

Union Calendar No. 368

105TH CONGRESS
2^D SESSION

H. R. 3736

[Report No. 105-657]

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

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]

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 *irement; 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.*

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