

110TH CONGRESS
2D SESSION

H. R. 5630

To modify certain requirements with respect to H–1B nonimmigrants.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2008

Ms. GIFFORDS introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To modify certain requirements with respect 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Innovation Employ-
5 ment Act”.

6 **SEC. 2. NUMERICAL LIMITATIONS.**

7 Section 214(g)(1)(A)(vii) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1184(g)(1)(A)(vii)) is amended to
9 read as follows:

10 “(vii) 130,000 in fiscal year 2008 and each
11 succeeding fiscal year, except that in fiscal

1 years 2010 through 2015, if such limitation is
2 reached in the previous fiscal year, such limita-
3 tion shall equal the greater of 180,000 and the
4 limitation applicable for the previous fiscal year
5 increased by 20 percent; or”.

6 **SEC. 3. EXEMPTION FROM NUMERICAL LIMITATION FOR**
7 **CERTAIN NONIMMIGRANTS.**

8 Section 214(g)(5) of the Immigration and Nationality
9 Act (8 U.S.C. 1184(g)(5)) is amended—

10 (1) in subparagraph (B), by striking “or”;

11 (2) in subparagraph (C), by striking the period
12 at the end and inserting a semicolon; and

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

14 “(D) has earned a master’s or higher degree
15 from a United States institution of higher education
16 (as defined in section 101(a) of the Higher Edu-
17 cation Act of 1965 (20 U.S.C. 1001(a)) in a field of
18 science, technology, engineering, or mathematics and
19 with respect to whom the petitioning employer re-
20 quires such education as a condition for the employ-
21 ment; or

22 “(E) has earned a master’s or higher degree (or
23 its equivalent) from an institution of higher edu-
24 cation outside of the United States in a field of
25 science, technology, engineering, or mathematics and

1 with respect to whom the petitioning employer re-
2 quires such education as a condition for the employ-
3 ment, until the number of aliens who are exempted
4 from such numerical limitations under this subpara-
5 graph during a fiscal year exceeds 20,000.”.

6 **SEC. 4. H-1B EMPLOYER REQUIREMENTS.**

7 Section 212(n)(1) of the Immigration and Nationality
8 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after
9 subparagraph (G) the following:

10 “(H) The employer has not advertised the avail-
11 able jobs specified in the application in an advertise-
12 ment that states or indicates that—

13 “(i) the job or jobs are only available to
14 persons who are or who may become H-1B
15 nonimmigrants; or

16 “(ii) persons who are or who may become
17 H-1B nonimmigrants shall receive priority or a
18 preference in the hiring process.

19 “(I) If the employer employs not less than 50
20 employees in the United States, not more than 50
21 percent of such employees are H-1B non-
22 immigrants.”.

1 **SEC. 5. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
2 **MENTS.**

3 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
4 SENTATION IN APPLICATION REVIEW PROCESS.—Section
5 212(n)(1) of the Immigration and Nationality Act (8
6 U.S.C. 1182(n)(1)) is amended, in the matter following
7 subparagraph (I) (as inserted by section 3 of this Act)—

8 (1) by inserting “and through the Department
9 of Labor’s website, without charge.” after “D.C.”;

10 (2) by inserting “, clear indicators of fraud,
11 misrepresentation of material fact,” after “complete-
12 ness”;

13 (3) by striking or “obviously inaccurate” and
14 inserting “presents clear indicators of fraud or mis-
15 representation of material fact, or is obviously inac-
16 curate”;

17 (4) by striking “within 7 days of” and inserting
18 “not later than 14 days after”; and

19 (5) by adding at the end the following: “If the
20 Secretary’s review of an application identifies clear
21 indicators of fraud or misrepresentation of material
22 fact, the Secretary may conduct an investigation and
23 hearing under paragraph (2).”.

24 (b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—
25 Section 212(n)(2) of such Act is amended—

26 (1) in subparagraph (A)—

1 (A) by striking “12 months” and inserting
2 “24 months”; and

3 (B) by striking “The Secretary shall con-
4 duct” and all that follows and inserting “Upon
5 the receipt of such a complaint, the Secretary
6 may initiate an investigation to determine if
7 such a failure or misrepresentation has oc-
8 curred.”;

9 (2) in subparagraph (C)(i)—

10 (A) by striking “a condition of paragraph
11 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
12 dition under subparagraph (B), (C)(i), (E), (F),
13 (H), (I), or (J) of paragraph (1)”;

14 (B) by striking “(1)(C)” and inserting
15 “(1)(C)(ii)”;

16 (3) in subparagraph (G)—

17 (A) in clause (i), by striking “if the Sec-
18 retary” and all that follows and inserting “with
19 regard to the employer’s compliance with the
20 requirements of this subsection.”;

21 (B) in clause (ii), by striking “and whose
22 identity” and all that follows through “failure
23 or failures.” and inserting “the Secretary of
24 Labor may conduct an investigation into the

1 employer's compliance with the requirements of
2 this subsection.”;

3 (C) in clause (iii), by striking the last sen-
4 tence;

5 (D) by striking clauses (iv) and (v);

6 (E) by redesignating clauses (vi), (vii), and
7 (viii) as clauses (iv), (v), and (vi), respectively;

8 (F) in clause (iv), as redesignated, by
9 striking “meet a condition described in clause
10 (ii), unless the Secretary of Labor receives the
11 information not later than 12 months” and in-
12 serting “comply with the requirements under
13 this subsection, unless the Secretary of Labor
14 receives the information not later than 24
15 months”;

16 (G) by amending clause (v), as redesi-
17 gnated, to read as follows:

18 “(v) The Secretary of Labor shall pro-
19 vide notice to an employer of the intent to
20 conduct an investigation. The notice shall
21 be provided in such a manner, and shall
22 contain sufficient detail, to permit the em-
23 ployer to respond to the allegations before
24 an investigation is commenced. The Sec-
25 retary is not required to comply with this

1 clause if the Secretary determines that
2 such compliance would interfere with an
3 effort by the Secretary to investigate or se-
4 cure compliance by the employer with the
5 requirements of this subsection. A deter-
6 mination by the Secretary under this
7 clause shall not be subject to judicial re-
8 view.”;

9 (H) in clause (vi), as redesignated, by
10 striking “An investigation” and all that follows
11 through “the determination.” and inserting “If
12 the Secretary of Labor, after an investigation
13 under clause (i) or (ii), determines that a rea-
14 sonable basis exists to make a finding that the
15 employer has failed to comply with the require-
16 ments under this subsection, the Secretary shall
17 provide interested parties with notice of such
18 determination and an opportunity for a hearing
19 in accordance with section 556 of title 5,
20 United States Code, not later than 120 days
21 after the date of such determination.”; and

22 (I) by adding at the end the following:

23 “(vii) If the Secretary of Labor, after
24 a hearing, finds a reasonable basis to be-
25 lieve that the employer has violated the re-

1 requirements under this subsection, the Sec-
2 retary may impose a penalty under sub-
3 paragraph (C).”; and

4 (4) by striking subparagraph (H).

5 (c) INFORMATION SHARING BETWEEN DEPARTMENT
6 OF LABOR AND DEPARTMENT OF HOMELAND SECU-
7 RITY.—Section 212(n)(2) of such Act, as amended by this
8 section, is further amended by inserting after subpara-
9 graph (G) the following:

10 “(H) The Director of United States Citi-
11 zenship and Immigration Services shall provide
12 the Secretary of Labor with any information
13 contained in the materials submitted by H–1B
14 employers as part of the adjudication process
15 that indicates that the employer is not com-
16 plying with H–1B visa program requirements.
17 The Secretary may initiate and conduct an in-
18 vestigation and hearing under this paragraph
19 after receiving information of noncompliance
20 under this subparagraph.”.

21 (d) AUDITS.—Section 212(n)(2)(A) of such Act, as
22 amended by this section, is further amended by adding
23 at the end the following: “The Secretary may conduct sur-
24 veys of the degree to which employers comply with the re-
25 quirements under this subsection and may conduct annual

1 compliance audits of employers that employ H-1B non-
2 immigrants. The Secretary shall conduct annual compli-
3 ance audits of not less than 1 percent of the employers
4 that employ H-1B nonimmigrants during the applicable
5 calendar year.”

6 (e) PENALTIES.—Section 212(n)(2)(C) of such Act,
7 as amended by this section, is further amended—

8 (1) in clause (i)(I), by striking “\$1,000” and
9 inserting “\$2,000”;

10 (2) in clause (ii)(I), by striking “\$5,000” and
11 inserting “\$10,000”; and

12 (3) in clause (vi)(III), by striking “\$1,000” and
13 inserting “\$2,000”.

14 (f) INFORMATION PROVIDED TO H-1B NON-
15 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of
16 such Act, as amended by this section, is further amended
17 by inserting after paragraph (2) the following:

18 “(3)(A) Upon issuing an H-1B visa to an ap-
19 plicant outside the United States, the issuing office
20 shall provide the applicant with—

21 “(i) a brochure outlining the employer’s
22 obligations and the employee’s rights under
23 Federal law, including labor and wage protec-
24 tions; and

1 “(ii) the contact information for Federal
2 agencies that can offer more information or as-
3 sistance in clarifying employer obligations and
4 workers’ rights.

5 “(B) Upon the issuance of an H–1B visa to an
6 alien inside the United States, the officer of the De-
7 partment of Homeland Security shall provide the ap-
8 plicant with—

9 “(i) a brochure outlining the employer’s
10 obligations and the employee’s rights under
11 Federal law, including labor and wage protec-
12 tions; and

13 “(ii) the contact information for Federal
14 agencies that can offer more information or as-
15 sistance in clarifying employer’s obligations and
16 workers’ rights.”.

17 **SEC. 6. WHISTLEBLOWER PROTECTIONS.**

18 Section 212(n)(2)(C)(iv) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

20 (1) by inserting “take, fail to take, or threaten
21 to take or fail to take, a personnel action, or” before
22 “to intimidate”; and

23 (2) by adding at the end the following: “An em-
24 ployer that violates this clause shall be liable to the

1 employees harmed by such violation for lost com-
2 pensation, including back pay.”.

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