

110TH CONGRESS  
1ST SESSION

# H. R. 2538

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

MAY 24, 2007

Mr. PASCRELL (for himself, Mr. LATOURETTE, Mr. ROHRABACHER, and Ms. DELAURO) 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.**

4       This Act may be cited as the “Defend the American  
5 Dream Act of 2007”.

**6 SEC. 2. WAGE DETERMINATION.**

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

1               “(A) The employer—

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

6                       “(I) the locally determined prevailing  
7                       wage level for the occupational classifica-  
8                       tion in the area of employment;

9                       “(II) the median average wage for all  
10                       workers in the occupational classification  
11                       in the area of employment; or

12                       “(III) the median wage for skill level  
13                       two in the occupational classification found  
14                       in the most recent Occupational Employ-  
15                       ment Statistics survey;

16                       whichever is greatest, based on the best infor-  
17                       mation available as of the time of filing of the  
18                       application; and

19                       “(ii) will provide working conditions for  
20                       such nonimmigrant that will not adversely af-  
21                       fect the working conditions of workers similarly  
22                       employed.

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

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

4           “(H) If the employer employed, in such pre-  
5 vious period as the Secretary shall specify, one or  
6 more H-1B nonimmigrants, the application shall be  
7 accompanied by the Internal Revenue Service Form  
8 W-2 Wage and Tax Statement filed by the employer  
9 with respect to such nonimmigrants for such pe-  
10 riod.”.

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

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

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

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

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

24       (b) REQUIRING ACTIVE RECRUITMENT.—Section  
25 212(n)(1)(G)(i)(I) of such Act (8 U.S.C.

1 1182(n)(1)(G)(i)(I)) is amended by inserting “actively”  
2 before “recruit”.

3 (c) PROHIBITION OF OUTPLACEMENT.—Section  
4 212(n) of such Act (8 U.S.C. 1182(n)) is amended—

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

7 “(F) The employer shall not place, out-source,  
8 lease, or otherwise contract for the placement of an  
9 alien admitted or provided status as an H-1B non-  
10 immigrant with another employer, regardless of  
11 whether or not such other employer is an H-1B-de-  
12 pendent employer.”; and

13 (2) by striking subparagraph (E) of paragraph  
14 (2).

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to applications filed on or after  
17 the date of the enactment of this Act, except that the  
18 amendments made by subsection (a) shall not apply to dis-  
19 placements for periods occurring more than 90 days before  
20 such date.

21 **SEC. 4. H-1B EMPLOYER REQUIREMENTS.**

22 (a) PUBLIC LISTING OF AVAILABLE POSITIONS.—

23 (1) LISTING OF AVAILABLE POSITIONS.—Sec-  
24 tion 212(n)(1)(C) of such Act is amended—

1 (A) in clause (i), by striking “(i) has pro-  
2 vided” and inserting the following:

3 “(ii)(I) has provided”;

4 (B) by redesignating clause (ii) as sub-  
5 clause (II); and

6 (C) by inserting before clause (ii), as re-  
7 designated, the following:

11 (2) LIST MAINTAINED BY THE DEPARTMENT OF  
12 LABOR.—Section 212(n) of such Act, is amended by  
13 adding at the end the following:

14       “(6)(A) Not later than 90 days after the date of the  
15 enactment of this paragraph, the Secretary of Labor shall  
16 establish a list of available jobs, which shall be publicly  
17 accessible without charge—

18                   “(i) on a website maintained by the Department  
19                   of Labor, which website shall be searchable by—

20                           “(I) the name, city, State, and zip code of  
21                           the employer:

22                           “(II) the date on which the job is expected  
23                           to begin:

1                     “(IV) the State and city (or county) at  
2                     which the work will be performed; and

3                     “(ii) at each 1-stop center created under the  
4                     Workforce Investment Act of 1998 (Public Law  
5                     105–220).

6             “(B) Each available job advertised on the list shall  
7             include—

8                     “(i) the employer’s full legal name;

9                     “(ii) the address of the employer’s principal  
10                     place of business;

11                     “(iii) the employer’s city, State and zip code;

12                     “(iv) the employer’s Federal Employer Identifi-  
13                     cation Number;

14                     “(v) the phone number, including area code and  
15                     extension, as appropriate, of the hiring official or  
16                     other designated official of the employer;

17                     “(vi) the e-mail address, if available, of the hir-  
18                     ing official or other designated official of the em-  
19                     ployer;

20                     “(vii) the wage rate to be paid for the position  
21                     and, if the wage rate in the offer is expressed as a  
22                     range, the bottom of the wage range;

23                     “(viii) whether the rate of pay is expressed on  
24                     an annual, monthly, biweekly, weekly, or hourly  
25                     basis;

1           “(ix) a statement of the expected hours per  
2 week that the job will require;

3           “(x) the date on which the job is expected to  
4 begin;

5           “(xi) the date on which the job is expected to  
6 end, if applicable;

7           “(xii) the number of persons expected to be em-  
8 ployed for the job;

9           “(xiii) the job title;

10          “(xiv) the job description;

11          “(xv) the city and State of the physical location  
12 at which the work will be performed; and

13          “(xvi) a description of a process by which a  
14 United States worker may submit an application to  
15 be considered for the job.

16          “(C) The Secretary of Labor may charge a nominal  
17 filing fee to employers who advertise available jobs on the  
18 list established under this paragraph to cover expenses for  
19 establishing and administering the requirements under  
20 this paragraph.

21          “(D) The Secretary may promulgate rules, after no-  
22 tice and a period for comment—

23           “(i) to carry out the requirements of this para-  
24 graph; and

1                   “(ii) that require employers to provide other in-  
2                   formation in order to advertise available jobs on the  
3                   list.”.

4                   (3) EFFECTIVE DATE.—Paragraph (1) shall  
5                   take effect for applications filed at least 30 days  
6                   after the creation of the list described in paragraph  
7                   (2).

8                   (b) H-1B NONIMMIGRANTS NOT ADMITTED FOR  
9                   JOBS ADVERTISED OR OFFERED ONLY TO H-1B NON-  
10                  IMMIGRANTS.—Section 212(n)(1) of such Act, as amended  
11                  by this Act, is further amended—

12                  (1) by inserting after subparagraph (H) the fol-  
13                  lowing:

14                  “(I)(i) The employer has not advertised the  
15                  available jobs specified in the application in an ad-  
16                  vertisement that states or indicates that—

17                  “(I) the job or jobs are only available to  
18                  persons who are or who may become H-1B  
19                  nonimmigrants; or

20                  “(II) persons who are or who may become  
21                  H-1B nonimmigrants shall receive priority or a  
22                  preference in the hiring process.

23                  “(ii) The employer has not only recruited per-  
24                  sons who are, or who may become, H-1B non-  
25                  immigrants to fill the job or jobs.”; and

#### 4                   “(J) The employer”:

5 (c) LIMIT ON PERCENTAGE OF H-1B EMPLOYEES.—

6 Section 212(n)(1) of such Act, as amended by this section,  
7 is further amended by inserting after subparagraph (J)  
8 the following:

9               “(K) If the employer employs not less than 50  
10              employees in the United States, not more than 50  
11              percent of such employees are H-1B non-  
12              immigrants.”.

13 (d) IMMIGRATION DOCUMENTS.—Section 204 of such  
14 Act (8 U.S.C. 1154) is amended by adding at the end the  
15 following:

16       “(l) EMPLOYER TO SHARE ALL IMMIGRATION PA-  
17 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not  
18 later than 10 working days after receiving a written re-  
19 quest from a former, current, or future employee or bene-  
20 ficiary, an employer shall provide the employee or bene-  
21 ficiary with the original (or a certified copy of the original)  
22 of all petitions, notices, and other written communication  
23 exchanged between the employer and the Department of  
24 Labor, the Department of Homeland Security, or any  
25 other Federal agency that is related to an immigrant or

1 nonimmigrant petition filed by the employer for the em-  
2 ployee or beneficiary.”.

3 **SEC. 5. REMOVAL OF EXEMPTION FROM H-1B NUMERICAL  
4 LIMITATION FOR CERTAIN ALIENS.**

5 (a) IN GENERAL.—Section 214(g)(5) of the Immig-  
6 ration and Nationality Act (8 U.S.C. 1184(g)(5)) is  
7 amended—

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

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

12 (3) by striking subparagraph (C).

13 (b) EFFECTIVE DATE.—The amendments made by  
14 subsection (a) shall apply to the issuance of a visa (or  
15 other provision of status) under section  
16 101(a)(15)(H)(i)(B) of the Immigration and Nationality  
17 Act (8 U.S.C. 1101(a)(15)(H)(i)(B)) on or after the first  
18 day of the first fiscal year beginning after the date of the  
19 enactment of this Act.

20 **SEC. 6. REQUIREMENT OF A DEGREE FROM CERTAIN INSTI-  
21 TUTIONS FOR H-1B SPECIALITY OCCUPATION  
22 NONIMMIGRANTS.**

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

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

10 (4) by striking subparagraph (C).

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

## 14 SEC. 7. LABOR ENFORCEMENT.

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

20       “(J) The Secretary shall be responsible under this  
21 paragraph for investigations of wage complaints, as well  
22 as investigations of allegations of fraud in the filing of  
23 applications under this subsection.”.

24 (b) AUDITS.—Section 212(n)(2)(A) of such Act (8  
25 U.S.C. 1182(n)(2)(A)) is amended by adding at the end

1 the following: “In addition, the Secretary may conduct  
2 surveys of the level of compliance by employers with the  
3 provisions and requirements of this subsection and may  
4 conduct annual compliance audits in the case of employers  
5 that employ H-1B nonimmigrants. In the case of an em-  
6 ployer that employs H-1B nonimmigrants that represent  
7 15 percent or more of the total number of individuals em-  
8 ployed by the employer, the Secretary shall conduct annual  
9 compliance audits of such employer.”.

10 (c) PENALTIES.—Section 212(n)(2)(C) of such Act  
11 is amended—

12 (1) in clause (i)(I), by striking “\$1,000” and  
13 inserting “\$2,000”;  
14 (2) in clause (ii)(I), by striking “\$5,000” and  
15 inserting “\$10,000”; and  
16 (3) in clause (vi)(III), by striking “\$1,000” and  
17 inserting “\$2,000”.

18 **SEC. 8. WHISTLEBLOWER PROTECTIONS.**

19 Section 212(n)(2)(C)(iv) of the Immigration and Na-  
20 tionality Act (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

21 (1) by inserting “take, fail to take, or threaten  
22 to take or fail to take, a personnel action, or” before  
23 “to intimidate”; and

24 (2) by adding at the end the following: “An em-  
25 ployer that violates this clause shall be liable to the

1       employees harmed by such violation for lost wages  
2       and benefits.”.

3 **SEC. 9. APPLICATION OF NONDISPLACEMENT REQUIRE-  
4                   MENT TO ALL H-1B EMPLOYERS.**

5       (a) IN GENERAL.—Section 212(n)(1)(E)(ii) of the  
6 Immigration and Nationality Act (8 U.S.C.  
7 1182(n)(1)(E)(ii)) is amended by striking “an H-1B de-  
8 pendent employer (as defined in paragraph (3))” and in-  
9 serting “an employer that employs H-1B non-  
10 immigrants”.

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

