

[DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION

H. R. _____

To amend the Immigration and Nationality Act to reform the H–1B visa program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BANKS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to reform the H–1B visa 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.**

4 This Act may be cited as the “American Tech Work-
5 force Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The H-1B visa has become a program used
2 to supplant American workers with inexpensive for-
3 eign labor.

4 (2) 60 percent of H-1B visas are assigned wage
5 levels substantially below the local median wages for
6 their relevant occupations.

7 (3) The ability to hire non-American workers at
8 wages substantially below median wage levels, ad-
9 justed for locality and occupation, clearly
10 disincentivizes the hiring of American workers.

11 (4) In 2019, Big Tech companies like Amazon,
12 Google, Microsoft, Facebook, IBM, and Apple were
13 6 of the top 8 initial approval recipients for H-1B
14 visas. This trend has existed since 2014.

15 (5) The Optional Practical Training program
16 was created without Congressional Authority, was
17 expanded by the Obama Administration, and is most
18 beneficial to Big Tech.

19 (6) The Optional Practical Training program
20 allows student visa holders who have completed their
21 studies and earned a degree in Science, Technology,
22 Engineering, or Math (STEM) to work for up to
23 three years, and waives their employer's payroll tax
24 obligations for the OPT participant.

1 (7) The Optional Practical Training program
2 functions as a tax break for employers who do not
3 employ Americans, and actively incentivizes such.

4 **SEC. 3. OPTIONAL PRACTICAL TRAINING PROGRAM TERMI-**
5 **NATED; EMPLOYMENT AUTHORIZATION TO**
6 **TERMINATE AFTER COMPLETION OF COURSE**
7 **OF STUDIES.**

8 (a) IN GENERAL.—Section 274A(h) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1324a) is amended by
10 adding at the end the following:

11 “(4) EMPLOYMENT AUTHORIZATION FOR
12 ALIENS NO LONGER ENGAGED IN FULL-TIME STUDY
13 IN THE UNITED STATES.—Notwithstanding any
14 other provision of law, no alien present in the United
15 States as a nonimmigrant under section
16 101(a)(15)(F)(i) may be provided employment au-
17 thorization in the United States pursuant to the Op-
18 tional Practical Training Program, or any such suc-
19 cessor program, and the Optional Practical Training
20 Program shall be terminated. Any employment au-
21 thorization for a nonimmigrant under section
22 101(a)(15)(F) shall terminate upon completion of
23 the alien’s course of studies and may not be granted
24 or extended thereafter.”.

1 (b) TRANSITION RULE.—Any application for the Op-
2 tional Practical Training Program that is pending as of
3 the date of enactment of this Act shall be rejected and
4 any fees paid pertaining to such application shall be re-
5 funded.

6 **SEC. 4. OTHER PROVISIONS REGARDING H-1B NON-**
7 **IMMIGRANTS.**

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

10 (1) in subparagraph (A), to read as follows:

11 “(A) That the employer is offering, and
12 will offer during the period of authorized em-
13 ployment, an annual wage to the H-1B non-
14 immigrant that is the greater of—

15 “(i) the annual wage that was paid to
16 the United States citizen or lawful perma-
17 nent resident employee who did identical or
18 similar work during the 2 years before the
19 employer filed such application; or

20 “(ii) \$110,000, if offered not later
21 than 1 year after the date of the enact-
22 ment of the American Tech Workforce Act
23 of 2021, which amount shall be annually
24 adjusted for inflation by July 1 of each
25 year.”; and

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

2 “(6) PERIOD OF VALIDITY.—A visa granted
3 under section 101(a)(15)(H)(i)(b) to an H-1B non-
4 immigrant pursuant to a petition by any employer
5 who has specific and non-speculative qualifying as-
6 signments in a specialty occupation for the bene-
7 ficiary of such petition for the entire time requested
8 in the petition, if any part of such an assignment
9 will be performed at a third-party worksite, shall be
10 valid for a period of not more than 1 year.

11 “(7) ORDER OF PRIORITY.—In issuing visa or
12 according status under section 101(a)(15)(H)(i)(b)
13 for a fiscal year, applications from employers in ac-
14 cordance with this subsection shall be granted in
15 order of the highest compensation rate included in
16 the application to the lowest.”.