

114TH CONGRESS
1ST SESSION

S. 2394

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.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2015

Mr. CRUZ (for himself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2015”.

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. Degree requirements for foreign nationals.

Sec. 202. Bar on nondisparagement and nondisclosure agreements.

Sec. 203. 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 2015, 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, or equipment use or rental, un-
14 less the requirement of the payment
15 of such amounts or fees is identical to
16 the payments that are required by
17 United States citizen or lawful perma-
18 nent resident employees; and

19 “(iv) will—

20 “(I) after the employer has filed
21 an application under this subsection
22 and placed an H-1B nonimmigrant
23 designated as a full-time employee on
24 the petition filed under section
25 214(c)(1) and the nonimmigrant has

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

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

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

9 “(III) has not displaced, fur-
10 loughed, terminated without cause, or
11 otherwise involuntarily separated, and
12 will not displace, furlough, terminate
13 without cause, or otherwise involun-
14 tarily separate a United States citizen
15 or lawful permanent resident em-
16 ployed by the petitioner employer dur-
17 ing the 4-year period beginning on the
18 date that is 2-years before the date on
19 which the petitioner employer filed
20 any visa petition supported by the ap-
21 plication.

22 “(ii) The 4-year period referred to in
23 clause (i)(III) does not include any period
24 of on-site, remote, teleconference-based,
25 computer-based, or other virtual training

1 of nonimmigrants by or with employees of
2 the petitioner employer.

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

14 “(i) the employee performs duties, in
15 whole or in part, at 1 or more worksites
16 owned, operated, or controlled by such
17 other employer; and

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

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

23 “(i) has documented specific steps to
24 recruit potential employees who are United
25 States citizens or lawful permanent resi-

1 dents using mainstream and industry-fo-
2 cused media and online advertising cam-
3 paigns, and offering wages that are at
4 least as high as the wage requirements es-
5 tablished for nonimmigrants in subpara-
6 graph (A), in order to recruit such citizens
7 and residents for the job or jobs for which
8 the nonimmigrant or nonimmigrants is or
9 are sought;

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

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

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

24 “(I) has disclosed information to
25 the petitioner employer, or to any

1 other person or entity, that the em-
2 ployee reasonably believes evidences a
3 violation of this subsection, or any
4 rule or regulation pertaining to this
5 subsection; or

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

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

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

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

23 “(2) NOTIFICATION AND TRANSPARENCY RE-
24 QUIREMENTS.—

1 “(A) IN GENERAL.—The petitioner em-
2 ployer shall make available for examination its
3 materials relating to its application to the Sec-
4 retary of Labor in accordance with paragraph
5 (1).

6 “(B) INTERNAL AND EXTERNAL PUBLICA-
7 TION OF APPLICATION MATERIALS.—

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

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

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

1 “(ii) PHYSICAL POSTING.—Not later
2 than 5 business days after the date on
3 which an application is filed in accordance
4 with paragraph (1), the petitioner em-
5 ployer shall post copies of such application
6 and necessary accompanying documenta-
7 tion in prominent places at all of its busi-
8 ness locations and worksites to ensure that
9 all of its employees are aware of the appli-
10 cation.

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

19 “(i) deny such application; and

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

1 “(D) SECRETARY OF LABOR APPLICATION
2 TRANSPARENCY OBLIGATIONS.—The Secretary
3 of Labor shall—

4 “(i) compile and publish on the De-
5 partment of Labor website, on an ongoing
6 basis—

7 “(I) the name of the petitioner
8 employer that has filed an application
9 under this subsection;

10 “(II) the date on which each
11 such petitioner employer filed such
12 application;

13 “(III) the number of H–1B visas
14 that have been requested in such ap-
15 plication;

16 “(IV) the sworn affidavit or other
17 court-recognized statement required
18 under paragraph (1)(G)(v); and

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

24 “(ii) not later than July 1 of each
25 year, publish the information described in

1 clause (i) for the preceding calendar year
2 in the Federal Register; and

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

8 “(I) the information described in
9 clause (i);

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

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

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

23 “(V) any assessments of civil
24 penalties of petitioner employers, as

1 required under clauses (ii) and (iii) of
2 paragraph (3)(D); and

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

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

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

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

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

19 “(B) INVESTIGATION PROCEDURES.—

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

24 “(I) based on the independent
25 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 1 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) may prohibit the petitioner
7 employer 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 the matter preceding subpara-
13 graph (A), by striking “(excluding” and all
14 that follows through “organization) filing
15 before” and inserting “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. DEGREE REQUIREMENTS FOR FOREIGN NATION-**
 18 **ALS.**

19 (a) IN GENERAL.—Each nonimmigrant employed
 20 pursuant to an H-1B visa requested by a petitioner em-
 21 ployer shall possess a doctorate or post-doctorate degree,
 22 or the foreign equivalent of such degree, with the exception
 23 of nonimmigrants who enter the United States pursuant
 24 to subparagraph (O) or (P) of section 101(a)(15) of the
 25 Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

1 (b) UNDERGRADUATE AND MASTERS DEGREES PRO-
2 HIBITED.—A nonimmigrant who only possesses an under-
3 graduate degree (or the foreign equivalent of such degree),
4 or a combination of undergraduate and masters degrees
5 (or the foreign equivalents of such degrees) shall be ineli-
6 gible for employment pursuant to a petitioner employer’s
7 H–1B visa, unless such nonimmigrant gained at least 10
8 years of relevant experience after obtaining such degree
9 or degrees.

10 (c) FOREIGN SCHOOL CERTIFICATION REQUIRE-
11 MENT.—

12 (1) IN GENERAL.—Each nonimmigrant em-
13 ployed pursuant to an H–1B visa requested by a pe-
14 titioner employer shall possess a degree or degrees,
15 in accordance with this section, issued from a for-
16 eign university or universities that are certified by
17 the Secretary of Labor as meeting appropriate base-
18 line education standards for institutions of higher
19 learning.

20 (2) DEPARTMENT OF LABOR CERTIFICATION OF
21 FOREIGN EDUCATIONAL INSTITUTIONS.—Not later
22 than 90 days after the date of the enactment of this
23 Act, the Secretary of Labor shall issue regulations
24 establishing criteria that a foreign university shall
25 demonstrate to establish sufficient indicia of the suf-

1 iciency of its academic standards and degree re-
2 quirements.

3 (d) DOCTORATE AND POST-DOCTORATE DEGREES
4 FROM UNITED STATES UNIVERSITIES PRIORITIZED.—

5 (1) IN GENERAL.—A nonimmigrant who pos-
6 sesses 1 or more doctorate or post-doctorate degrees
7 from 1 or more universities that are physically lo-
8 cated in the United States shall receive priority con-
9 sideration for placement in employment pursuant to
10 an H–1B visa requested by a petitioner employer.

11 (2) EMPLOYER OBLIGATIONS TO PRIORITIZE.—
12 A petitioner employer shall employ a nonimmigrant
13 described in paragraph (1) before employing any for-
14 eign national who has obtained his or her degree or
15 degrees from 1 or more foreign universities.

16 (3) PENALTIES FOR EMPLOYERS FOR FAILURE
17 TO PRIORITIZE.—Any petitioner employer that fails
18 to comply with paragraph (2) shall be subject to the
19 penalties provided in section 212(n)(3)(D) of the
20 Immigration and Nationality Act, as amended by
21 section 101(a).

22 (4) DEVELOPMENT OF PRIORITIZATION PROCE-
23 DURE.—Not later than 90 days after the date of the
24 enactment of this Act, the Secretary of Homeland
25 Security, or the head of U.S. Citizenship and Immi-

1 gratation Services, serving as the Secretary's designee,
2 shall develop a procedure that ensures that non-
3 immigrants who possess 1 or more doctorate or post-
4 doctorate degrees from 1 or more universities that
5 are physically located in the United States shall re-
6 ceive priority consideration, in accordance with para-
7 graph (1).

8 (e) FOREIGN NATIONAL WORK EXPERIENCE RE-
9 QUIREMENT.—A nonimmigrant is not eligible for employ-
10 ment pursuant to an H-1B visa requested by a petitioner
11 employer unless the nonimmigrant possesses at least 2
12 years of nonacademic experience in the same field or pro-
13 fession for which the nonimmigrant is being sought.

14 **SEC. 202. BAR ON NONDISPARAGEMENT AND NONDISCLO-**
15 **SURE AGREEMENTS.**

16 (a) IN GENERAL.—A petitioner employer may not re-
17 quire a United States citizen or lawful permanent resident
18 employee of such petitioner employer to sign any non-
19 disparagement or nondisclosure agreement, regardless of
20 its characterization or label, that conditions receipt of any
21 financial or nonfinancial benefit from the petitioner em-
22 ployer upon the nondisclosure of such petitioner employ-
23 er's potential misuse of the H-1B visa program.

24 (b) PATENT OR TRADEMARK AFFIRMATIVE DE-
25 FENSE IN LITIGATION.—Notwithstanding subsection (a),

1 a petitioner employer, as a defense in litigation, may af-
2 firmatively assert that an agreement described in sub-
3 section (a) was necessary to prevent the disclosure of any
4 highly technical information that might be related to a
5 pending patent or trademark application.

6 **SEC. 203. UNITED STATES FEDERAL COURT JURISDICTION**
7 **OVER CIVIL ACTIONS PERTAINING TO MIS-**
8 **USE OF THE H-1B VISA PROGRAM.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law—

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

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

19 (3) the Supreme Court of the United States
20 shall have jurisdiction to address appeals of civil ac-
21 tions by any person claiming misuse of the H-1B
22 visa program for cases originating from any United
23 States court of appeals.

24 (b) NO EXHAUSTION REQUIREMENT.—Notwith-
25 standing any other provision of law, a person shall have

1 standing to pursue a civil action claiming misuse of the
 2 H-1B visa program, in accordance with subsection (a),
 3 regardless of whether such person has exhausted all ad-
 4 ministrative remedies in connection with such claims.

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

11 **TITLE III—REPEAL OF OTHER** 12 **PROVISIONS**

13 **SEC. 301. REPEAL OF THE DIVERSITY VISA LOTTERY.**

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

16 (1) in section 201(a)—

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

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

21 (C) by striking paragraph (3);

22 (2) in section 203—

23 (A) by striking subsection (c); and

24 (B) in subsection (e)—

25 (i) by striking paragraph (2); and

1 (ii) by redesignating paragraph (3) as
2 paragraph (2); and
3 (3) in section 204(a)(1), by striking subpara-
4 graph (I).

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