareness of the application;  
16           and

17                                   “(II) post an electronic copy of  
18           the application and such accom-  
19           panying documentation as are nec-  
20           essary on a publicly accessible website  
21           to ensure public awareness of the ap-  
22           plication.

23                           “(ii) PHYSICAL POSTING.—Not later  
24           than 5 business days after the date on  
25           which an application is filed in accordance

1 with paragraph (1), the petitioner em-  
2 ployer shall post copies of such application  
3 and necessary accompanying documenta-  
4 tion in prominent places at all of its busi-  
5 ness locations and worksites to ensure that  
6 all of its employees are aware of the appli-  
7 cation.

8 “(C) FAILURE TO PROVIDE COMPLETE IN-  
9 TERNAL AND EXTERNAL PUBLICATION OF AP-  
10 PPLICATION MATERIALS.—If the Secretary of  
11 Labor receives proof that a petitioner employer  
12 has failed to meet the publication requirements  
13 under subparagraph (B) of any application that  
14 is filed in accordance with paragraph (1), the  
15 Secretary shall—

16 “(i) deny such application; and

17 “(ii) prevent such petitioner employer  
18 from filing another such application during  
19 the 2-year period beginning on such date  
20 of denial.

21 “(D) SECRETARY OF LABOR APPLICATION  
22 TRANSPARENCY OBLIGATIONS.—The Secretary  
23 of Labor shall—

1           “(i) compile and publish on the De-  
2           partment of Labor website, on an ongoing  
3           basis—

4                   “(I) the name of the petitioner  
5                   employer that has filed an application  
6                   under this subsection;

7                   “(II) the date on which each  
8                   such petitioner employer filed such  
9                   application;

10                  “(III) the number of H–1B visas  
11                  that have been requested in such ap-  
12                  plication;

13                  “(IV) the sworn affidavit or other  
14                  court-recognized statement required  
15                  under paragraph (1)(G)(v); and

16                  “(V) the name of the employee or  
17                  employees who signed or executed the  
18                  sworn affidavit or other court-recog-  
19                  nized statement referred to in sub-  
20                  clause (IV);

21           “(ii) not later than July 1 of each  
22           year, publish the information described in  
23           clause (i) for the preceding calendar year  
24           in the Federal Register; and

1           “(iii) not later than July 1 of each  
2 year, submit a report to the Committee on  
3 the Judiciary of the Senate and the Com-  
4 mittee on the Judiciary of the House of  
5 Representatives that contains—

6                   “(I) the information described in  
7 clause (i);

8                   “(II) information about any peti-  
9 tioner employers whose applications  
10 were denied under subparagraph (C);

11                   “(III) information about any on-  
12 going investigations of petitioner em-  
13 ployers for potential or determined  
14 violations of use of the H-1B visa  
15 program;

16                   “(IV) any referrals of potential  
17 violations of section 1621 of title 18,  
18 United States Code, to the Attorney  
19 General, as required under paragraph  
20 (3)(D)(i);

21                   “(V) any assessments of civil  
22 penalties of petitioner employers, as  
23 required under clauses (ii) and (iii) of  
24 paragraph (3)(D); and



1           “(VI) any additional information  
2           that the Secretary of Labor believes  
3           may be relevant to future congress-  
4           sional evaluation of the H-1B visa  
5           program.

6           “(3) H-1B APPLICATION INVESTIGATIONS.—

7           “(A) IN GENERAL.—The Secretary of  
8           Labor shall establish a process for the receipt,  
9           investigation, and disposition of complaints re-  
10          specting—

11          “(i) a petitioner employer’s failure to  
12          meet a condition specified in an application  
13          submitted under paragraph (1); and

14          “(ii) a petitioner employer’s misrepre-  
15          sentation of material facts in such an ap-  
16          plication.

17          “(B) INVESTIGATION PROCEDURES.—

18          “(i) IN GENERAL.—The Secretary of  
19          Labor may conduct an investigation of any  
20          complaint alleged against a petitioner em-  
21          ployer—

22          “(I) based on the independent  
23          judgment of the Secretary;

1           “(II) in response to a referral or  
2           complaint from the head of another  
3           Federal agency; or

4           “(III) through any other method  
5           that, in the Secretary’s discretion,  
6           shows cause for such an investigation.

7           “(ii) COMPLAINANTS.—A complaint  
8           may be filed by any aggrieved party, in-  
9           cluding—

10           “(I) any United States citizen or  
11           lawful permanent resident who be-  
12           lieves his or her job has been elimi-  
13           nated or could potentially be elimi-  
14           nated as the result of the petitioner  
15           employer hiring or seeking to hire a  
16           foreign national pursuant to a non-  
17           immigrant visa;

18           “(II) any trade association or  
19           union that represents any person de-  
20           scribed in subclause (I); and

21           “(III) any foreign national hired  
22           for work in the United States pursu-  
23           ant to a nonimmigrant visa who be-  
24           lieves he or she is subject to poten-

1 tially unlawful workplace conditions or  
2 requirements.

3 “(iii) PROCESS FOR FOREIGN NA-  
4 TIONAL COMPLAINANTS.—The Secretary of  
5 Labor and the Secretary of Homeland Se-  
6 curity shall devise a process under which  
7 an H-1B nonimmigrant who files a com-  
8 plaint regarding a violation under this sub-  
9 section and is otherwise eligible to remain  
10 and work in the United States may be al-  
11 lowed to seek other appropriate employ-  
12 ment in the United States for a period not  
13 to exceed the maximum period of stay au-  
14 thorized for such nonimmigrant classifica-  
15 tion.

16 “(iv) PROGRAM PAUSE FOR INITI-  
17 ATION OF INVESTIGATION.—In any situa-  
18 tion in which the Secretary of Labor com-  
19 mences an investigation of a petitioner em-  
20 ployer under this paragraph, the Secretary  
21 of Labor may—

22 “(I) cease processing any applica-  
23 tion that is submitted under this sub-  
24 section and filed by such petitioner

1 employer until the conclusion of such  
2 investigation; and

3 “(II) suspend such petitioner em-  
4 ployer’s usage of currently issued H-  
5 1B nonimmigrant visas, until the con-  
6 clusion of such investigation.

7 “(C) INITIATION OF INVESTIGATION.—Not  
8 later than 30 days after the date on which a  
9 complaint is filed with the Department of Labor  
10 under this paragraph, the Secretary of Labor—

11 “(i) shall determine whether a reason-  
12 able basis exists to make a finding under  
13 subparagraph (D);

14 “(ii) not later than 30 days after the  
15 date of such determination, shall provide  
16 for notice of such determination to the in-  
17 terested parties and an opportunity for a  
18 hearing on such determination, in accord-  
19 ance with section 556 of title 5, United  
20 States Code;

21 “(iii) if such a hearing is requested  
22 and held, shall make a finding concerning  
23 the matter not later than 30 days after the  
24 date of such hearing; and

1           “(iv) in the case of similar complaints  
2           respecting the same petitioner employer,  
3           may consolidate the hearings under this  
4           subparagraph on such complaints.

5           “(D) PENALTIES.—

6           “(i) FINDING OF POSSIBLE CRIMINAL  
7           VIOLATION.—If the Secretary of Labor,  
8           after notice and opportunity for a hearing  
9           under subparagraph (C), finds that a peti-  
10          tioner employer made one or more false  
11          statements in a sworn affidavit or similar  
12          court-recognized statement, the Secretary  
13          shall refer such petitioner employer to the  
14          Attorney General for criminal prosecution.

15          “(ii) FINDING OF MATERIAL FAILURE  
16          WITHOUT DISPLACEMENT.—If the Sec-  
17          retary of Labor, after notice and oppor-  
18          tunity for a hearing under subparagraph  
19          (C), finds that a petitioner employer mate-  
20          rially failed to meet a condition required  
21          under paragraph (1), the Secretary may—

22                  “(I) impose a fine against the pe-  
23                  titioner employer that is not less than  
24                  \$50,000 and not greater than  
25                  \$100,000 per violation, which shall be

1 deposited into the general fund of the  
2 Treasury;

3 “(II) immediately revoke all  
4 issued H–1B visas currently being  
5 used by the petitioner employer; and

6 “(III) prohibit the petitioner em-  
7 ployer from applying for additional  
8 H–1B visas for a period of not less  
9 than 5 years and not more than 10  
10 years.

11 “(iii) FINDING OF MATERIAL FAILURE  
12 WITH DISPLACEMENT.—If the Secretary of  
13 Labor, after notice and opportunity for a  
14 hearing under subparagraph (C), finds  
15 that a petitioner employer materially failed  
16 to meet a condition under paragraph (1),  
17 and, in the course of, or as a result of,  
18 such material failure, the petitioner em-  
19 ployer displaced a United States citizen or  
20 lawful permanent resident employed by the  
21 petitioner employer during the period be-  
22 ginning 2 years before the date on which  
23 any visa petition supported by the applica-  
24 tion was filed and ending 2 years after  
25 such date, the Secretary shall—

1           “(I) impose a fine against the pe-  
2           titioner employer that is not less than  
3           \$100,000 and not greater than  
4           \$500,000 per violation, which shall be  
5           deposited into the general fund of the  
6           Treasury;

7           “(II) immediately revoke all  
8           issued H-1B visas currently being  
9           used by the petitioner employer;

10           “(III) permanently bar the peti-  
11           tioner employer from applying for ad-  
12           ditional H-1B visas; and

13           “(IV) require the petitioner em-  
14           ployer to provide retroactive com-  
15           pensation for any displaced United  
16           States citizen or lawful permanent  
17           resident employee.

18           “(E) SCOPE OF INVESTIGATIVE AUTHOR-  
19           ITY.—

20           “(i) IN GENERAL.—The Secretary of  
21           Labor may initiate an investigation of any  
22           petitioner employer that employs non-  
23           immigrants described in section  
24           101(a)(15)(H)(i)(b) if the Secretary of  
25           Labor has reasonable cause to believe that

1 the petitioner employer is not in compli-  
2 ance with this subsection.

3 “(ii) CERTIFICATION.—The Secretary  
4 of Labor (or the acting Secretary in case  
5 of the absence or disability) shall person-  
6 ally certify that reasonable cause exists to  
7 initiate an investigation under this sub-  
8 paragraph. The investigation may be initi-  
9 ated for reasons other than completeness  
10 and obvious inaccuracies by the petitioner  
11 employer in complying with this sub-  
12 section.

13 “(iii) USE OF INFORMATION.—If the  
14 Secretary of Labor receives specific cred-  
15 ible information from a source who is likely  
16 to have knowledge of a petitioner employ-  
17 er’s practices or employment conditions, or  
18 a petitioner employer’s compliance with the  
19 petitioner employer’s labor condition appli-  
20 cation under paragraph (1), and whose  
21 identity is known to the Secretary of  
22 Labor, and such information provides rea-  
23 sonable cause to believe that the petitioner  
24 employer has committed a willful failure to  
25 meet a condition under subparagraph (A),



1 (B), (C), (E), (F), or (G)(i), has engaged  
2 in a pattern or practice of failures to meet  
3 such a condition, or has committed a sub-  
4 stantial failure to meet such a condition  
5 that affects multiple employees, the Sec-  
6 retary of Labor may—

7 “(I) conduct an investigation into  
8 the alleged failure or failures; and

9 “(II) withhold the identity of the  
10 source from the petitioner employer,  
11 which shall not be subject to disclo-  
12 sure under section 552 of title 5,  
13 United States Code.

14 “(iv) PROCEDURE.—The Secretary of  
15 Labor shall establish a procedure for any  
16 person desiring to provide information de-  
17 scribed in clause (iii) that may be used, in  
18 whole or in part, as the basis for the com-  
19 mencement of an investigation described in  
20 such clause, to provide such information in  
21 writing on a form developed and provided  
22 by the Secretary and completed by or on  
23 behalf of the person. Such person may not  
24 be an officer or employee of the Depart-  
25 ment of Labor unless the information sat-

1 isfies the requirement under clause (v)(II),  
2 although an officer or employee of the De-  
3 partment of Labor may complete the form  
4 on behalf of the person.

5 “(v) INFORMATION SOURCES.—Any  
6 investigation initiated or approved by the  
7 Secretary of Labor under this subpara-  
8 graph shall be based on information that—

9 “(I) satisfies the requirements  
10 under clause (iii); and

11 “(II)(aa) originates from a  
12 source other than an officer or em-  
13 ployee of the Department of Labor; or

14 “(bb) was lawfully obtained by  
15 the Secretary of Labor in the course  
16 of lawfully conducting another De-  
17 partment of Labor investigation.

18 “(vi) CLARIFICATION.—The receipt of  
19 information by the Secretary of Labor that  
20 was submitted by a petitioner employer to  
21 the Secretary of Homeland Security or the  
22 Secretary of Labor for purposes of secur-  
23 ing the employment of a nonimmigrant de-  
24 scribed in section 101(a)(15)(H)(i)(b) shall

1 not be considered a receipt of information  
2 under clause (iii).

3 “(vii) DEADLINE.—An investigation  
4 described in clause (iii) (or a hearing de-  
5 scribed in clause (ix) based on such inves-  
6 tigation) may not be conducted with re-  
7 spect to information about a failure to  
8 meet a condition described in clause (iii)  
9 unless the Secretary of Labor receives the  
10 information not later than 1 year after the  
11 date of the alleged failure.

12 “(viii) NOTICE.—

13 “(I) IN GENERAL.—Before initi-  
14 ating an investigation of a petitioner  
15 employer under this subparagraph,  
16 the Secretary of Labor shall provide  
17 notice of the intent to conduct such  
18 an investigation to such employer in  
19 such a manner, and containing suffi-  
20 cient information, to permit the peti-  
21 tioner employer to respond to the alle-  
22 gations before the investigation is  
23 commenced.

24 “(II) EXCEPTION.—The Sec-  
25 retary of Labor is not required to

1           comply with subclause (I) if the Sec-  
2           retary determines that such compli-  
3           ance would interfere with an effort by  
4           the Secretary to secure compliance by  
5           the petitioner employer with the re-  
6           quirements under this subsection.  
7           There shall be no judicial review of a  
8           determination by the Secretary of  
9           Labor under this clause.

10           “(ix)   TIMING.—An investigation  
11           under this subparagraph may be conducted  
12           for a period of up to 60 days. Not later  
13           than 120 days after the Secretary of Labor  
14           determines, through an investigation under  
15           this subparagraph, that a reasonable basis  
16           exists to determine that the petitioner em-  
17           ployer has committed a willful failure to  
18           meet a condition under subparagraph (A),  
19           (B), (C), (E), (F), or (G)(i) of paragraph  
20           (1), has engaged in a pattern or practice  
21           of failures to meet such a condition, or has  
22           committed a substantial failure to meet  
23           such a condition that affects multiple em-  
24           ployees, the Secretary shall provide for no-  
25           tice of such determination to the interested

1 parties and an opportunity for a hearing in  
2 accordance with section 556 of title 5,  
3 United States Code. If such a hearing is  
4 requested, the Secretary of Labor shall  
5 make a finding concerning the matter not  
6 later than 120 days after the date of the  
7 hearing.

8 “(F) COMPLIANCE.—

9 “(i) GOOD FAITH ATTEMPT.—Except  
10 as provided in clauses (ii) and (iii), a per-  
11 son or entity is considered to have com-  
12 plied with the requirements under this sub-  
13 section, notwithstanding a technical or pro-  
14 cedural failure to meet such requirements,  
15 if there was a good faith attempt to com-  
16 ply with the requirements.

17 “(ii) EXCEPTIONS.—Clause (i) shall  
18 not apply if—

19 “(I) the Department of Labor (or  
20 another enforcement agency) has ex-  
21 plained to the person or entity the  
22 basis for the failure;

23 “(II) the person or entity has  
24 been provided a period of not less  
25 than 10 business days after the date

1 of the explanation to correct the fail-  
2 ure; and

3 “(III) the person or entity has  
4 not corrected the failure voluntarily  
5 within the period described in sub-  
6 clause (II).

7 “(iii) PENALTY AVOIDANCE.—A per-  
8 son or entity shall not be assessed fines or  
9 other penalties for a violation of the pre-  
10 vailing wage requirements under para-  
11 graph (1)(A) if the person or entity estab-  
12 lishes that the manner in which the pre-  
13 vailing wage was calculated was consistent  
14 with recognized industry standards and  
15 practices.

16 “(iv) EXCEPTIONS.—Clauses (i) and  
17 (iii) shall not apply to a person or entity  
18 that has engaged in, or is engaging in, a  
19 pattern or practice of willful violations of  
20 this subsection.

21 “(4) SAVINGS PROVISION.—Nothing in this sub-  
22 section may be construed to supersede or preempt  
23 any other enforcement-related authority under this  
24 title, including section 274B, or under any other  
25 Act.”.

1 (b) ADMISSION OF NONIMMIGRANTS.—Section 214 of  
2 the Immigration and Nationality Act (8 U.S.C. 1184) is  
3 amended—

4 (1) by striking “Attorney General” each place  
5 such term appears and inserting “Secretary of  
6 Homeland Security”;

7 (2) by amending subsection (b) to read as fol-  
8 lows:

9 “(b) PRESUMPTION OF STATUS; WRITTEN WAIV-  
10 ER.—

11 “(1) IN GENERAL.—Every alien (other than a  
12 nonimmigrant described in subparagraph (L) or (V)  
13 of section 101(a)(15) and other than a non-  
14 immigrant described in any provision of subpara-  
15 graph (H) of such section except subclause (b1) of  
16 such subparagraph) shall be presumed to be an im-  
17 migrant until the alien establishes to the satisfaction  
18 of the consular officer, at the time of application for  
19 a visa, and the immigration officers, at the time of  
20 application for admission, that he or she is entitled  
21 to a nonimmigrant status under section 101(a)(15).

22 “(2) RESTRICTIONS.—An alien who is an offi-  
23 cer or employee of any foreign government or of any  
24 international organization entitled to enjoy privi-  
25 leges, exemptions, and immunities under the Inter-

1 national Organizations Immunities Act (22 U.S.C.  
2 288 et seq.), and an alien who is the attendant, serv-  
3 ant, employee, or member of the immediate family of  
4 any such alien shall not be entitled to apply for or  
5 receive an immigrant visa, or to enter the United  
6 States as an immigrant unless the alien executes a  
7 written waiver in the same form and substance as is  
8 prescribed under section 247(b).”; and

9 (3) in subsection (c)—

10 (A) by striking paragraph (2);

11 (B) in paragraph (9)—

12 (i) in subparagraph (A), by striking  
13 “(excluding” and all that follows through  
14 “organization) filing before” and inserting  
15 “filing”; and

16 (ii) in subparagraph (B), by striking  
17 “\$1,500” and inserting “\$10,000”;

18 (C) by striking paragraph (10);

19 (D) in paragraph (11)(A), by striking “or  
20 the Secretary of State, as appropriate,”; and

21 (E) in paragraph (12)(C), by striking  
22 “\$500” and inserting “\$2,000”.

23 (c) EMPLOYMENT AUTHORIZATION.—Section  
24 274A(h) of the Immigration and Nationality Act (8 U.S.C.  
25 1324a) is amended by adding at the end the following:



1           “(4) EMPLOYMENT AUTHORIZATION FOR  
 2 ALIENS NO LONGER ENGAGED IN FULL-TIME STUDY  
 3 IN THE UNITED STATES.—Notwithstanding any  
 4 other provision of law, no alien present in the United  
 5 States as a nonimmigrant under section  
 6 101(a)(15)(F)(i) may be provided employment au-  
 7 thorization in the United States pursuant to the Op-  
 8 tional Practical Training Program, or any such suc-  
 9 cessor program, without an express Act of Congress  
 10 authorizing such a program.”.

11           (d) CLERICAL AMENDMENT.—Section 212 of the Im-  
 12 migration and Nationality Act (8 U.S.C. 1182) is amend-  
 13 ed by redesignating subsection (t), as added by section  
 14 1(b)(2)(B) of Public Law 108–449, as subsection (u).

## 15           **TITLE II—NEW H-1B VISA** 16           **REQUIREMENTS**

17           **SEC. 201. BAR ON NONDISPARAGEMENT AND NONDISCLO-**  
 18           **SURE AGREEMENTS.**

19           (a) IN GENERAL.—A petitioner employer may not re-  
 20 quire a United States citizen or lawful permanent resident  
 21 employee of such petitioner employer to sign any non-  
 22 disparagement or nondisclosure agreement, regardless of  
 23 its characterization or label, that conditions receipt of any  
 24 financial or nonfinancial benefit from the petitioner em-

1 ployer upon the nondisclosure of such petitioner employ-  
2 er's potential misuse of the H-1B visa program.

3 (b) PATENT OR TRADEMARK AFFIRMATIVE DE-  
4 FENSE IN LITIGATION.—Notwithstanding subsection (a),  
5 a petitioner employer, as a defense in litigation, may af-  
6 firmatively assert that an agreement described in sub-  
7 section (a) was necessary to prevent the disclosure of any  
8 highly technical information that might be related to a  
9 pending patent or trademark application.

10 **SEC. 202. UNITED STATES FEDERAL COURT JURISDICTION**  
11 **OVER CIVIL ACTIONS PERTAINING TO MIS-**  
12 **USE OF THE H-1B VISA PROGRAM.**

13 (a) IN GENERAL.—Notwithstanding any other provi-  
14 sion of law—

15 (1) each United States district court shall have  
16 jurisdiction to address civil actions by any person  
17 claiming misuse of the H-1B visa program;

18 (2) each United States court of appeals shall  
19 have jurisdiction to address appeals of civil actions  
20 by any person claiming misuse of the H-1B visa  
21 program for cases originating within a United States  
22 district court within that circuit; and

23 (3) the Supreme Court of the United States  
24 shall have jurisdiction to address appeals of civil ac-  
25 tions by any person claiming misuse of the H-1B

1 visa program for cases originating from any United  
2 States court of appeals.

3 (b) NO EXHAUSTION REQUIREMENT.—Notwith-  
4 standing any other provision of law, a person shall have  
5 standing to pursue a civil action claiming misuse of the  
6 H-1B visa program, in accordance with subsection (a),  
7 regardless of whether such person has exhausted all ad-  
8 ministrative remedies in connection with such claims.

9 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
10 tion may be construed to affect or change any of the other  
11 jurisdictional, procedural, or administrative rules under  
12 title 28, United States Code, other than the specific estab-  
13 lishment of jurisdiction of Federal courts, as provided in  
14 subsection (a).

## 15 **TITLE III—REPEAL OF OTHER** 16 **PROVISIONS**

### 17 **SEC. 301. REPEAL OF THE DIVERSITY VISA LOTTERY.**

18 Title II of the Immigration and Nationality Act (8  
19 U.S.C. 1151 et seq.) is amended—

20 (1) in section 201(a)—

21 (A) in paragraph (1), by adding “and” at  
22 the end;

23 (B) in paragraph (2), by striking “; and”  
24 and inserting a period; and

25 (C) by striking paragraph (3);

- 1           (2) in section 203—  
2            (A) by striking subsection (c); and  
3            (B) in subsection (e)—  
4            (i) by striking paragraph (2); and  
5            (ii) by redesignating paragraph (3) as  
6            paragraph (2); and  
7           (3) in section 204(a)(1), by striking subpara-  
8           graph (I).

○