

1 **SEC. \_\_\_\_ . GOVERNMENT CONTRACTS.**

2 (a) GOVERNMENT CONTRACTS.—Section 274A(h) of  
3 the Immigration and Nationality Act, as amended by sec-  
4 tion 302 of this Act, is further amended by striking para-  
5 graphs (1) and (2) and inserting the following:

6 “(1) EMPLOYERS.—

7 “(A) IN GENERAL.—If an employer who  
8 does not hold Federal contracts, grants, or co-  
9 operative agreements is determined by the Sec-  
10 retary of Homeland Security to be a repeat vio-  
11 lator of this section or is convicted of a crime  
12 under this section, the employer shall be subject  
13 to debarment from the receipt of Federal con-  
14 tracts, grants, or cooperative agreements for a  
15 period of not less than 5 years in accordance  
16 with the procedures and standards prescribed  
17 by the Federal Acquisition Regulations. The  
18 Secretary or the Attorney General shall advise  
19 the Administrator of General Services of any  
20 such debarment, and the Administrator of Gen-  
21 eral Services shall list the employer on the List  
22 of Parties Excluded from Federal Procurement  
23 and Nonprocurement Programs for the period  
24 of the debarment.

25 “(B) WAIVER AUTHORITY.—After consid-  
26 eration of the views of any agency or depart-

1           ment that holds a contract, grant, or coopera-  
2           tive agreement with an employer described  
3           under subparagraph (A), the Administrator of  
4           General Services, in consultation with the Sec-  
5           retary and the Attorney General, may waive the  
6           debarment or may limit the duration or scope  
7           of the debarment under subparagraph (A) if  
8           such waiver or limitation is necessary to the na-  
9           tional defense or in the interest of national se-  
10          curity.

11           “(C) NOTIFICATION TO CONGRESS.—If the  
12          Administrator of General Services grants a  
13          waiver or limitation described under subpara-  
14          graph (B), the Administrator shall submit no-  
15          tice of such waiver or limitation to each mem-  
16          ber of the Committee on the Judiciary of the  
17          Senate and of the Committee on the Judiciary  
18          of the House of Representatives.

19          “(2) CONTRACTORS AND RECIPIENTS.—

20           “(A) IN GENERAL.—If an employer who  
21          holds Federal contracts, grants, or cooperative  
22          agreements is determined by the Secretary of  
23          Homeland Security to be a repeat violator of  
24          this section or is convicted of a crime under this  
25          section, the employer shall be subject to debar-

1           ment from the receipt of Federal contracts,  
2           grants, or cooperative agreements for a period  
3           of not less than 5 years in accordance with the  
4           procedures and standards prescribed by the  
5           Federal Acquisition Regulations. Prior to de-  
6           barring the employer, the Secretary, in coopera-  
7           tion with the Administrator of General Services,  
8           shall advise all agencies holding contracts,  
9           grants, or cooperative agreements with the em-  
10          ployer of the proceedings to debar the employer  
11          from the receipt of new Federal contracts,  
12          grants, or cooperative agreements for a period  
13          of not less than 5 years.

14               “(B) WAIVER AUTHORITY.—After consid-  
15          eration of the views of any agency or depart-  
16          ment that holds a contract, grant, or coopera-  
17          tive agreement with an employer described  
18          under subparagraph (A), the Administrator of  
19          General Services, in consultation with the Sec-  
20          retary and the Attorney General, may waive the  
21          debarment or may limit the duration or scope  
22          of the debarment under subparagraph (A) if  
23          such waiver or limitation is necessary to the na-  
24          tional defense or in the interest of national se-  
25          curity.

1           “(C) NOTIFICATION TO CONGRESS.—If the  
2           Administrator of General Services grants a  
3           waiver or limitation described under subpara-  
4           graph (B), the Administrator shall submit no-  
5           tice of such waiver or limitation to each mem-  
6           ber of the Committee on the Judiciary of the  
7           Senate and of the Committee on the Judiciary  
8           of the House of Representatives.”.

9           (b) LIMIT ON PERCENTAGE OF H-1B AND L EM-  
10          PLOYEES.—Subparagraph (I) of section 212(n)(1) of the  
11          Immigration and Nationality Act (8 U.S.C. 1182(n)(1)),  
12          as added by section 420(d), is amended to read as follows:

13                 “(I) If the employer employs not less than  
14                 50 employees in the United States, not more  
15                 than 50 percent of such employees are H-1B  
16                 nonimmigrants and nonimmigrants described in  
17                 section 101(a)(15)(L).”.

18          (c) WAGE DETERMINATION FOR H-1B NON-  
19          IMMIGRANTS.—

20                 (1) CHANGE IN MINIMUM WAGES.—Section  
21                 212(p)(3) of the Immigration and Nationality Act (8  
22                 U.S.C. 1182(p)(3)) is amended by adding at the end  
23                 the following sentence: “The wage rate required  
24                 under subsections (n)(1)(A)(i)(II) and  
25                 (t)(1)(A)(i)(II) shall be determined and issued by

1 the Secretary of Labor, pursuant to a request from  
2 an employer filing a labor condition application with  
3 the Secretary for purposes of those subsections and  
4 as part of the adjudication of such application. The  
5 Secretary shall respond to such a request within 14  
6 days.”.

7 (2) LABOR CONDITION APPLICATIONS.—Section  
8 212(n)(1)(A) of the Immigration and Nationality  
9 Act (8 U.S.C. 1182(n)(1)(A)) is amended—

10 (A) in clause (i), by striking “and” at the  
11 end;

12 (B) by redesignating clause (ii) as clause  
13 (iv); and

14 (C) by inserting after clause (i) the fol-  
15 lowing new clauses:

16 “(ii) has filed with the Secretary of  
17 Labor, pursuant to section 212(p)(3), a re-  
18 quest for the Secretary’s determination of  
19 the appropriate wage rate;

20 “(iii) in no instance will pay more  
21 than 30 percent of the H-1B non-  
22 immigrants employed by the employer  
23 wages equivalent to the lowest wage level  
24 under section 212(p)(4); and”.

1           (3) NONIMMIGRANT PROFESSIONALS; LABOR  
2           ATTESTATIONS.—Section 212 of the Immigration  
3           and Nationality Act (8 U.S.C. 1182) is amended in  
4           paragraph (1)(A) of the first subsection (t) (as  
5           added by section 402(b)(2) of Public Law 108–77  
6           (117 Stat. 941))—

7                   (A) in clause (i), by striking “and” at the  
8           end;

9                   (B) by redesignating clause (ii) as clause  
10           (iii); and

11                   (C) inserting after clause (i) the following  
12           new clause:

13                           “(ii) has filed with the Secretary of  
14                   Labor, pursuant to section 212(p)(3), a re-  
15                   quest for the Secretary’s determination of  
16                   the appropriate wage rate; and”.

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

20           (d) PROHIBITION ON OUTPLACEMENT OF H–1B  
21           NONIMMIGRANTS.—

22                   (1) IN GENERAL.—Section 212(n) of such Act,  
23           as amended by this Act, is further amended—

1 (A) in paragraph (1), by amending sub-  
2 paragraph (F), as amended by section 420, to  
3 read as follows:

4 “(F) The employer shall not place,  
5 outsource, lease, or otherwise contract for the  
6 placement of an H-1B nonimmigrant with an-  
7 other employer where there are indicia of an  
8 employment relationship between the non-  
9 immigrant and such other employer unless the  
10 employer of the alien has been granted a waiver  
11 under paragraph (2)(E).”; and

12 (B) in paragraph (2), by amending sub-  
13 paragraph (E), as amended by section 420, to  
14 read as follows:

15 “(E) The Secretary of Labor shall promul-  
16 gate rules, after notice and a period for com-  
17 ment, for an employer of an H-1B non-  
18 immigrant to apply for a waiver of the prohibi-  
19 tion in paragraph (1)(F). The Secretary shall  
20 grant or deny a waiver within 14 days after the  
21 waiver application is filed. In order to receive a  
22 waiver under this subparagraph, the burden  
23 shall be on the employer seeking the waiver to  
24 establish that—

1                   “(i) the employer with whom the non-  
2                   immigrant would be placed has not dis-  
3                   placed and does not intend to displace a  
4                   United States worker employed by the em-  
5                   ployer within the period beginning 180  
6                   days before and ending 180 days after the  
7                   date of the placement of the nonimmigrant  
8                   with the employer;

9                   “(ii) the nonimmigrant will not be  
10                  controlled and supervised principally by the  
11                  employer with whom the nonimmigrant  
12                  would be placed; and

13                  “(iii) the placement of the non-  
14                  immigrant is not essentially an arrange-  
15                  ment to provide labor for hire for the em-  
16                  ployer with whom the nonimmigrant will  
17                  be placed.”.

18                  (2) APPLICATION.—The amendments made by  
19                  paragraph (1) shall apply to an application filed on  
20                  or after the date the rules required by section  
21                  212(n)(2)(E) of such Act, as amended by paragraph  
22                  (1)(B) of this subsection, are issued.

23                  (e) POSTING AVAILABLE POSITIONS.—

24                  (1) POSTING AVAILABLE POSITIONS.—Section  
25                  212(n)(1)(C) of such Act is amended—

1 (A) by redesignating clause (ii) as sub-  
2 clause (II);

3 (B) by striking “(i) has provided” and in-  
4 serting the following:

5 “(ii)(I) has provided”; and

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

8 “(i) has posted a detailed description  
9 of each position for which a nonimmigrant  
10 is sought on the website described in para-  
11 graph (6) of this subsection for at least 30  
12 calendar days, which description shall in-  
13 clude the wages and other terms and con-  
14 ditions of employment, the minimum edu-  
15 cation, training, experience and other re-  
16 quirements for the position, and the proc-  
17 ess for applying for the position; and”.

18 (2) DEPARTMENT OF LABOR WEBSITE.—Sec-  
19 tion 212(n) of such Act, as amended by this section,  
20 is further amended by adding at the end the fol-  
21 lowing:

22 “(6)(A) Not later than 90 days after the date  
23 of the enactment of this paragraph, the Secretary of  
24 Labor shall establish a searchable website for post-

1 ing positions as required by paragraph (1)(C). This  
2 website shall be publicly accessible without charge.

3 “(B) The Secretary may work with private com-  
4 panies and nonprofit organizations in the develop-  
5 ment and operation of the website established under  
6 this paragraph.

7 “(C) The Secretary may promulgate rules, after  
8 notice and a period for comment, to carry out the  
9 requirements of this paragraph.”.

10 (3) APPLICATION.—The amendments made by  
11 paragraph (1) shall apply to an application filed 30  
12 days or more after the date that the website re-  
13 quired by section 212(n)(6) of such Act, as added by  
14 paragraph (2) of this subsection, is created.

15 (f) WAGE DETERMINATION FOR L NON-  
16 IMMIGRANTS.—

17 (1) CHANGE IN MINIMUM WAGES.—Paragraph  
18 (2) of section 214(c) of the Immigration and Nation-  
19 ality Act (8 U.S.C. 1184(c)) is amended by adding  
20 at the end the following:

21 “(K)(i) An employer that employs a non-  
22 immigrant described in section 101(a)(15)(L)  
23 shall—

24 “(I) offer such nonimmigrant, during  
25 the period of authorized employment,

1 wages, based on the best information avail-  
2 able at the time the application is filed,  
3 which are not less than the highest of—

4 “(aa) the prevailing wage level  
5 for the occupational classification in  
6 the area of employment; or

7 “(bb) the actual wage level paid  
8 by the employer to all other individ-  
9 uals with similar experience and quali-  
10 fications for the specific employment  
11 in question; and

12 “(II) provide working conditions for  
13 such nonimmigrant that will not adversely  
14 affect the working conditions of workers  
15 similarly employed.

16 “(ii) If an employer, in such previous pe-  
17 riod specified by the Secretary of Homeland Se-  
18 curity, employed 1 or more L-1 nonimmigrants,  
19 the employer shall provide to the Secretary of  
20 Homeland Security the Internal Revenue Serv-  
21 ice Form W-2 Wage and Tax Statement filed  
22 by the employer with respect to such non-  
23 immigrants for such period.

24 “(iii) It is a failure to meet a condition  
25 under this subparagraph for an employer, who

1           has filed a petition to import 1 or more aliens  
2           as nonimmigrants described in section  
3           101(a)(15)(L), to—

4                   “(I) require such a nonimmigrant to  
5                   pay a penalty for ceasing employment with  
6                   the employer before a date mutually agreed  
7                   to by the nonimmigrant and the employer;  
8                   or

9                   “(II) fail to offer to such a non-  
10                  immigrant, during the nonimmigrant’s pe-  
11                  riod of authorized employment, on the  
12                  same basis, and in accordance with the  
13                  same criteria, as the employer offers to  
14                  United States workers, benefits and eligi-  
15                  bility for benefits, including—

16                           “(aa) the opportunity to partici-  
17                           pate in health, life, disability, and  
18                           other insurance plans;

19                           “(bb) the opportunity to partici-  
20                           pate in retirement and savings plans;  
21                           and

22                           “(cc) cash bonuses and noncash  
23                           compensation, such as stock options  
24                           (whether or not based on perform-  
25                           ance).

1           “(iv) The Secretary of Homeland Security  
2 shall determine whether a required payment  
3 under clause (iii)(I) is a penalty (and not liq-  
4 uidated damages) pursuant to relevant State  
5 law.”.

6           (2) EFFECTIVE DATE.—The amendment made  
7 by this subsection shall apply to applications filed on  
8 or after the date of the enactment of this Act.

9           (g) PROHIBITION ON OUTPLACEMENT OF L NON-  
10 IMMIGRANTS.—

11           (1) IN GENERAL.—Paragraph (2) of section  
12 214(c) of the Immigration and Nationality Act (8  
13 U.S.C. 1184(c)), as amended by this section, is fur-  
14 ther amended by adding at the end the following:

15           “(M)(i) An employer who imports an alien  
16 as a nonimmigrant described in section  
17 101(a)(15)(L) shall not place, outsource, lease,  
18 or otherwise contract for the placement of the  
19 alien with another employer where there are in-  
20 dicia of an employment relationship between the  
21 alien and such other employer unless the em-  
22 ployer of the alien has been granted a waiver  
23 under clause (ii).

24           “(ii) The Secretary of Homeland Security  
25 shall promulgate rules, after notice and a period

1           for comment, for an employer to apply for a  
2           waiver of the prohibition set out in clause (i).  
3           The Secretary shall grant or deny a waiver  
4           within 14 days after the waiver application is  
5           filed. In order to receive such a waiver, the bur-  
6           den shall be on the employer seeking the waiver  
7           to establish that—

8                       “(I) the employer with whom the non-  
9                       immigrant would be placed has not dis-  
10                      placed and does not intend to displace a  
11                      United States worker employed by the em-  
12                      ployer within the period beginning 180  
13                      days before and ending 180 days after the  
14                      date of the placement of the nonimmigrant  
15                      with the employer;

16                     “(II) the nonimmigrant will not be  
17                     controlled and supervised principally by the  
18                     employer with whom the nonimmigrant  
19                     would be placed; and

20                     “(III) the placement of the non-  
21                     immigrant is not essentially an arrange-  
22                     ment to provide labor for hire for the em-  
23                     ployer with whom the nonimmigrant will  
24                     be placed, rather than a placement in con-  
25                     nection with the provision or a product or

1           service for which specialized knowledge  
2           specific to the petitioning employer is nec-  
3           essary.”.

4           (2) APPLICATION.—The amendment made by  
5           paragraph (1) shall apply to an application filed on  
6           or after the date the rules required by section  
7           212(e)(2)(M)(ii) of such Act, as added by paragraph  
8           (1) of this subsection, are issued.