

# NumbersUSA



## **McKennedy: Twelve Million Served; Millions More On the Way!**

### **McCain-Kennedy-Kolbe-Flake-Gutierrez Bills Offer Amnesty to All—And Then Some**

#### **A Bipartisan Smorgasbord**

On May 12, 2005, a bipartisan group of open-borders Senators and Representatives announced to the world that they had found the legislative solution to America's immigration problems. By redefining ordinary words in extraordinary ways, by using multitudes of studies to disguise an alarming lack of substance, and by pretending that more words lead to higher quality, these five men would turn this nation into the society of Haves and Have-Nots of which they – along with their big business/immigration lawyer/ethnic advocacy cronies – have always dreamed. They would dupe American workers into welcoming their foreign replacements. It had, after all, been done before, albeit on a much smaller scale and with significantly more honesty, under the Immigration Reform and Control Act of 1986.

And so three Republicans from Arizona—Sen. John McCain, Rep. Jim Kolbe, and Rep. Jeff Flake—and two Democrats—Sen. Ted Kennedy (Mass.) and Rep. Luis Gutierrez (Ill.)—introduced the “Secure America and Orderly Immigration Act” to great fanfare. As almost always happens with such grand schemes, however, someone goofed and released an 11-page description of what is actually in the bills (or, at least most of what is in it). The visions of five-cent burgers and half-dollar Happy Meals began to fade almost immediately. Not even the Senate would have the stomach to pass this employers' extravaganza.

#### **What Is On the Menu?**

The McCain-Kennedy bill (S. 1033) and the Kolbe-Flake-Gutierrez bill (HR 2330) are nearly identical. A word-by-word comparison turned up only the different bill numbers, the different chamber in which each was introduced, the different sponsors and cosponsors—Sens. Brownback (R-Kan.), Lieberman (D-Conn.), Graham (R-S.C.), and Salazar (D-Colo.) also cosponsored the Senate version—of each bill, different committees of jurisdiction in each chamber, five brackets ([ ]) accidentally

left in the House version, a “;” instead of a “.” in the Senate version, six instances in which the Senate version capitalized a word while the House didn’t, and a typo in the House version, which says “ -5B nonimmigrants” instead of “H-5B nonimmigrants.” As such, both bills will be referred to as the “McKennedy bill” henceforth.

## **1. Where’s the Beef? (Part I)**

Title I of the McKennedy bill is called “Border Security,” but there’s no beef to be found here. It starts out by calling for five strategies/plans/frameworks and six reports to Congress. In a section called “Information Sharing Agreements,” the bill calls on Mexico to help with the “screening of third-country nationals using Mexico as a transit corridor for entry into the United States” (in other words, Mexico will replace the coyotes that currently guide illegals north). By the time the authors finally get around to taking action to improve border security instead of just studying it or handing it off to a foreign country, they apparently have forgotten which country they represent. They call on the Departments of State and Homeland Security (DHS) to assess the financial and technical support that Central American governments need to secure their borders. DHS is required to “provide robust law enforcement assistance” to Central American governments, while State is to provide “equipment, technical assistance, and vehicles to manage, regulate, and patrol” Mexico’s southern borders with Guatemala and Belize.

## **2. The Price of Doing Business**

Apparently, the authors of the McKennedy bill are not quite as sure as they claim that it will solve the immigration crisis. Title II authorizes appropriations to reimburse states for the costs of processing and detaining criminal aliens between now and 2011. Clearly, they expect an increase in the number of such criminals, since they authorize increasing funding—from \$750 million in 2006 to \$950 million in 2008 through 2011. These amounts are in addition to \$200 million per year to reimburse states for the “indirect costs” of incarcerating criminal aliens.

## **3. Come for Dinner; Stay Forever**

Title III establishes an H-5A “nonimmigrant” visa available to foreign workers who can pay \$500 and perform any job not covered by another nonimmigrant visa. If such workers can find a U.S. employer willing to hire them, and if they are healthy and are not criminals, terrorists, polygamists, or child abductors, they get a three year visa with one three-year extension. The employer has to post the job announcement on America’s Job Bank for 30 days before hiring a foreign worker, and the employer has to keep records for one year documenting why he didn’t hire any Americans who applied. A waiver of most other grounds of inadmissibility, including prior immigration violations, may be purchased for \$1,500. These workers are duty-bound to return home if they are unemployed for 45 or more consecutive days, but they can reenter without getting a new visa if they find a new American job. Those who violate the terms of their H-5A visa will have to find another visa with which to

come to the United States, because they will not be eligible for another H-5A visa—unless they qualify for a waiver.

The initial cap on H-5A visas will be 400,000, with subsequent caps to be determined by U.S. employers' appetite for cheap labor. If employers reach the cap in the first quarter of any year, the cap for that same year and the following year will automatically increase by 20 percent. If the cap is reached in the second quarter of a year, the same thing happens, except the increase is only 15 percent. Hitting the cap in the third quarter results in a 10 percent increase in both years, but hitting the cap in the fourth quarter only increases the next year's cap, not the current year's, by 10 percent. There is probably no need to mention this, but if employers don't manage to use all the available visas in a year, the cap for the subsequent year will drop by 10 percent.

All of these H-5A workers will get to stay permanently, if they wish, so employers will never have to raise wages again! Employers can petition for a green card for their H-5A workers at any time, but if the employer doesn't want to bother, the worker can apply on his own after he's worked here for at least four years. Once the application for permanent residence is filed, the worker is entitled to stay in the United States until he gets his green card or has exhausted his appeals.

American workers can rest assured because all these new foreign workers have the same rights as U.S. workers and employers are required to obey U.S. labor laws, so everyone has an absolute right to earn minimum wage. Even foreign-labor recruiters have to obey the law and provide each foreign worker with a form, to be paid for and distributed by the Labor Department in "English, Spanish, and other languages, as necessary," detailing all the rights the worker will enjoy in America. Should any employer or recruiter break any of these rules, the injured party can file an administrative complaint with Labor.

#### **4. Where's the Beef? (Part II)**

Title IV is called "Enforcement" but it really only enforces the idea that U.S. employers need not fire their illegal alien workers. It requires State and DHS to comply with current law by issuing machine-readable visas and other immigration documents and it creates a brand new Employment Eligibility Confirmation System meant to replace the existing employer verification system. Employers are only required to confirm the work eligibility of their new H-5A workers (though the system is supposed to be designed so that it could work for other employees at some unspecified point in the future). This new system does not give a definite answer of ineligibility, only a "confirmation" or a "tentative nonconfirmation" of an individual's identity and employment eligibility. The bill establishes a "secondary verification process" in the case of "tentative nonconfirmation," but employers are not required to contest a "tentative nonconfirmation," and failure to contest does not constitute knowledge of employment of an illegal alien. In fact, firing or suspending an employee who has received a "tentative nonconfirmation" is considered an unlawful use of the system. This system begs the question, "what's the point?" Instead of enforcing the current law and utilizing the existing verification system, McKennedy seeks to spend taxpayer dollars to establish multiple new systems but no

requirements or even incentives to actually use them. The Department of Labor is allowed, under the bill, to investigate employer violations, but only if he can certify that he has reasonable cause to believe a violation has occurred.

## **5. It's Fast AND Cheap!**

Title V creates a “labor migration facilitation program” in conjunction with representatives of foreign governments whose citizens participate in the H-5 visa programs. The program will offer assistance to aliens who seek H-5 “nonimmigrant” status. It is also supposed to create economic incentives for aliens to return to their home country, and relies on foreign governments to monitor the migration of its nationals who are in the program. Not only will we rely on foreign governments to get their nationals to go home (even though they don't legally have to since they can apply for a green card instead), we're also going to help Mexico grow its economy, so the mass exodus will slow down.

## **6. Family Value Meal – Two for the Price of One**

Title VI adds an extra 254,000 family-based visas, plus any unused visas from prior years, and it adds an extra 150,000 employment-based visas, plus any unused ones from prior years. It also increases the per-country limit from seven percent to 10 percent of immigrant visas.

The family preference allocations are reshuffled by the bill, too. Adult, unmarried children of citizens get 10 percent of the visas; spouses, minor children and adult, unmarried children of lawful permanent residents get 50 percent of the visas (77 percent of the 50 percent have to go to spouses and minor children); adult, married children of citizens get 10 percent; and adult siblings of citizens get 30 percent.

McKennedy reduces the number of visas available for priority (i.e., extraordinary and outstanding) workers and for professionals with advanced degrees, and it increases the number of visas available for skilled (i.e., two years' experience or a BA) and unskilled workers. Rather than their current share of 57.2 percent of employment-based visas, the highly skilled workers would get only 40 percent of such visas. This makes perfect sense once you understand that lower-skilled American workers are less likely to contact their representatives in Congress to complain, and they're definitely less likely to be campaign contributors—especially now that they'll be earning minimum wage—so it's much better that they be displaced, rather than higher-skilled American workers.

And since all these new, unskilled, minimum-wage-earning, foreign workers will be clamoring for green cards before you know it, the McKennedy bill says that sponsors only have to prove that they earn 100 percent of the poverty level, rather than 125 percent. After all, when everyone's making minimum wage, it will be impossible to bring over all your relatives if you have to actually be able to support them.

Finally, Title VI creates waivers of inadmissibility for aliens who have applied for a green card and can pay \$2,000 for the waiver.

## 7. Supersize it!

If you:

- ▶ Are in the United States illegally;
- ▶ Have had (or can fake having had or pretend to have been self-employed in) a job since May 12, 2005;
- ▶ Have not been convicted of a non-immigration-related crime other than prostitution or vice;
- ▶ Are not known by the U.S. government to be a terrorist;
- ▶ Are not known by the U.S. government to have persecuted anyone on account of race, religion, nationality, membership in a particular social group, or political opinion; and
- ▶ Are not a convicted polygamist or child abductor; or
- ▶ Are the spouse or minor child of someone who meets the above criteria; or
- ▶ Are under 21 and in school instead of working; and
- ▶ Have \$1,000 (everyone must pay),

then Title VII of McKennedy has an amnesty for you! Once you pay the \$1,000, you will get a temporary H-5B visa and a work permit valid for six years. And you do not have to worry about any information you provide being used against you in a court of law, because that would be a criminal offense. So go ahead and put in your application every single immigration violation and anything else you have done that will not prevent you from getting the amnesty, because once it is in your application, it can never be used against you.

Don't worry about the "evidence" that is required by McKennedy to show proof of presence and employment or full-time higher education in the U.S, either. The bill requires acceptance of virtually any document, including an affidavit from a friend or a remittance receipt! After all, the authors of the bill have gone to great lengths to ensure that it "takes into account the difficulties encountered by aliens in obtaining the evidence of employment due to the undocumented status of the alien," i.e. **illegality**. All that is required is documentation that indicates you are employed as "a matter of reasonable inference."

If you can stay employed or in school, at least long enough to put together another \$1,000 and the money for a health checkup, cut a deal with the IRS to pay any taxes you owe, learn some English and basic civics, and sign up for the draft if you are male and in the right age range, you and your spouse and minor children can apply for permanent resident status. As soon as your six years as a "temporary" worker are up, you get to cut right to the head of the line for a green card and eventual citizenship, because none of the numerical limits in the law apply to you.

Don't worry about your law-breaking employer, either, because Title VII gives amnesty to all employers who hired illegal aliens prior to the introduction of the McKennedy bill.

## **8. The Drive Thru Window Is Closed**

Title VIII ensures only qualified representatives for aliens in immigration matters. Such representatives may include attorneys, law students or graduates with proper supervision and permission, reputable individuals (at the request of the alien), representatives from a recognized organization, accredited government officials of the alien's home country, or individuals licensed to practice law in the alien's home country.

This title also prohibits the advertising of legal services relating to immigration to attorneys or individuals approved in this section. A civil action may be filed against anyone who unlawfully represents an alien, but any information obtained in the civil action is deemed inadmissible in any criminal action.

## **9. All American Meal**

Title IX creates the United States Citizenship Foundation for charitable and education purposes to support the functions of the Office of Citizenship. It also authorizes appropriations necessary "to carry out the mission of the Office of Citizenship." The Foundation is allowed to solicit, accept, and make gifts of money and other property. The McKennedy bill also establishes a grant program to fund civics and English-as-a-second-language courses or "other activities approved by the Secretary (of DHS) to promote civics and English as a second language."

## **10. They Get What We Pay For**

Title X makes all H-5 visa holders eligible for federally reimbursed emergency health care, the most expensive form of health care in the United States, under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Title X also directs Health and Human Services and the Institute of Medicine of the National Academies to study binational public health infrastructure and health insurance efforts, and report to Congress the results of the study. It does not specify whether Canada or Mexico is to be the other half of the binational effort, but Mexico is the safer bet.

## **11. The Dollar Menu**

Among the miscellaneous provisions requiring numerous reports, record-keeping, and funding allocations from fees and fines collected in relation to the H-5 program, included in Title XI is a provision that grants temporary residence to children with no parents or guardian and to women without spouses who are found to be "at risk of harm" on the basis of their age or sex, respectively, and who are referred to a consular or immigration official abroad by any Federal agency, international organization, or recognized nongovernmental agency designated by the State Department. Once the child or woman gets to the United States, DHS is required to grant him/her permanent resident status within one year.

Title XI also expands the S nonimmigrant visa classification to include any individual, plus their family members, possessing “critical reliable information” concerning weapons of mass destruction and willing to share that information. It then raises the annual cap on S visas to 3,500 from 250.

Finally, Title XI allows religious denominations, affiliated religious organization, or their agents or officers to harbor or provide sanctuary to illegal aliens.