

# Union Calendar No. 368

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3736

[Report No. 105-657]

To amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1998

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

JULY 29, 1998

Additional sponsors: Mr. THORNBERRY, Mr. CAMPBELL, and Mr. SPRATT

JULY 29, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on April 28, 1998]

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## A BILL

To amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Workforce Improvement*  
3 *and Protection Act of 1998”.*

4 **SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN WORK-**  
5 **ERS; TEMPORARY REDUCTION IN H-2B NON-**  
6 **IMMIGRANTS.**

7 *Section 214(g) of the Immigration and Nationality*  
8 *Act (8 U.S.C. 1184(g)) is amended—*

9 *(1) by amending paragraph (1)(A) to read as*  
10 *follows:*

11 *“(A) under section 101(a)(15)(H)(i)(b), subject*  
12 *to paragraph (5), may not exceed—*

13 *“(i) 95,000 in fiscal year 1998;*

14 *“(ii) 105,000 in fiscal year 1999;*

15 *“(iii) 115,000 in fiscal year 2000; and*

16 *“(iv) 65,000 in fiscal year 2001 and any*  
17 *subsequent fiscal year; or”;*

18 *(2) by amending paragraph (1)(B) to read as*  
19 *follows:*

20 *“(B) under section 101(a)(15)(H)(i)(b) may not*  
21 *exceed—*

22 *“(i) 36,000 in fiscal year 1998;*

23 *“(ii) 26,000 in fiscal year 1999;*

24 *“(iii) 16,000 in fiscal year 2000; and*

25 *“(iv) 66,000 in fiscal year 2001 and any*  
26 *subsequent fiscal year.”;*



1        *the application, any United States worker (as defined*  
2        *in paragraph (3)) (including a worker whose services*  
3        *are obtained by contract, employee leasing, temporary*  
4        *help agreement, or other similar means) who has sub-*  
5        *stantially equivalent qualifications and experience in*  
6        *the specialty occupation, and in the area of employ-*  
7        *ment, for which H-1B nonimmigrants are sought or*  
8        *in which they are employed.*

9            *“(ii) Except as provided in clause (iii), in the*  
10        *case of an employer that employs an H-1B non-*  
11        *immigrant, the employer shall not place the non-*  
12        *immigrant with another employer where—*

13            *“(I) the nonimmigrant performs his or her*  
14        *duties in whole or in part at one or more work-*  
15        *sites owned, operated, or controlled by such other*  
16        *employer; and*

17            *“(II) there are indicia of an employment*  
18        *relationship between the nonimmigrant and such*  
19        *other employer.*

20            *“(iii) Clause (ii) shall not apply to an employ-*  
21        *er’s placement of an H-1B nonimmigrant with an-*  
22        *other employer if the other employer has executed an*  
23        *attestation that it satisfies and will satisfy the condi-*  
24        *tions described in clause (i) during the period de-*  
25        *scribed in such clause.*

1           “(iv) This subparagraph shall not apply to an  
2 application filed by an employer that is an institu-  
3 tion of higher education (as defined in section  
4 1201(a) of the Higher Education Act of 1965), or a  
5 related or affiliated nonprofit entity, if the applica-  
6 tion relates solely to aliens who—

7           “(I) the employer seeks to employ—

8           “(aa) as a researcher on a project for  
9 which not less than 50 percent of the fund-  
10 ing is provided, for a limited period of  
11 time, through a grant or contract with an  
12 entity other than the employer; or

13           “(bb) as a professor or instructor under  
14 a contract that expires after a limited pe-  
15 riod of time; and

16           “(II) have attained a master’s or higher de-  
17 gree (or its equivalent) in a specialty the specific  
18 knowledge of which is required for the intended  
19 employment.”.

20 (b) DEFINITIONS.—

21           (1) IN GENERAL.—Section 212(n) of the Immi-  
22 gration and Nationality Act (8 U.S.C. 1182(n)) is  
23 amended by adding at the end the following:

24           “(3) For purposes of this subsection:

1           “(A) *The term ‘H–1B nonimmigrant’ means an*  
2 *alien admitted or provided status as a nonimmigrant*  
3 *described in section 101(a)(15)(H)(i)(b).*

4           “(B) *The term ‘lay off or otherwise displace’,*  
5 *with respect to an employee—*

6           “*(i) means to cause the employee’s loss of*  
7 *employment, other than through a discharge for*  
8 *cause, a voluntary departure, or a voluntary re-*  
9 *tirement; and*

10           “*(ii) does not include any situation in*  
11 *which employment is relocated to a different geo-*  
12 *graphic area and the employee is offered a*  
13 *chance to move to the new location, with wages*  
14 *and benefits that are not less than those at the*  
15 *old location, but elects not to move to the new lo-*  
16 *cation.*

17           “(C) *The term ‘United States worker’ means—*

18           “*(i) a citizen or national of the United*  
19 *States;*

20           “*(ii) an alien lawfully admitted for perma-*  
21 *nent residence; or*

22           “*(iii) an alien authorized to be employed by*  
23 *this Act or by the Attorney General.”.*

24           (2)       CONFORMING       AMENDMENTS.—*Section*  
25           *212(n)(1) of the Immigration and Nationality Act (8*

1       *U.S.C. 1182(n)(1)) is amended by striking “a non-*  
2       *immigrant described in section 101(a)(15)(H)(i)(b)”*  
3       *each place such term appears and inserting “an H-*  
4       *1B nonimmigrant”.*

5       **SEC. 4. RECRUITMENT OF UNITED STATES WORKERS PRIOR**  
6               **TO SEEKING NONIMMIGRANT WORKERS.**

7       *Section 212(n)(1) of the Immigration and Nationality*  
8       *Act (8 U.S.C. 1182(n)(1)), as amended by section 3, is fur-*  
9       *ther amended by inserting after subparagraph (E) the fol-*  
10       *lowing:*

11               *“(F)(i) The employer, prior to filing the applica-*  
12               *tion, has taken, in good faith, timely and significant*  
13               *steps to recruit and retain sufficient United States*  
14               *workers in the specialty occupation for which H–1B*  
15               *nonimmigrants are sought. Such steps shall have in-*  
16               *cluded recruitment in the United States, using proce-*  
17               *dures that meet industry-wide standards and offering*  
18               *compensation that is at least as great as that required*  
19               *to be offered to H–1B nonimmigrants under subpara-*  
20               *graph (A), and offering employment to any United*  
21               *States worker who applies and has the same quali-*  
22               *fications as, or better qualifications than, any of the*  
23               *H–1B nonimmigrants sought.*

24               *“(ii) The conditions described in clause (i) shall*  
25               *not apply to an employer with respect to the employ-*





1           (1) *by redesignating subparagraphs (A), (B),*  
2 *and (C) as subparagraphs (B), (C), and (E), respec-*  
3 *tively;*

4           (2) *by inserting after “purposes of this sub-*  
5 *section:” the following:*

6           “(A) *The term ‘H-1B-dependent employer’*  
7 *means an employer that—*

8                   “(i)(I) *has fewer than 21 full-time equiva-*  
9 *lent employees who are employed in the United*  
10 *States; and*

11                   (II) *employs 4 or more H-1B non-*  
12 *immigrants; or*

13                   “(ii)(I) *has at least 21 but not more than*  
14 *150 full-time equivalent employees who are em-*  
15 *ployed in the United States; and*

16                   (II) *employs H-1B nonimmigrants in a*  
17 *number that is equal to at least 20 percent of the*  
18 *number of such full-time equivalent employees; or*

19                   “(iii)(I) *has at least 151 full-time equiva-*  
20 *lent employees who are employed in the United*  
21 *States; and*

22                   (II) *employs H-1B nonimmigrants in a*  
23 *number that is equal to at least 15 percent of the*  
24 *number of such full-time equivalent employees.*

1        *In applying this subparagraph, any group treated as*  
2        *a single employer under subsection (b), (c), (m), or*  
3        *(o) of section 414 of the Internal Revenue Code of*  
4        *1986 shall be treated as a single employer. Aliens em-*  
5        *ployed under a petition for H-1B nonimmigrants*  
6        *shall be treated as employees, and counted as non-*  
7        *immigrants under section 101(a)(15)(H)(i)(b) under*  
8        *this subparagraph.”; and*

9                *(3) by inserting after subparagraph (C) (as so*  
10        *redesignated) the following:*

11                *“(D) The term ‘non-H-1B-dependent employer’*  
12        *means an employer that is not an H-1B-dependent*  
13        *employer.”.*

14        **SEC. 6. INCREASED ENFORCEMENT AND PENALTIES.**

15                *(a) IN GENERAL.—Section 212(n)(2)(C) of the Immi-*  
16        *gration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is*  
17        *amended to read as follows:*

18                *“(C)(i) If the Secretary finds, after notice and oppor-*  
19        *tunity for a hearing, a failure to meet a condition of para-*  
20        *graph (1)(B) or (1)(E), a substantial failure to meet a con-*  
21        *dition of paragraph (1)(C), (1)(D), or (1)(F), or a mis-*  
22        *representation of material fact in an application—*

23                *“(I) the Secretary shall notify the Attorney Gen-*  
24        *eral of such finding and may, in addition, impose*  
25        *such other administrative remedies (including civil*

1       *monetary penalties in an amount not to exceed*  
2       *\$1,000 per violation) as the Secretary determines to*  
3       *be appropriate; and*

4               *“(II) the Attorney General shall not approve pe-*  
5       *titions filed with respect to that employer under sec-*  
6       *tion 204 or 214(c) during a period of at least 1 year*  
7       *for aliens to be employed by the employer.*

8               *“(ii) If the Secretary finds, after notice and oppor-*  
9       *tunity for a hearing, a willful failure to meet a condition*  
10       *of paragraph (1), a willful misrepresentation of material*  
11       *fact in an application, or a violation of clause (iv)—*

12               *“(I) the Secretary shall notify the Attorney Gen-*  
13       *eral of such finding and may, in addition, impose*  
14       *such other administrative remedies (including civil*  
15       *monetary penalties in an amount not to exceed*  
16       *\$5,000 per violation) as the Secretary determines to*  
17       *be appropriate; and*

18               *“(II) the Attorney General shall not approve pe-*  
19       *titions filed with respect to that employer under sec-*  
20       *tion 204 or 214(c) during a period of at least 1 year*  
21       *for aliens to be employed by the employer.*

22               *“(iii) If the Secretary finds, after notice and oppor-*  
23       *tunity for a hearing, a willful failure to meet a condition*  
24       *of paragraph (1) or a willful misrepresentation of material*  
25       *fact in an application, in the course of which failure or*

1 *misrepresentation the employer also has failed to meet a*  
2 *condition of paragraph (1)(E)—*

3           *“(I) the Secretary shall notify the Attorney Gen-*  
4 *eral of such finding and may, in addition, impose*  
5 *such other administrative remedies (including civil*  
6 *monetary penalties in an amount not to exceed*  
7 *\$25,000 per violation) as the Secretary determines to*  
8 *be appropriate; and*

9           *“(II) the Attorney General shall not approve pe-*  
10 *titions filed with respect to that employer under sec-*  
11 *tion 204 or 214(c) during a period of at least 2 years*  
12 *for aliens to be employed by the employer.*

13           *“(iv) It is a violation of this clause for an employer*  
14 *who has filed an application under this subsection to in-*  
15 *timidate, threaten, restrain, coerce, blacklist, discharge, or*  
16 *in any other manner discriminate against an employee*  
17 *(which term, for purposes of this clause, includes a former*  
18 *employee and an applicant for employment) because the*  
19 *employee has disclosed information to the employer, or to*  
20 *any other person, that the employee reasonably believes evi-*  
21 *dences a violation of this subsection, or any rule or regula-*  
22 *tion pertaining to this subsection, or because the employee*  
23 *cooperates or seeks to cooperate in an investigation or other*  
24 *proceeding concerning the employer’s compliance with the*

1 *requirements of this subsection or any rule or regulation*  
2 *pertaining to this subsection.”.*

3       **(b) PLACEMENT OF H-1B NONIMMIGRANT WITH**  
4 *OTHER EMPLOYER.—Section 212(n)(2) of the Immigration*  
5 *and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by*  
6 *adding at the end the following:*

7       *“(E) Under regulations of the Secretary, the previous*  
8 *provisions of this paragraph shall apply to a failure of an*  
9 *other employer to comply with an attestation described in*  
10 *paragraph (1)(E)(iii) in the same manner as they apply*  
11 *to a failure to comply with a condition described in para-*  
12 *graph (1)(E)(i).”.*

13       **(c) SPOT INVESTIGATIONS DURING PROBATIONARY**  
14 *PERIOD.—Section 212(n)(2) of the Immigration and Na-*  
15 *tionality Act (8 U.S.C. 1182(n)(2)), as amended by sub-*  
16 *section (b), is further amended by adding at the end the*  
17 *following:*

18       *“(F) The Secretary may, on a case-by-case basis, sub-*  
19 *ject an employer to random investigations for a period of*  
20 *up to 5 years, beginning on the date that the employer is*  
21 *found by the Secretary to have committed a willful failure*  
22 *to meet a condition of paragraph (1) or to have made a*  
23 *misrepresentation of material fact in an application. The*  
24 *preceding sentence shall apply to an employer regardless*  
25 *of whether the employer is an H-1B-dependent employer*





1           (1) *the numbers of individuals who were issued*  
2 *visas or otherwise provided nonimmigrant status dur-*  
3 *ing the preceding 3-month period under section*  
4 *101(a)(15)(H)(i)(b) of the Immigration and Nation-*  
5 *ality Act;*

6           (2) *the numbers of individuals who were issued*  
7 *visas or otherwise provided nonimmigrant status dur-*  
8 *ing the preceding 3-month period under section*  
9 *101(a)(15)(H)(i)(b) of such Act; and*

10          (3) *the countries of origin and occupations of,*  
11 *educational levels attained by, and total compensa-*  
12 *tion (including the value of all wages, salary, bonuses,*  
13 *stock, stock options, and any other similar forms of*  
14 *remuneration) paid to, individuals issued visas or*  
15 *provided nonimmigrant status under such sections*  
16 *during such period.*

17 **SEC. 9. GAO STUDY AND REPORT ON AGE DISCRIMINATION**  
18 **IN THE INFORMATION TECHNOLOGY FIELD.**

19          (a) *STUDY.*—*The Comptroller General of the United*  
20 *States shall conduct a study assessing age discrimination*  
21 *in the information technology field. The study shall consider*  
22 *the following:*

23           (1) *The prevalence of age discrimination in the*  
24 *information technology workplace.*



1           (2) *The extent to which there is a difference,*  
2           *based on age, in promotion and advancement; work-*  
3           *ing hours; telecommuting; salary; and stock options,*  
4           *bonuses, or other benefits.*

5           (3) *The relationship between rates of advance-*  
6           *ment, promotion, and compensation to experience,*  
7           *skill level, education, and age.*

8           (4) *Differences in skill level on the basis of age.*

9           (b) *REPORT.—Not later than October 1, 2000, the*  
10          *Comptroller General of the United States shall submit to*  
11          *the Committees on the Judiciary of the United States House*  
12          *of Representatives and the Senate a report containing the*  
13          *results of the study described in subsection (a). The report*  
14          *shall include any recommendations of the Comptroller Gen-*  
15          *eral concerning age discrimination in the information tech-*  
16          *nology field.*

17          **SEC. 10. GAO LABOR MARKET STUDY AND REPORT.**

18          (a) *STUDY.—The Comptroller General of the United*  
19          *States shall conduct a labor market study. The study shall*  
20          *investigate and analyze the following:*

21                 (1) *The overall shortage of available workers in*  
22                 *the high-technology, rapid-growth industries.*

23                 (2) *The multiplier effect growth of high-tech-*  
24                 *nology industry on low-technology employment.*

1           (3) *The relative achievement rates of United*  
2 *States and foreign students in secondary school in a*  
3 *variety of subjects, including math, science, computer*  
4 *science, English, and history.*

5           (4) *The relative performance, by subject area, of*  
6 *United States and foreign students in postsecondary*  
7 *and graduate schools as compared to secondary*  
8 *schools.*

9           (5) *The labor market need for workers with in-*  
10 *formation technology skills and the extent of the defi-*  
11 *cit of such workers to fill high-technology jobs during*  
12 *the 10-year period beginning on the date of the enact-*  
13 *ment of this Act.*

14           (6) *Future training and education needs of com-*  
15 *panies in the high-technology sector.*

16           (7) *Future training and education needs of*  
17 *United States students to ensure that their skills at*  
18 *various levels match the needs of the high-technology*  
19 *and information technology sectors.*

20           (8) *An analysis of which particular skill sets are*  
21 *in demand.*

22           (9) *The needs of the high-technology sector for*  
23 *foreign workers with specific skills.*

24           (10) *The potential benefits of postsecondary edu-*  
25 *cational institutions, employers, and the United*

1       *States economy from the entry of skilled professionals*  
2       *in the fields of engineering and science.*

3               *(11) The effect on the high-technology labor mar-*  
4       *ket of the downsizing of the defense sector, the increase*  
5       *in productivity in the computer industry, and the de-*  
6       *ployment of workers dedicated to the Year 2000*  
7       *Project.*

8       *(b) REPORT.—Not later than October 1, 2000, the*  
9       *Comptroller General of the United States shall submit to*  
10      *the Committees on the Judiciary of the United States House*  
11      *of Representatives and the Senate a report containing the*  
12      *results of the study described in subsection (a).*

13      **SEC. 11. EFFECTIVE DATE.**

14       *The amendments made by this Act shall take effect on*  
15      *the date of the enactment of this Act and shall apply to*  
16      *applications filed with the Secretary of Labor on or after*  
17      *30 days after the date of the enactment of this Act, except*  
18      *that the amendments made by section 2 shall apply to ap-*  
19      *plications filed with such Secretary before, on, or after the*  
20      *date of the enactment of this Act.*

Union Calendar No. 368

105<sup>TH</sup> CONGRESS  
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**H. R. 3736**

[Report No. 105-6571]

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## **A BILL**

To amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants.

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JULY 29, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed