

111TH CONGRESS  
1ST SESSION

# S. 2910

To increase the wages and benefits of blue collar workers by strengthening labor provisions in the H-2B program, to provide for labor recruiter accountability, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2009

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To increase the wages and benefits of blue collar workers by strengthening labor provisions in the H-2B program, to provide for labor recruiter accountability, 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 “Increasing American Wages and Benefits Act of 2010”.

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—LABOR PROTECTIONS

- Sec. 101. Enforcement of Federal labor laws relating to H-2B nonagricultural guest workers.
- Sec. 102. Recruitment of United States workers.
- Sec. 103. Prevailing wages for United States workers and H-2B workers.
- Sec. 104. Certification requirement.
- Sec. 105. Protections for workers.
- Sec. 106. Petitions by employers that have signed labor agreements with unions that operate hiring halls.
- Sec. 107. H-2B nonimmigrant labor certification application fees.

#### TITLE II—LABOR RECRUITER ACCOUNTABILITY

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Protections for workers recruited abroad.
- Sec. 204. Enforcement provisions.
- Sec. 205. Procedures in addition to other rights of employees.
- Sec. 206. Rulemaking.

## 1 **TITLE I—LABOR PROTECTIONS**

### 2 **SEC. 101. ENFORCEMENT OF FEDERAL LABOR LAWS RE-** 3 **LATING TO H-2B NONAGRICULTURAL GUEST** 4 **WORKERS.**

5 (a) IN GENERAL.—Section 214(c)(14) of the Immi-  
 6 gration and Nationality Act (8 U.S.C. 1184(c)(14)) is  
 7 amended—

8 (1) in subparagraph (A), by striking “of Home-  
 9 land Security” each place it appears and inserting  
 10 “of Labor”;

11 (2) by striking subparagraph (B);

12 (3) by redesignating subparagraphs (C) and  
 13 (D) as subparagraphs (B) and (C), respectively; and

14 (4) by adding at the end the following:

15 “(D) The Secretary of Labor is authorized to take  
 16 such actions, including imposing appropriate penalties and  
 17 seeking appropriate injunctive relief and specific perform-

1 ance of contractual obligations, as may be necessary to  
2 assure employer compliance with the terms and conditions  
3 required under this Act for employing nonimmigrant  
4 workers described in section 101(a)(15)(H)(ii)(b), and as  
5 required under the Increasing American Wages and Bene-  
6 fits Act of 2010. The authority of the Secretary of Labor  
7 under this subparagraph shall not preempt any other  
8 rights which affected persons may have under Federal or  
9 State law.

10       “(E) Any aggrieved person whose wages or working  
11 conditions have been directly and adversely affected by an  
12 employer in violation of applicable laws and regulations  
13 governing the employment of nonimmigrant workers de-  
14 scribed in section 101(a)(15)(H)(ii)(b), or by a violation  
15 of the terms and conditions of employment, may bring a  
16 civil action against such employer in the appropriate dis-  
17 trict court of the United States. Such cause of action shall  
18 not be subject to exhaustion of administrative remedies  
19 and shall be in addition to any other causes of action and  
20 remedies that may exist.

21       “(F) Notwithstanding any other provision of law, the  
22 Legal Services Corporation may provide legal services on  
23 behalf of nonimmigrant workers described in section  
24 101(a)(15)(H)(ii)(b) regarding the terms and conditions  
25 of employment, transportation, and housing and other

1 provisions of law applicable to the employment of such  
2 nonimmigrants.”.

3 (b) REPORT.—Section 214(g)(10) of the Immigration  
4 and Nationality Act (8 U.S.C. 1184(g)(10)) is amended—

5 (1) by inserting “(A)” after “(10)”; and

6 (2) by adding at the end the following:

7 “(B) Each employer that hires a nonimmigrant work-  
8 er described in section 101(a)(15)(H)(ii)(b) shall—

9 (i) notify the Secretary of Labor not later  
10 than 30 days after the conclusion of each such non-  
11 immigrant’s term of employment; and

12 (ii) submit to the Secretary of Labor employ-  
13 ment payroll records and similar documentation  
14 showing that the employer paid the required pre-  
15 vailing wage and transportation, and other expenses  
16 required under this section and section 212.”.

17 **SEC. 102. RECRUITMENT OF UNITED STATES WORKERS.**

18 Section 212 of the Immigration and Nationality Act  
19 (8 U.S.C. 1182) is amended—

20 (1) in subsection (p)(3), by striking “(a)(5)(A),  
21 (n)(1)(A)(i)(II),” and inserting “(n)(1)(A)(i)(II)”;

22 (2) by redesignating subsection (t) (as added by  
23 section 1(b)(2)(B) of Public Law 108–449) as sub-  
24 section (u); and

25 (3) by adding at the end the following:

1       “(v)(1) Except as provided under paragraph (5), an  
2 employer that seeks to employ an alien described in section  
3 101(a)(15)(H)(ii)(b) (referred to in this subsection as an  
4 ‘H–2B nonimmigrant’) shall take the following steps to  
5 recruit United States workers for the position for which  
6 the alien is sought not later than 14 days before filing  
7 an application under paragraph (3):

8           “(A) The employer shall submit a copy of the  
9 job offer, including a description of the wages and  
10 other terms and conditions of employment, to the  
11 State Workforce Agency that serves the area of em-  
12 ployment in the State in which the employer is lo-  
13 cated (referred to in this subsection as the ‘SWA’).  
14 The SWA shall provide the employer with an ac-  
15 knowledgment of receipt of such documentation in  
16 accordance with this paragraph.

17           “(B) The employer shall authorize the SWA to  
18 post the job opportunity on the Internet through the  
19 web site for ‘America’s Job Bank’, with local job  
20 banks, and with unemployment agencies and other  
21 labor referral and recruitment sources pertinent to  
22 such job opportunity.

23           “(C) The employer shall authorize the SWA to  
24 provide notification of the job opportunity, and the

1 SWA shall designate that these are job opportunities  
2 for which H-2B visas have been requested, to—

3 “(i) the central office of the State Federa-  
4 tion of Labor in the State in which the job is  
5 located; and

6 “(ii) the office of the local union which  
7 represents the employees in the same or sub-  
8 stantially equivalent job classification, if appli-  
9 cable.

10 “(D) The employer shall post the availability of  
11 the job opportunity for which the employer is seek-  
12 ing a worker in conspicuous locations at the place of  
13 employment for all employees to see.

14 “(E) The employer shall advertise the avail-  
15 ability of the job opportunity for which the employer  
16 is seeking a worker in a publication with the highest  
17 circulation in the labor market that is likely to be  
18 patronized by a potential worker for at least 5 con-  
19 secutive days.

20 “(F) Based on recommendations by the local  
21 job service, the employer shall advertise the avail-  
22 ability of the job opportunity in professional, trade,  
23 or local minority and ethnic publications that are  
24 likely to be patronized by a potential worker.

1           “(2) An employer that seeks to employ an H–2B non-  
2 immigrant shall—

3                   “(A) first offer the job to any eligible United  
4 States worker who—

5                           “(i) applies;

6                           “(ii) is qualified for the job; and

7                           “(iii) is available at the time of need; and

8                   “(B) maintain, for at least 3 years after the  
9 employment relation is terminated, documentation of  
10 recruitment efforts and responses conducted and re-  
11 ceived before filing an application with the Depart-  
12 ment of Labor, including—

13                           “(i) resumes;

14                           “(ii) applications; and

15                           “(iii) tests of United States workers who  
16 applied and were not hired for the job the em-  
17 ployer seeks to fill with a nonimmigrant worker,  
18 if applicable.

19           “(3) An employer that seeks to hire an H–2B non-  
20 immigrant shall submit an application to the Secretary of  
21 Labor that includes a certification, under penalty of per-  
22 jury, that—

23                   “(A) the employer has not made a job offer to  
24 a United States worker, which imposed restrictions

1 or obligations that will not be imposed on an H-2B  
2 nonimmigrant;

3 “(B) the employer has complied with the re-  
4 cruitment requirements under paragraph (1);

5 “(C) the employer will offer an H-2B non-  
6 immigrant not less than the same benefits and work-  
7 ing conditions provided to United States workers  
8 similarly employed in the same occupational classi-  
9 fication at the same actual place of employment in  
10 addition to paying an H-2B nonimmigrant a pre-  
11 vailing wage rate not less than the wage rate offered  
12 to United States workers;

13 “(D) there is currently no strike, lockout, or  
14 labor dispute (as defined in section 2(9) of the  
15 Labor-Management Relations Act (29 U.S.C.  
16 152(9)), at the same place of employment, which af-  
17 fects employees in the same occupational classifica-  
18 tion in which an H-2B nonimmigrant will be em-  
19 ployed;

20 “(E) the employer will comply with all applica-  
21 ble laws and regulations relating to the right of  
22 workers to join or organize a union (including rights  
23 protected under section 7 of the Labor-Management  
24 Relations Act (29 U.S.C. 157));

25 “(F) the employer has—

1           “(i) provided notice of the filing of an ap-  
2           plication to the bargaining representative of em-  
3           ployees, if any, working in the same occupa-  
4           tional classification at the place of employment  
5           as an H-2B nonimmigrant who the employer  
6           intends to employ; or

7           “(ii) if there is no such bargaining rep-  
8           resentative, posted notice of filing such applica-  
9           tion in conspicuous locations at the place of em-  
10          ployment for all employees to see for not fewer  
11          than 14 business days; and

12          “(G) the requirements applicable to the job,  
13          which the employer intends to hire an H-2B non-  
14          immigrant to perform, represent the actual min-  
15          imum requirements applicable to that job and the  
16          employer will not hire an H-2B nonimmigrant to  
17          perform the job who has less training or experience  
18          than the employer’s other employees.

19          “(4)(A) An employer that applies to hire an H-2B  
20          nonimmigrant shall hire any qualified United States work-  
21          er who applies for the job for which such nonimmigrant  
22          was intended to be employed if such United States worker  
23          applies before the date that is 30 days before the date  
24          on which the last such H-2B nonimmigrant is scheduled  
25          to begin work for such employer.

1 “(B) The Secretary of Labor, through the workforce  
2 agency of a State, as appropriate, shall provide informa-  
3 tion about applications for H-2B nonimmigrants, includ-  
4 ing information about domestic workers who apply for jobs  
5 but are not hired, to a United States worker, nonprofit  
6 organization, or union not later than 48 hours after such  
7 worker, organization, or union requests such informa-  
8 tion.”.

9 **SEC. 103. PREVAILING WAGES FOR UNITED STATES WORK-**  
10 **ERS AND H-2B WORKERS.**

11 Section 212 of the Immigration and Nationality Act  
12 (8 U.S.C. 1182), as amended by section 102, is further  
13 amended by adding at the end the following:

14 “(w)(1) No alien may be admitted or provided status  
15 as a nonimmigrant under section 101(a)(15)(H)(ii)(b) in  
16 an occupational classification unless the Secretary of  
17 Labor certifies that the employer—

18 “(A) is offering and will offer during the period  
19 of authorized employment to aliens admitted or pro-  
20 vided such status the wage rate set forth in the col-  
21 lective bargaining agreement, if the job opportunity  
22 is covered by a collective bargaining agreement;

23 “(B) if the job opportunity is not covered by a  
24 collective bargaining agreement, the wage the em-  
25 ployer is offering and will offer, to any alien or

1 United States worker employed by or offered em-  
2 ployment by the employer, during the period of au-  
3 thorized employment for aliens admitted or provided  
4 such status, wages that are not less than the higher  
5 of—

6 “(i) the wage determination, if any, issued  
7 pursuant to subchapter IV of chapter 31 of title  
8 40, United States Code (commonly known as  
9 the ‘Davis–Bacon Act’);

10 “(ii) the wage determination, if any, issued  
11 pursuant to the Service Contract Act of 1965  
12 (41 U.S.C. 351 et seq.);

13 “(iii) the median rate of the highest 66  
14 percent of the wage data applicable to such oc-  
15 cupational classification under the most recently  
16 published Occupational Employment Statistics  
17 Survey, compiled by the Bureau of Labor Sta-  
18 tistics; or

19 “(iv) a wage that is not less than 150 per-  
20 cent of the Federal minimum wage in effect  
21 under the Fair Labor Standards Act (29 U.S.C.  
22 201 et seq.); and

23 “(C) will provide working conditions for such  
24 alien that will not adversely affect the working con-  
25 ditions of workers similarly employed.

1       “(2) An employer may not appeal a decision of the  
2 Secretary of Labor concerning the wages required to be  
3 paid under paragraph (1)(A) unless United States workers  
4 and their labor representatives are given the opportunity  
5 to submit contrary evidence or appeal that such required  
6 wages are too low.

7       “(3) An employer may not hire a nonimmigrant de-  
8 scribed in section 101(a)(15)(H)(ii)(b) unless—

9               “(A) real prevailing wages in the occupational  
10 classification in which such nonimmigrant is to be  
11 hired are at least 3 percent higher than such wages  
12 during the preceding year under the Occupational  
13 Employment Statistics Survey compiled by the Bu-  
14 reau of Labor Statistics; or

15               “(B) the employer offers to pay the H-2B  
16 worker or a United States worker a wage in the oc-  
17 cupational classification in which such worker is to  
18 be hired that is at least 3 percent higher during the  
19 preceding year, after adjusting for inflation under  
20 the Occupational Employment Survey.”.

21 **SEC. 104. CERTIFICATION REQUIREMENT.**

22       Section 214(c)(14) of the Immigration and Nation-  
23 ality Act, as amended by section 101, is further amended  
24 by adding at the end the following:

1       “(G) A petition by an employer seeking to hire an  
2 alien described in section 101(a)(15)(H)(ii)(b) shall not  
3 be approved until the employer has provided written cer-  
4 tification, under penalty of perjury, to the Secretary of  
5 Labor that—

6           “(i) the employer has not been required under  
7 law to provide a notice of a mass layoff pursuant to  
8 the Worker Adjustment and Retraining Notification  
9 Act (29 U.S.C. 2101 et seq.) during the 12-month  
10 period immediately preceding the date on which the  
11 alien is to be hired; and

12           “(ii) the employer does not intend to provide a  
13 notice of a mass layoff pursuant to such Act.

14       “(H) If an employer is required under law to provide  
15 a notice of a mass layoff pursuant to such Act after hiring  
16 nonimmigrants granted status under section  
17 101(a)(15)(H)(ii)(b), the status of such nonimmigrants  
18 shall expire on the date that is 60 days after the date  
19 on which such notice is provided.

20       “(I) An employer shall be exempt from the require-  
21 ments under subparagraphs (G) and (H) if the employer  
22 provides written certification, under penalty of perjury,  
23 that the total number of the employer’s employees in the  
24 United States will not be reduced as a result of a mass  
25 layoff.”.

1 **SEC. 105. PROTECTIONS FOR WORKERS.**

2 Section 214(c)(14) of the Immigration and Nation-  
3 ality Act, as amended by sections 101 and 104, is further  
4 amended by adding at the end the following:

5 “(J) Employers who hire nonimmigrants described in  
6 section 101(a)(15)(H)(ii)(b) shall reimburse the non-  
7 immigrants for the reasonable transportation costs in-  
8 curred by such nonimmigrants and United States workers  
9 to initially reach the job site and, once the period of em-  
10 ployment for the job opportunity is completed, to return  
11 to their countries of origin or to the next place of employ-  
12 ment, if the worker has contracted with a subsequent em-  
13 ployer who has not agreed to provide or pay for the work-  
14 er’s transportation to such subsequent employer’s place of  
15 employment. The amount of reimbursement for such  
16 transportation expenses shall not exceed the lesser of—

17 “(i) the actual cost to the worker or alien of the  
18 transportation and subsistence involved; or

19 “(ii) the most economical and reasonable com-  
20 mon carrier transportation charges and subsistence  
21 costs for the distance involved.

22 “(K)(i) Employers who hire nonimmigrants described  
23 in section 101(a)(15)(H)(ii)(b) shall guarantee to offer the  
24 worker employment for at least 75 percent of the work-  
25 days of the total periods during which the work contract  
26 and all extensions of such contract are in effect, beginning

1 with the first workday after the arrival of the worker at  
2 the place of employment and ending on the expiration date  
3 specified in the work contract or in its extensions, if any.

4 “(ii) If the employer affords a worker during the total  
5 work contract period less employment than that required  
6 under this subparagraph, the employer shall pay the work-  
7 er the amount which the worker would have earned had  
8 the worker worked for the guaranteed number of days.

9 “(iii) In this subparagraph, the term ‘workday’—

10 “(I) means a day in which the worker is offered  
11 the number of hours stated in the job order; and

12 “(II) excludes the worker’s Sabbath and Fed-  
13 eral holidays.

14 “(iv) A work guarantee does not meet the require-  
15 ments under this subparagraph unless the number of  
16 hours of work offered by the employer is equal to not less  
17 than the product of—

18 “(I) 75 percent of the workdays; multiplied by

19 “(II) the average number of hours per day stat-  
20 ed in the job order.

21 “(v) A worker may be offered more than the specified  
22 hours of work on a single workday.

23 “(vi) The employer may not require, for purposes of  
24 meeting the work guarantee, that the worker work longer

1 than the number of hours specified in the job order on  
 2 a workday, the worker's Sabbath, or a Federal holiday.

3       “(L) If the job opportunity is not covered by the  
 4 State workers' compensation law, the employer will pro-  
 5 vide, at no cost to the worker, insurance covering injury  
 6 and disease arising out of, and in the course of, the work-  
 7 er's employment which will provide benefits at least equal  
 8 to those provided under the State's workers' compensation  
 9 law for comparable employment.”.

10 **SEC. 106. PETITIONS BY EMPLOYERS THAT HAVE SIGNED**  
 11                               **LABOR AGREEMENTS WITH UNIONS THAT OP-**  
 12                               **ERATE HIRING HALLS.**

13       Section 212(v) of the Immigration and Nationality  
 14 Act, as added by section 102, is amended by adding at  
 15 the end the following:

16       “(5) An employer that seeks to hire an H-2B non-  
 17 immigrant may file an application with the Secretary of  
 18 Labor in accordance with this paragraph, instead of com-  
 19 plying with paragraphs (1) through (4), if—

20               “(A) the employer has signed a labor agreement  
 21 with a labor organization (as defined in section 2(5)  
 22 of the Labor-Management Relations Act (29 U.S.C.  
 23 152(5)) under which the labor organization is re-  
 24 sponsible for referring applicants for employment to

1 the employer under a procedure commonly known as  
2 a ‘hiring hall’ or ‘referral hall’; and

3 “(B) the application is accompanied by a writ-  
4 ten statement prepared by the labor organization at-  
5 testing that—

6 “(i) the labor organization operates a hir-  
7 ing hall that, pursuant to contractual agree-  
8 ment and actual practice, is a source of employ-  
9 ees in the same or substantially equivalent oc-  
10 cupational classification in which the employer  
11 seeks to employ an H–2B nonimmigrant;

12 “(ii) the labor organization does not have  
13 a sufficient number of qualified applicants  
14 available for referral in the same or substan-  
15 tially equivalent occupational classification in  
16 which the employer seeks to employ an H–2B  
17 nonimmigrant;

18 “(iii) the labor organization has advertised,  
19 for at least 5 consecutive days, the availability  
20 of the job opportunity for which the employer  
21 is seeking to employ an H–2B nonimmigrant in  
22 the publication with the highest circulation in  
23 the labor market that is likely to be patronized  
24 by potential applicants;

1           “(iv) the employer is contractually obli-  
 2           gated to pay all employees, in the same or sub-  
 3           stantially equivalent occupational classification  
 4           in which the employer seeks to employ an H-  
 5           2B nonimmigrant, wages and benefits set forth  
 6           in a labor agreement with the labor organiza-  
 7           tion, which equals or exceeds the prevailing  
 8           wage rate the employer would be obligated to  
 9           pay; and

10           “(v) the H-2B nonimmigrants who the  
 11           employer seeks to employ will be paid not less  
 12           than the same wages and benefits and be sub-  
 13           ject to the same terms and conditions of em-  
 14           ployment set forth in the employer’s labor  
 15           agreement with the labor organization.”.

16 **SEC. 107. H-2B NONIMMIGRANT LABOR CERTIFICATION AP-**  
 17 **PLICATION FEES.**

18           (a) ESTABLISHMENT OF FEES.—Section  
 19 212(a)(5)(A) of the Immigration and Nationality Act (8  
 20 U.S.C. 1182(a)(5)(A)) is amended by adding at the end  
 21 the following:

22                           “(v) ESTABLISHMENT OF H-2B EM-  
 23                           PLOYMENT CERTIFICATION APPLICATION  
 24                           FEE.—

1           “(I) IN GENERAL.—The Sec-  
2           retary of Labor shall impose a fee on  
3           an employer that submits an applica-  
4           tion for an employment certification  
5           for aliens granted nonimmigrant sta-  
6           tus under section 101(a)(15)(H)(ii)(b)  
7           to the Secretary of Labor under this  
8           subparagraph on or after the date  
9           that is 30 days after the date of en-  
10          actment of the Increasing American  
11          Wages and Benefits Act of 2010.

12           “(II) FEE DURING INITIAL  
13          YEAR.—During the period beginning  
14          30 days after the date of enactment of  
15          the Increasing American Wages and  
16          Benefits Act of 2010 and ending 1  
17          year after such date, the fee imposed  
18          under subclause (I) shall be \$800 for  
19          each application.

20           “(III) FEE AFTER INITIAL  
21          YEAR.—After the date that is one  
22          year after the date of enactment of  
23          the Increasing American Wages and  
24          Benefits Act of 2010, the fee imposed  
25          under subclause (I) shall be set at a

1 level the Secretary of Labor deter-  
2 mines will ensure recovery of the full  
3 costs of carrying out labor certifi-  
4 cation activities under this subpara-  
5 graph and will recover any additional  
6 costs associated with the administra-  
7 tion of the fees collected.

8 “(IV) PROHIBITION ON EM-  
9 PLOYER ACCEPTING REIMBURSEMENT  
10 OF FEE.—

11 “(aa) IN GENERAL.—An em-  
12 ployer subject to a fee under this  
13 clause shall not require or accept  
14 reimbursement, directly or indi-  
15 rectly, of or other compensation  
16 for all or part of the cost of such  
17 fee.

18 “(bb) CIVIL PENALTY.—If  
19 the Secretary of Labor deter-  
20 mines, after notice and oppor-  
21 tunity for a hearing, that an em-  
22 ployer has violated item (aa), the  
23 Secretary of Labor may impose a  
24 civil penalty on such employer in

1 an amount not to exceed \$5,000  
2 per violation.

3 “(V) DEPOSIT OF FEES AND  
4 PENALTIES.—Fees and civil penalties  
5 collected under this clause shall be de-  
6 posited in the ‘H–2B Employment  
7 Certification Application Fee Account’  
8 established under section 286(w).”.

9 (b) ESTABLISHMENT OF ACCOUNT AND USE OF  
10 FUND.—Section 286 of the Immigration and Nationality  
11 Act (8 U.S.C. 1356) is amended by adding at the end the  
12 following:

13 “(w) H–2B EMPLOYMENT CERTIFICATION APPLICA-  
14 TION FEE ACCOUNT.—

15 “(1) ESTABLISHMENT OF ACCOUNT.—There is  
16 established in the general fund of the Treasury a  
17 separate account, which shall be known as the ‘H–  
18 2B Employment Certification Application Fee Ac-  
19 count’. Notwithstanding any other provision of this  
20 title, there shall be deposited as offsetting receipts  
21 into the account all amounts from the fees and civil  
22 penalties collected under section 212(a)(5)(A)(v).

23 “(2) USE OF FEES.—Of the amounts deposited  
24 into the H–2B Employment Certification Applica-  
25 tion Fee Account under this subsection in each fiscal

1 year, the Secretary of Labor shall use such amounts  
2 as the Secretary of Labor determines are nec-  
3 essary—

4 “(A) for the costs of Federal administra-  
5 tion, including personnel, in carrying out labor  
6 certification activities under section  
7 212(a)(5)(A); and

8 “(B) to assist the States, as appropriate,  
9 in the determination of prevailing wages for  
10 purposes of carrying out such section.

11 “(3) AVAILABILITY OF FUNDS.—The fees de-  
12 posited into the H-2B Employment Certification  
13 Application Fee Account under this subsection shall  
14 remain available until expended for the activities de-  
15 scribed in paragraph (2).”.

16 (c) PROGRAM INTEGRITY.—Section 212(a)(5)(A) of  
17 the Immigration and Nationality Act (8 U.S.C.  
18 1182(a)(5)(A)), as amended by subsection (a), is further  
19 amended by adding at the end the following:

20 “(vi) PROGRAM INTEGRITY REGULA-  
21 TIONS.—The Secretary of Labor may pre-  
22 scribe such regulations as may be nec-  
23 essary to ensure the integrity of the labor  
24 certification process carried out under this  
25 subparagraph. Such regulations may in-

1           clude standards and procedures under  
 2           which employers and their representatives  
 3           are excluded from participation in the  
 4           labor certification process under this sub-  
 5           paragraph.”.

6           **TITLE II—LABOR RECRUITER**  
 7           **ACCOUNTABILITY**

8   **SEC. 201. SHORT TITLE.**

9           This title may be cited as the “Indentured Servitude  
 10 Abolition Act of 2010”.

11 **SEC. 202. DEFINITIONS.**

12           (a) FAIR LABOR STANDARDS ACT OF 1938.—Except  
 13 as otherwise provided by this title, for purposes of this  
 14 Act the terms used in this Act shall have the same mean-  
 15 ings, respectively, as are given those terms in section 3  
 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

17           (b) OTHER DEFINITIONS.—In this title:

18                   (1) FOREIGN LABOR CONTRACTING ACTIVITY.—

19                   The term “foreign labor contracting activity” means  
 20                   recruiting, soliciting, hiring, employing, or fur-  
 21                   nishing, an individual who resides outside of the  
 22                   United States to be employed in the United States.

23                   (2) FOREIGN LABOR CONTRACTOR.—The term

24                   “foreign labor contractor” means any person who  
 25                   for any money or other valuable consideration paid

1 or promised to be paid, performs any foreign labor  
2 contracting activity.

3 (3) SECRETARY.—The term “Secretary” means  
4 the Secretary of Labor.

5 (4) STATE.—The term “State” means any  
6 State of the United States and includes the District  
7 of Columbia, Puerto Rico, Guam, American Samoa,  
8 the Commonwealth of the Northern Mariana Is-  
9 lands, and the Virgin Islands of the United States.

10 (5) WORKER.—The term “worker” means an  
11 individual who is the subject of foreign labor con-  
12 tracting activity.

13 **SEC. 203. PROTECTIONS FOR WORKERS RECRUITED**  
14 **ABROAD.**

15 (a) BASIC REQUIREMENTS.—

16 (1) DISCLOSURES OF INFORMATION.—Each em-  
17 ployer and foreign labor contractor who engages in  
18 foreign labor contracting activity shall ascertain and  
19 disclose to each such worker who is recruited for em-  
20 ployment the following information at the time of  
21 the worker’s recruitment:

22 (A) The place of employment.

23 (B) The compensation for the employment.

24 (C) A description of employment activities.

25 (D) The period of employment.

1           (E) The transportation, housing, and any  
2 other employee benefit to be provided and any  
3 costs to be charged for each benefit.

4           (F) The existence of any arrangements  
5 with any owner or agent of any establishment  
6 in the area of employment under which the con-  
7 tractor or employer is to receive a commission  
8 or any other benefit resulting from any sales  
9 (including the provision of services) by such es-  
10 tablishment to the workers.

11           (G) Whether and the extent to which work-  
12 ers will be compensated through workers' com-  
13 pensation, private insurance, or otherwise for  
14 injuries or death, including work related inju-  
15 ries and death, during the period of employ-  
16 ment and, if so, the name of the State workers'  
17 compensation insurance carrier or the name of  
18 the policyholder of the private insurance, the  
19 name and the telephone number of each person  
20 who must be notified of an injury or death, and  
21 the time period within which such notice must  
22 be given.

23           (H) Any education or training to be pro-  
24 vided or made available, including the nature  
25 and cost of such training, who will pay such

1 costs, and whether the training is a condition of  
2 employment, continued employment, or future  
3 employment.

4 (I) A statement, approved by the Secretary  
5 of Labor, describing the protections of this Act  
6 for workers recruited abroad.

7 (2) PROHIBITION ON PROVIDING FALSE INFOR-  
8 MATION.—No foreign labor contractor or employer  
9 shall knowingly provide false or misleading informa-  
10 tion to any worker concerning any matter required  
11 to be disclosed in paragraph (1).

12 (3) FORM OF DISCLOSURE.—The information  
13 required to be disclosed by paragraph (1) to workers  
14 shall be provided in written form. Such information  
15 shall be provided in English or, as necessary and  
16 reasonable, in the language of the worker being re-  
17 cruited. The Department of Labor shall make forms  
18 available in English, Spanish, and other languages,  
19 as necessary, which may be used in providing work-  
20 ers with information required under this section.

21 (4) PROHIBITION ON RECRUITMENT FEES.—No  
22 fees may be charged to a worker for recruitment.

23 (5) PROHIBITION ON VIOLATING THE TERMS OF  
24 A WORKING ARRANGEMENT.—No employer or for-  
25 eign labor contractor shall, without justification, vio-

1 late the terms of any working arrangement made by  
2 that contractor or employer.

3 (6) PROHIBITION ON DISCRIMINATION.—

4 (A) IN GENERAL.—It shall be unlawful for  
5 an employer or a foreign labor contractor to fail  
6 or refuse to hire or to discharge any individual,  
7 or otherwise discriminate against an individual  
8 with respect to compensation, terms, conditions,  
9 or privileges of employment because such indi-  
10 vidual's race, color, creed, sex, national origin,  
11 religion, age, or disability.

12 (B) CONSIDERATIONS.—For the purposes  
13 of determining the existence of unlawful dis-  
14 crimination under subparagraph (A)—

15 (i) in the case of a claim of discrimi-  
16 nation based on race, color, creed, sex, na-  
17 tional origin, or religion, the same legal  
18 standards shall apply as are applicable  
19 under title VII of the Civil Rights Act of  
20 1964 (42 U.S.C. 2000e et seq.);

21 (ii) in the case of a claim of discrimi-  
22 nation based on unlawful discrimination  
23 based on age, the same legal standards  
24 shall apply as are applicable under the Age

1 Discrimination in Employment Act of 1967  
2 (29 U.S.C. 621 et seq.); and

3 (iii) in the case of a claim of discrimi-  
4 nation based on disability, the same legal  
5 standards shall apply as are applicable  
6 under title I of the Americans With Dis-  
7 abilities Act (42 U.S.C. 12101 et seq.).

8 (b) OTHER WORKER PROTECTIONS.—

9 (1) NOTIFICATION REQUIREMENTS.—Each em-  
10 ployer shall notify the Secretary of the identity of  
11 any foreign labor contractor involved in any foreign  
12 labor contractor activity for or on behalf of the em-  
13 ployer. The employer shall be subject to the civil  
14 remedies of this Act for violations committed by  
15 such foreign labor contractor to the same extent as  
16 if the employer had committed the violation. The  
17 employer shall notify the Secretary of the identity of  
18 such a foreign labor contractor whose activities do  
19 not comply with this Act.

20 (2) LIST OF VIOLATORS.—The Secretary shall  
21 maintain a list of all foreign labor contractors whom  
22 the Secretary knows or believes have been involved  
23 in violations of this Act, and make that list publicly  
24 available. The Secretary shall provide a procedure by  
25 which an employer, a foreign labor contractor, or

1 someone acting on behalf of such contractor may  
2 seek to have a foreign labor contractor's name re-  
3 moved from such list by demonstrating to the Sec-  
4 retary's satisfaction that the foreign labor contractor  
5 has not violated this Act in the previous 5 years.

6 (3) PROHIBITION ON VIOLATION OF WRITTEN  
7 AGREEMENTS.—A foreign labor contractor may not  
8 violate, without justification, the terms of any writ-  
9 ten agreements made with an employer pertaining to  
10 any contracting activity or worker protection under  
11 this Act.

12 (c) DISCRIMINATION PROHIBITED AGAINST WORK-  
13 ERS SEEKING RELIEF UNDER THIS ACT.—A person may  
14 not intimidate, threaten, restrain, coerce, blacklist, dis-  
15 charge, or in any manner discriminate against any worker  
16 because such worker has, with just cause, filed any com-  
17 plaint or instituted, or caused to be instituted, any pro-  
18 ceeding under or related to this Act, or has testified or  
19 is about to testify in any such proceedings, or because of  
20 the exercise, with just cause, by such worker on behalf  
21 of himself or others of any right or protection afforded  
22 by this Act.

23 **SEC. 204. ENFORCEMENT PROVISIONS.**

24 (a) CRIMINAL PENALTIES.—

1           (1) FIRST CONVICTION.—Any person who  
2 knowingly violates this Act shall be fined under title  
3 18, United States Code, or imprisoned not more  
4 than 1 year, or both.

5           (2) SUBSEQUENT CONVICTIONS.—Upon convic-  
6 tion for a second or subsequent violation of this Act,  
7 the defendant shall be fined under title 18, United  
8 States Code, or imprisoned not more than 3 years,  
9 or both.

10 (b) ADMINISTRATIVE SANCTIONS.—

11           (1) CIVIL PENALTIES.—

12           (A) IN GENERAL.—Subject to subpara-  
13 graph (B), the Secretary may assess a civil  
14 money penalty of not more than \$5,000 on any  
15 person who violates this Act.

16           (B) CONSIDERATIONS.—In determining  
17 the amount of any penalty to be assessed under  
18 subparagraph (A), the Secretary shall take into  
19 account—

20           (i) the person’s previous record of  
21 compliance with this Act, comparable re-  
22 quirements of the Fair Labor Standards  
23 Act of 1938 (29 U.S.C. 201 et seq.), and  
24 regulations promulgated under such Acts;  
25 and

1 (ii) the gravity of the violation.

2 (2) USE OF PROHIBITED CONTRACTOR.—Any  
3 employer who uses the services of a foreign labor  
4 contractor who is on the list maintained by the Sec-  
5 retary pursuant to section 203(b)(2), shall, if the ac-  
6 tions of such foreign labor contractor have contrib-  
7 uted to a violation of this Act by the employer, be  
8 fined \$10,000 per violation in addition to any other  
9 fines or penalties for which the employer may be lia-  
10 ble for such violation.

11 (c) ACTIONS BY SECRETARY.—The Secretary may  
12 take such actions, including seeking appropriate injunctive  
13 relief and specific performance of contractual obligations,  
14 as may be necessary to ensure employer compliance with  
15 this Act, including required terms and conditions of em-  
16 ployment.

17 (d) WAIVER OF RIGHTS.—Agreements by employees  
18 purporting to waive or to modify their rights under this  
19 Act shall be void as contrary to public policy.

20 (e) REPRESENTATION IN COURT.—Except as pro-  
21 vided under section 518(a) of title 28, United States Code,  
22 relating to litigation before the Supreme Court, the Solie-  
23 itor of Labor may appear for and represent the Secretary  
24 in any civil litigation brought under this Act, but all such

1 litigation shall be subject to the direction and control of  
2 the Attorney General.

3 **SEC. 205. PROCEDURES IN ADDITION TO OTHER RIGHTS OF**  
4 **EMPLOYEES.**

5 The rights and remedies provided to workers by this  
6 Act are in addition to any other contractual or statutory  
7 rights and remedies of the workers and are not intended  
8 to alter or affect such rights and remedies.

9 **SEC. 206. RULEMAKING.**

10 The Secretary shall prescribe such regulations as may  
11 be necessary to carry out this Act.

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