

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4378

To amend the Immigration and Nationality Act to provide greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2005

Mr. PASCARELL (for himself, Mr. OWENS, Ms. WATERS, and Ms. KILPATRICK of Michigan) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to provide greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program.

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       “Defend the American Dream Act of 2005”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Wage determination.
- Sec. 3. Good faith recruitment requirement.

Sec. 4. Notice requirement.

Sec. 5. Reduction of period of authorized admission as H-1B nonimmigrant.

Sec. 6. Removal of exemption from H-1B numerical limitation for certain aliens.

Sec. 7. Requirement of a degree from certain institutions for H-1B specialty occupation nonimmigrants.

Sec. 8. Tripling H-1B nonimmigrant petitioner fee.

Sec. 9. Labor enforcement.

Sec. 10. Private right of action.

Sec. 11. Application of nondisplacement requirement to all H-1B employers.

1 **SEC. 2. WAGE DETERMINATION.**

2 (a) CHANGE IN MINIMUM WAGES.—Section  
3 212(n)(1)(A) of the Immigration and Nationality Act (8  
4 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

5 “(A) The employer—

6 “(i) is offering and will offer during the  
7 period of authorized employment to aliens ad-  
8 mitted or provided status as an H-1B non-  
9 immigrant wages that are at least—

10 “(I) the locally determined prevailing  
11 wage level for the occupational classifica-  
12 tion in the area of employment;

13 “(II) the median average wage for all  
14 workers in the occupational classification  
15 in the area of employment; or

16 “(III) the median wage for skill level  
17 two in the occupational classification found  
18 in the most recent Occupational Employ-  
19 ment Statistics survey;

1           whichever is greatest, based on the best infor-  
2           mation available as of the time of filing of the  
3           application; and

4           “(ii) will provide working conditions for  
5           such nonimmigrant that will not adversely af-  
6           fect the working conditions of workers similarly  
7           employed.

8           The wage determination methodology used under  
9           clause (i) shall be submitted with the application.”.

10          (b) PROVISION OF W-2 FORMS.—Section 212(n)(1)  
11       of such Act (8 U.S.C. 1182(n)(1)) is amended by inserting  
12       after subparagraph (G) the following new subparagraph:

13           “(H) If the employer employed, in such pre-  
14       vious period as the Secretary shall specify, one or  
15       more H-1B nonimmigrants, the application shall be  
16       accompanied by the Internal Revenue Service Form  
17       W-2 Wage and Tax Statement filed by the employer  
18       with respect to such nonimmigrants for such pe-  
19       riod.”.

20          (c) EFFECTIVE DATE.—The amendments made by  
21       this section shall apply to applications filed on or after  
22       the date of the enactment of this Act.

1 **SEC. 3. GOOD FAITH RECRUITMENT REQUIREMENT.**

2 (a) **EXTENDING TIME PERIOD FOR NO DISPLACE-**  
3 **MENT.**—Section 212(n) of the Immigration and Nation-  
4 ality Act (8 U.S.C. 1182(n)) is amended—

5 (1) in paragraph (1)(E)(i), by striking “90  
6 days” and inserting “180 days” each place it ap-  
7 pears; and

8 (2) in paragraph (2)(C)(iii), in the matter be-  
9 fore subclause (I), by striking “90 days” and insert-  
10 ing “180 days” each place it appears.

11 (b) **REQUIRING ACTIVE RECRUITMENT.**—Section  
12 212(n)(1)(G)(i)(I) of such Act (8 U.S.C.  
13 1182(n)(1)(G)(i)(I)) is amended by inserting “actively”  
14 before “recruit”.

15 (c) **PROHIBITION OF OUTPLACEMENT.**—Section  
16 212(n) of such Act (8 U.S.C. 1182(n)) is amended—

17 (1) by amending subparagraph (F) of para-  
18 graph (1) to read as follows:

19 “(F) The employer shall not place, out-source,  
20 lease, or otherwise contract for the placement of an  
21 alien admitted or provided status as an H–1B non-  
22 immigrant with another employer, regardless of  
23 whether or not such other employer is an H–1B-de-  
24 pendent employer.”; and

25 (2) by striking subparagraph (E) of paragraph  
26 (2).

1 (d) **EFFECTIVE DATE.**—The amendments made by  
2 this section shall apply to applications filed on or after  
3 the date of the enactment of this Act, except that the  
4 amendments made by subsection (a) shall not apply to dis-  
5 placements for periods occurring more than 90 days before  
6 such date.

7 **SEC. 4. NOTICE REQUIREMENT.**

8 (a) **IN GENERAL.**—Section 212(n) of the Immigra-  
9 tion and Nationality Act (8 U.S.C. 1182(n)) is further  
10 amended—

11 (1) in paragraph (1), in the matter preceding  
12 subparagraph (A), by inserting “and the employer  
13 certifies that the prior notice requirement of para-  
14 graph (6) has been met with respect to the applica-  
15 tion”; and

16 (2) by adding at the end the following new  
17 paragraph:

18 “(6) For purposes of paragraph (1), the prior notice  
19 requirement of this paragraph, with respect to an applica-  
20 tion of an employer, is that employer has made copies of  
21 the application (or, a summary of essential information  
22 derived from such application, including the number of H-  
23 1B nonimmigrants being sought, their occupational classi-  
24 fications, the wages offered, the period of intended em-  
25 ployment, the locations at which they will be employed,

1 and a statement that a copy of the application is available  
2 for public inspection in conspicuous locations at the em-  
3 ployer’s principal place of business and at worksites where  
4 H–1B nonimmigrants will be employed) accessible for ex-  
5 amination by affected United States and foreign workers  
6 at least 30 days in advance of the filing of the application  
7 with the Secretary of Labor through—

8           “(A) posting of such application (or summary)  
9           in conspicuous locations at worksites where H–1B  
10           nonimmigrants will be employed;

11           “(B) electronic notification to employees in the  
12           occupational classifications for which H–1B  
13           nonimmigrants are being sought; and

14           “(C) provision of a copy of the application to  
15           each H–1B nonimmigrant on whose behalf the appli-  
16           cation is being filed.”.

17           (b) **EFFECTIVE DATE.**—The amendments made by  
18 subsection (a) shall apply to applications filed more than  
19 30 days after the date of the enactment of this Act.

20 **SEC. 5. REDUCTION OF PERIOD OF AUTHORIZED ADMIS-**  
21 **SION AS H-1B NONIMMIGRANT.**

22           (a) **IN GENERAL.**—Section 214(g)(4) of the Immi-  
23 gration and Nationality Act (8 U.S.C. 1184(g)(4)) is  
24 amended by striking “6 years” and inserting “3 years”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply with respect to the period of  
3 authorized admission of an alien as an H–1B non-  
4 immigrant under section 101(a)(15)(H)(i)(B) of the Im-  
5 migration and Nationality Act (8 U.S.C.  
6 1101(a)(15)(H)(i)(B)) that begins on or after the date of  
7 the enactment of this Act.

8 **SEC. 6. REMOVAL OF EXEMPTION FROM H-1B NUMERICAL**  
9 **LIMITATION FOR CERTAIN ALIENS.**

10 (a) IN GENERAL.—Section 214(g)(5) of the Immi-  
11 gration and Nationality Act (8 U.S.C. 1184(g)(5)) is  
12 amended—

13 (1) in subparagraph (A), by adding “or” after  
14 the semicolon;

15 (2) in subparagraph (B), by striking “; or” and  
16 inserting a period; and

17 (3) by striking subparagraph (C).

18 (b) EFFECTIVE DATE.—The amendments made by  
19 subsection (a) shall apply to the issuance of a visa (or  
20 other provision of status) under section  
21 101(a)(15)(H)(i)(B) of the Immigration and Nationality  
22 Act (8 U.S.C. 1101(a)(15)(H)(i)(B)) on or after the first  
23 day of the first fiscal year beginning after the date of the  
24 enactment of this Act.

1 **SEC. 7. REQUIREMENT OF A DEGREE FROM CERTAIN INSTI-**  
2 **TUTIONS FOR H-1B SPECIALTY OCCUPATION**  
3 **NONIMMIGRANTS.**

4 (a) IN GENERAL.—Section 214(i)(2) of the Immigra-  
5 tion and Nationality Act (8 U.S.C. 1184(i)(2)) is amend-  
6 ed—

7 (1) in subparagraph (A), by adding “or” at the  
8 end;

9 (2) in subparagraph (B), by inserting “, from  
10 a bona fide educational institution in the United  
11 States or from an educational institution that is at  
12 least equivalent to such an institution in the United  
13 States,” after “paragraph (1)(B)”;

14 (3) in subparagraph (B), by striking “, or” and  
15 inserting a period; and

16 (4) by striking subparagraph (C).

17 (b) EFFECTIVE DATE.—The amendments made by  
18 subsection (a) shall apply to applications filed on or after  
19 the date of the enactment of this Act.

20 **SEC. 8. TRIPLING H-1B NONIMMIGRANT PETITIONER FEE.**

21 (a) IN GENERAL.—Section 214(c)(9)(B) of the Immi-  
22 gration and Nationality Act (8 U.S.C. 1184(c)(9)(B)) is  
23 amended by striking “\$1,500” and inserting “\$4,500”.

24 (b) TECHNICAL AMENDMENT.—Section 214(c)(9)(A)  
25 of such Act (8 U.S.C. 1184(c)(9)(A)) is amended, in the  
26 matter preceding clause (i), by striking “before”.

1 (c) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to petitions filed on or after the  
3 date of the enactment of this Act.

4 **SEC. 9. LABOR ENFORCEMENT.**

5 (a) CENTRALIZATION OF ADMINISTRATIVE AND EN-  
6 FORCEMENT FUNCTIONS.—Section 212(n)(2) of the Im-  
7 migration and Nationality Act (8 U.S.C. 1182(n)(2)) is  
8 amended by adding at the end the following new subpara-  
9 graph:

10 “(J) The Secretary shall be responsible under this  
11 paragraph for investigations of wage complaints, as well  
12 as investigations of allegations of fraud in the filing of  
13 applications under this subsection.”.

14 (b) AUDITS.—Section 212(n)(2)(A) of such Act (8  
15 U.S.C. 1182(n)(2)(A)) is amended by adding at the end  
16 the following: “In addition, the Secretary may conduct  
17 surveys of the level of compliance by employers with the  
18 provisions and requirements of this subsection and may  
19 conduct annual compliance audits in the case of employers  
20 that employ H–1B nonimmigrants. In the case of an em-  
21 ployer that employs H–1B nonimmigrants that represent  
22 15 percent or more of the total number of individuals em-  
23 ployed by the employer, the Secretary shall conduct annual  
24 compliance audits of such employer.”.

1 **SEC. 10. PRIVATE RIGHT OF ACTION.**

2 (a) IN GENERAL.—Section 212(n)(2) of the Immi-  
3 gration and Nationality Act (8 U.S.C. 1182(n)(2)), as  
4 amended by section 8(a), is further amended by adding  
5 at the end the following new subparagraph:

6 “(K) In addition to any other remedies available  
7 under this paragraph, a person who is harmed by a viola-  
8 tion by an employer of a requirement of this subsection  
9 may bring a civil action against the employer in any court  
10 of competent jurisdiction for damages or other appropriate  
11 relief.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 subsection (a) shall apply to violations occurring on or  
14 after the date of the enactment of this Act.

15 **SEC. 11. APPLICATION OF NONDISPLACEMENT REQUIRE-**  
16 **MENT TO ALL H-1B EMPLOYERS.**

17 (a) IN GENERAL.—Section 212(n)(1)(E)(ii) of the  
18 Immigration and Nationality Act (8 U.S.C.  
19 1182(n)(1)(E)(ii)) is amended by striking “an H-1B de-  
20 pendent employer (as defined in paragraph (3))” and in-  
21 serting “an employer that employs H-1B non-immi-  
22 grants”.

23 (b) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to applications filed on or after  
25 the date of the enactment of this Act.

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