

111TH CONGRESS
1ST SESSION

S. 887

To amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

Mr. DURBIN (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States, 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 (a) **SHORT TITLE.**—This Act may be cited as the
5 “H–1B and L–1 Visa Reform Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title.

TITLE I—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subtitle A—H-1B Employer Application Requirements

- Sec. 101. Modification of application requirements.
 Sec. 102. New application requirements.
 Sec. 103. Application review requirements.

Subtitle B—Investigation and Disposition of Complaints Against H-1B Employers

- Sec. 111. General modification of procedures for investigation and disposition.
 Sec. 112. Investigation, working conditions, and penalties.
 Sec. 113. Waiver requirements.
 Sec. 114. Initiation of investigations.
 Sec. 115. Information sharing.
 Sec. 116. Conforming amendment.

Subtitle C—Other Protections

- Sec. 121. Posting available positions through the Department of Labor.
 Sec. 122. H-1B government authority and requirements.
 Sec. 123. Requirements for information for H-1B and L-1 nonimmigrants.
 Sec. 124. Additional Department of Labor employees.
 Sec. 125. Technical correction.
 Sec. 126. Application.

TITLE II—L-1 VISA FRAUD AND ABUSE PROTECTIONS

- Sec. 201. Prohibition on outplacement of L-1 nonimmigrants.
 Sec. 202. L-1 employer petition requirements for employment at new offices.
 Sec. 203. Cooperation with Secretary of State.
 Sec. 204. Investigation and disposition of complaints against L-1 employers.
 Sec. 205. Wage rate and working conditions for L-1 nonimmigrant.
 Sec. 206. Penalties.
 Sec. 207. Prohibition on retaliation against L-1 nonimmigrants.
 Sec. 208. Reports on L-1 nonimmigrants.
 Sec. 209. Technical amendments.
 Sec. 210. Application.
 Sec. 211. Report on L-1 blanket petition process.

1 **TITLE I—H-1B VISA FRAUD AND**
 2 **ABUSE PROTECTIONS**

3 **Subtitle A—H-1B Employer**
 4 **Application Requirements**

5 **SEC. 101. MODIFICATION OF APPLICATION REQUIRE-**
 6 **MENTS.**

7 (a) GENERAL APPLICATION REQUIREMENTS.—Sub-
 8 paragraph (A) of section 212(n)(1) of the Immigration

1 and Nationality Act (8 U.S.C. 1182(n)(1)) is amended to
2 read as follows:

3 “(A) The employer—

4 “(i) is offering and will offer to H–1B non-
5 immigrants, during the period of authorized
6 employment for each H–1B nonimmigrant,
7 wages that are determined based on the best in-
8 formation available at the time the application
9 is filed and which are not less than the highest
10 of—

11 “(I) the locally determined prevailing
12 wage level for the occupational classifica-
13 tion in the area of employment;

14 “(II) the median average wage for all
15 workers in the occupational classification
16 in the area of employment; and

17 “(III) the median wage for skill level
18 2 in the occupational classification found
19 in the most recent Occupational Employ-
20 ment Statistics survey; and

21 “(ii) will provide working conditions for
22 such H–1B nonimmigrant that will not ad-
23 versely affect the working conditions of other
24 workers similarly employed.”.

1 (b) INTERNET POSTING REQUIREMENT.—Subpara-
2 graph (C) of such section 212(n)(1) is amended—

3 (1) by redesignating clause (ii) as subclause
4 (II);

5 (2) by striking “(i) has provided” and inserting
6 the following:

7 “(ii)(I) has provided”; and

8 (3) by inserting before clause (ii), as redesign-
9 nated by paragraph (2) of this subsection, the fol-
10 lowing:

11 “(i) has posted on the Internet website de-
12 scribed in paragraph (3), for at least 30 cal-
13 endar days, a detailed description of each posi-
14 tion for which a nonimmigrant is sought that
15 includes a description of—

16 “(I) the wages and other terms and
17 conditions of employment;

18 “(II) the minimum education, train-
19 ing, experience, and other requirements for
20 the position; and

21 “(III) the process for applying for the
22 position; and”.

23 (c) WAGE DETERMINATION INFORMATION.—Sub-
24 paragraph (D) of such section 212(n)(1) is amended by

1 inserting “the wage determination methodology used
2 under subparagraph (A)(i),” after “shall contain”.

3 (d) APPLICATION OF REQUIREMENTS TO ALL EM-
4 PLOYERS.—

5 (1) NONDISPLACEMENT.—Subparagraph (E) of
6 such section 212(n)(1) is amended—

7 (A) in clause (i)—

8 (i) by striking “90 days” both places
9 it appears and inserting “180 days”; and

10 (ii) by striking “(i) In the case of an
11 application described in clause (ii), the”
12 and inserting “The”; and

13 (B) by striking clause (ii).

14 (2) RECRUITMENT.—Subparagraph (G)(i) of
15 such section 212(n)(1) is amended by striking “In
16 the case of an application described in subparagraph
17 (E)(ii), subject” and inserting “Subject”.

18 (e) REQUIREMENT FOR WAIVER.—Subparagraph (F)
19 of such section 212(n)(1) is amended to read as follows:

20 “(F) The employer shall not place, outsource,
21 lease, or otherwise contract for the services or place-
22 ment of H-1B nonimmigrants with another em-
23 ployer unless the employer of the alien has been
24 granted a waiver under paragraph (2)(E).”.

1 **SEC. 102. NEW APPLICATION REQUIREMENTS.**

2 Section 212(n)(1) of the Immigration and Nationality
3 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after
4 clause (ii) of subparagraph (G) the following:

5 “(H)(i) The employer has not advertised any
6 available position specified in the application in an
7 advertisement that states or indicates that—

8 “(I) such position is only available to an
9 individual who is or will be an H–1B non-
10 immigrant; or

11 “(II) an individual who is or will be an H–
12 1B nonimmigrant shall receive priority or a
13 preference in the hiring process for such posi-
14 tion.

15 “(ii) The employer has not solely recruited indi-
16 viduals who are or who will be H–1B nonimmigrants
17 to fill such position.

18 “(I) If the employer employs 50 or more em-
19 ployees in the United States, the sum of the number
20 of such employees who are H–1B nonimmigrants
21 plus the number of such employees who are non-
22 immigrants described in section 101(a)(15)(L) may
23 not exceed 50 percent of the total number of em-
24 ployees.

25 “(J) If the employer, in such previous period as
26 the Secretary shall specify, employed 1 or more H–

1 1B nonimmigrants, the employer shall submit to the
2 Secretary the Internal Revenue Service Form W-2
3 Wage and Tax Statement filed by the employer with
4 respect to the H-1B nonimmigrants for such pe-
5 riod.”.

6 **SEC. 103. APPLICATION REVIEW REQUIREMENTS.**

7 (a) TECHNICAL AMENDMENT.—Section 212(n)(1) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1182(n)(1)), as amended by section 102, is further
10 amended in the undesignated paragraph at the end, by
11 striking “The employer” and inserting the following:

12 “(K) The employer.”.

13 (b) APPLICATION REVIEW REQUIREMENTS.—Sub-
14 paragraph (K) of such section 212(n)(1), as designated
15 by subsection (a), is amended—

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

18 (2) by striking “only for completeness” and in-
19 serting “for completeness and clear indicators of
20 fraud or misrepresentation of material fact,”;

21 (3) by striking “or obviously inaccurate” and
22 inserting “, presents clear indicators of fraud or
23 misrepresentation of material fact, or is obviously in-
24 accurate”;

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

3 (5) by adding at the end the following: “If the
4 Secretary’s review of an application identifies clear
5 indicators of fraud or misrepresentation of material
6 fact, the Secretary may conduct an investigation and
7 hearing in accordance with paragraph (2).”.

8 **Subtitle B—Investigation and Dis-**
9 **position of Complaints Against**
10 **H-1B Employers**

11 **SEC. 111. GENERAL MODIFICATION OF PROCEDURES FOR**
12 **INVESTIGATION AND DISPOSITION.**

13 Subparagraph (A) of section 212(n)(2) of the Immi-
14 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
15 amended—

16 (1) by striking “(A) Subject” and inserting
17 “(A)(i) Subject”;

18 (2) by striking “12 months” and inserting “24
19 months”;

20 (3) by striking the last sentence; and

21 (4) by adding at the end the following:

22 “(ii)(I) Upon the receipt of such a com-
23 plaint, the Secretary may initiate an investiga-
24 tion to determine if such a failure or misrepre-
25 sentation has occurred.

1 “(II) The Secretary may conduct surveys
2 of the degree to which employers comply with
3 the requirements of this subsection and may
4 conduct annual compliance audits of employers
5 that employ H–1B nonimmigrants.

6 “(III) The Secretary shall—

7 “(aa) conduct annual compliance au-
8 dits of not less than 1 percent of the em-
9 ployers that employ H–1B nonimmigrants
10 during the applicable calendar year;

11 “(bb) conduct annual compliance au-
12 dits of each employer with more than 100
13 employees who work in the United States
14 if more than 15 percent of such employees
15 are H–1B nonimmigrants; and

16 “(cc) make available to the public an
17 executive summary or report describing the
18 general findings of the audits carried out
19 pursuant to this subclause.”.

20 **SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND**
21 **PENALTIES.**

22 Subparagraph (C) of section 212(n)(2) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
24 amended—

25 (1) in clause (i)—

1 (A) in the matter preceding subclause

2 (I)—

3 (i) by striking “a condition of para-
4 graph (1)(B), (1)(E), or (1)(F)” and in-
5 serting “a condition under subparagraph
6 (A), (B), (C)(i), (E), (F), (G)(i)(I), (H),
7 (I), or (J) of paragraph (1)”; and

8 (ii) by striking “(1)(C)” and inserting
9 “(1)(C)(ii)”; and

10 (B) in subclause (I)—

11 (i) by striking “\$1,000” and inserting
12 “\$2,000”; and

13 (ii) by striking “and” at the end;

14 (C) in subclause (II), by striking the pe-
15 riod at the end and inserting a semicolon and
16 “and”;

17 (D) by adding at the end the following:

18 “(III) an employer that violates such subpara-
19 graph (A) shall be liable to the employees harmed by
20 such violations for lost wages and benefits.”; and

21 (2) in clause (ii)

22 (A) in subclause (I)—

23 (i) by striking “may” and inserting
24 “shall”; and

1 (ii) by striking “\$5,000” and insert-
2 ing “\$10,000”; and

3 (B) in subclause (II), by striking the pe-
4 riod at the end and inserting a semicolon and
5 “and”;

6 (C) by adding at the end the following:

7 “(III) an employer that violates such subpara-
8 graph (A) shall be liable to the employees harmed by
9 such violations for lost wages and benefits.”; and

10 (3) in clause (iii)—

11 (A) in the matter preceding subclause (I),
12 by striking “90 days” both places it appears
13 and inserting “180 days”;

14 (B) in subclause (I)—

15 (i) by striking “may” and inserting
16 “shall”; and

17 (ii) by striking “and” at the end;

18 (C) in subclause (II), by striking the pe-
19 riod at the end and inserting a semicolon and
20 “and”; and

21 (D) by adding at the end the following:

22 “(III) an employer that violates subparagraph
23 (A) of such paragraph shall be liable to the employ-
24 ees harmed by such violations for lost wages and
25 benefits.”;

1 (4) in clause (iv)—

2 (A) by inserting “to take, fail to take, or
3 threaten to take or fail to take, a personnel ac-
4 tion, or” before “to intimidate”;

5 (B) by inserting “(I)” after “(iv)”; and

6 (C) by adding at the end the following:

7 “(II) An employer that violates this clause shall
8 be liable to the employees harmed by such violation
9 for lost wages and benefits.”; and

10 (5) in clause (vi)—

11 (A) by amending subclause (I) to read as
12 follows:

13 “(I) It is a violation of this clause for an em-
14 ployer who has filed an application under this sub-
15 section—

16 “(aa) to require an H–1B nonimmigrant to
17 pay a penalty for ceasing employment with the
18 employer prior to a date agreed to by the non-
19 immigrant and the employer (the Secretary
20 shall determine whether a required payment is
21 a penalty, and not liquidated damages, pursu-
22 ant to relevant State law); and

23 “(bb) to fail to offer to an H–1B non-
24 immigrant, during the nonimmigrant’s period of
25 authorized employment, on the same basis, and

1 in accordance with the same criteria, as the em-
2 ployer offers to United States workers, benefits
3 and eligibility for benefits, including—

4 “(AA) the opportunity to participate
5 in health, life, disability, and other insur-
6 ance plans;

7 “(BB) the opportunity to participate
8 in retirement and savings plans; and

9 “(CC) cash bonuses and noncash com-
10 pensation, such as stock options (whether
11 or not based on performance).”; and

12 (B) in subclause (III), by striking
13 “\$1,000” and inserting “\$2,000”.

14 **SEC. 113. WAIVER REQUIREMENTS.**

15 (a) IN GENERAL.—Subparagraph (E) of section
16 212(n)(2) of the Immigration and Nationality Act (8
17 U.S.C. 1182(n)(2)) is amended to read as follows:

18 “(E)(i) The Secretary of Labor may waive the prohi-
19 bition in paragraph (1)(F) if the Secretary determines
20 that the employer seeking the waiver has established
21 that—

22 “(I) the employer with whom the H-1B non-
23 immigrant would be placed has not displaced, and
24 does not intend to displace, a United States worker
25 employed by the employer within the period begin-

1 ning 180 days before and ending 180 days after the
2 date of the placement of the nonimmigrant with the
3 employer;

4 “(II) the H–1B nonimmigrant will not be con-
5 trolled and supervised principally by the employer
6 with whom the H–1B nonimmigrant would be
7 placed; and

8 “(III) the placement of the H–1B non-
9 immigrant is not essentially an arrangement to pro-
10 vide labor for hire for the employer with whom the
11 H–1B nonimmigrant will be placed.

12 “(ii) The Secretary shall grant or deny a waiver
13 under this subparagraph not later than 7 days after the
14 Secretary receives the application for such waiver.”.

15 (b) REQUIREMENT FOR RULES.—

16 (1) RULES FOR WAIVERS.—The Secretary of
17 Labor shall promulgate rules, after notice and a pe-
18 riod for comment, for an employer to apply for a
19 waiver under subparagraph (E) of section 212(n)(2)
20 of such Act, as amended by subsection (a).

21 (2) REQUIREMENT FOR PUBLICATION.—The
22 Secretary of Labor shall submit to Congress and
23 publish in the Federal Register and other appro-
24 priate media a notice of the date that rules required
25 by paragraph (1) are published.

1 **SEC. 114. INITIATION OF INVESTIGATIONS.**

2 Subparagraph (G) of section 212(n)(2) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
4 amended—

5 (1) in clause (i), by striking “if the Secretary”
6 and all that follows and inserting “with regard to
7 the employer’s compliance with the requirements of
8 this subsection.”;

9 (2) in clause (ii), by striking “and whose iden-
10 tity” and all that follows through “failure or fail-
11 ures.” and inserting “the Secretary of Labor may
12 conduct an investigation into the employer’s compli-
13 ance with the requirements of this subsection.”;

14 (3) in clause (iii), by striking the last sentence;

15 (4) by striking clauses (iv) and (v);

16 (5) by redesignating clauses (vi), (vii), and (viii)
17 as clauses (iv), (v), and (vi), respectively;

18 (6) in clause (iv), as so redesignated, by strik-
19 ing “meet a condition described in clause (ii), unless
20 the Secretary of Labor receives the information not
21 later than 12 months” and inserting “comply with
22 the requirements under this subsection, unless the
23 Secretary of Labor receives the information not later
24 than 24 months”;

25 (7) by amending clause (v), as so redesignated,
26 to read as follows:

1 “(v) The Secretary of Labor shall provide no-
2 tice to an employer of the intent to conduct an in-
3 vestigation. The notice shall be provided in such a
4 manner, and shall contain sufficient detail, to permit
5 the employer to respond to the allegations before an
6 investigation is commenced. The Secretary is not re-
7 quired to comply with this clause if the Secretary de-
8 termines that such compliance would interfere with
9 an effort by the Secretary to investigate or secure
10 compliance by the employer with the requirements of
11 this subsection. A determination by the Secretary
12 under this clause shall not be subject to judicial re-
13 view.”;

14 (8) in clause (vi), as so redesignated, by strik-
15 ing “An investigation” and all that follows through
16 “the determination.” and inserting “If the Secretary
17 of Labor, after an investigation under clause (i) or
18 (ii), determines that a reasonable basis exists to
19 make a finding that the employer has failed to com-
20 ply with the requirements under this subsection, the
21 Secretary shall provide interested parties with notice
22 of such determination and an opportunity for a
23 hearing in accordance with section 556 of title 5,
24 United States Code, not later than 120 days after
25 the date of such determination.”; and

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

2 “(vii) If the Secretary of Labor, after a hear-
3 ing, finds a reasonable basis to believe that the em-
4 ployer has violated the requirements under this sub-
5 section, the Secretary shall impose a penalty under
6 subparagraph (C).”.

7 **SEC. 115. INFORMATION SHARING.**

8 Subparagraph (H) of section 212(n)(2) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
10 amended to read as follows:

11 “(H) The Director of United States Citizenship and
12 Immigration Services shall provide the Secretary of Labor
13 with any information contained in the materials submitted
14 by employers of H–1B nonimmigrants as part of the adju-
15 dication process that indicates that the employer is not
16 complying with visa program requirements for H–1B non-
17 immigrants. The Secretary may initiate and conduct an
18 investigation and hearing under this paragraph after re-
19 ceiving information of noncompliance under this subpara-
20 graph.”.

21 **SEC. 116. CONFORMING AMENDMENT.**

22 Subparagraph (F) of section 212(n)(2) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1182) is amended
24 by striking “The preceding sentence shall apply to an em-

1 ployer regardless of whether or not the employer is an H-
2 1B-dependent employer.”.

3 **Subtitle C—Other Protections**

4 **SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE** 5 **DEPARTMENT OF LABOR.**

6 (a) DEPARTMENT OF LABOR WEBSITE.—Paragraph
7 (3) of section 212(n) of the Immigration and Nationality
8 Act (8 U.S.C. 1182(n)) is amended to read as follows:

9 “(3)(A) Not later than 90 days after the date of the
10 enactment of the H–1B and L–1 Visa Reform Act of
11 2009, the Secretary of Labor shall establish a searchable
12 Internet website for posting positions as required by para-
13 graph (1)(C). Such website shall be available to the public
14 without charge.

15 “(B) The Secretary may work with private companies
16 or nonprofit organizations to develop and operate the
17 Internet website described in subparagraph (A).

18 “(C) The Secretary may promulgate rules, after no-
19 tice and a period for comment, to carry out the require-
20 ments of this paragraph.”.

21 (b) REQUIREMENT FOR PUBLICATION.—The Sec-
22 retary of Labor shall submit to Congress and publish in
23 the Federal Register and other appropriate media a notice
24 of the date that the Internet website required by para-

1 graph (3) of section 212(n) of such Act, as amended by
2 subsection (a), will be operational.

3 (c) APPLICATION.—The amendments made by sub-
4 section (a) shall apply to an application filed on or after
5 the date that is 30 days after the date described in sub-
6 section (b).

7 **SEC. 122. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
8 **MENTS.**

9 (a) IMMIGRATION DOCUMENTS.—Section 204 of the
10 Immigration and Nationality Act (8 U.S.C. 1154) is
11 amended by adding at the end the following:

12 “(l) EMPLOYER TO PROVIDE IMMIGRATION PAPER-
13 WORK EXCHANGED WITH FEDERAL AGENCIES.—Not
14 later than 21 business days after receiving a written re-
15 quest from a former, current, or future employee or bene-
16 ficiary, an employer shall provide such employee or bene-
17 ficiary with the original (or a certified copy of the original)
18 of all petitions, notices, and other written communication
19 exchanged between the employer and the Department of
20 Labor, the Department of Homeland Security, or any
21 other Federal agency or department that is related to an
22 immigrant or nonimmigrant petition filed by the employer
23 for such employee or beneficiary.”

24 (b) REPORT ON JOB CLASSIFICATION AND WAGE
25 DETERMINATIONS.—Not later than 1 year after the date

1 of the enactment of this Act, the Comptroller General of
 2 the United States shall prepare a report analyzing the ac-
 3 curacy and effectiveness of the Secretary of Labor’s cur-
 4 rent job classification and wage determination system. The
 5 report shall—

6 (1) specifically address whether the systems in
 7 place accurately reflect the complexity of current job
 8 types as well as geographic wage differences; and

9 (2) make recommendations concerning nec-
 10 essary updates and modifications.

11 **SEC. 123. REQUIREMENTS FOR INFORMATION FOR H-1B**
 12 **AND L-1 NONIMMIGRANTS.**

13 Section 214 of the Immigration and Nationality Act
 14 (8 U.S.C. 1184) is amended by adding at the end the fol-
 15 lowing:

16 “(s) REQUIREMENTS FOR INFORMATION FOR H-1B
 17 AND L-1 NONIMMIGRANTS.—

18 “(1) IN GENERAL.—Upon issuing a visa to an
 19 applicant for nonimmigrant status pursuant to sub-
 20 paragraph (H)(i)(b) or (L) of section 101(a)(15)
 21 who is outside the United States, the issuing office
 22 shall provide the applicant with—

23 “(A) a brochure outlining the obligations
 24 of the applicant’s employer and the rights of
 25 the applicant with regard to employment under

1 Federal law, including labor and wage protec-
2 tions;

3 “(B) the contact information for appro-
4 priate Federal agencies or departments that
5 offer additional information or assistance in
6 clarifying such obligations and rights; and

7 “(C) a copy of the application submitted
8 for the nonimmigrant under section 212(n) or
9 the petition submitted for the nonimmigrant
10 under subsection (c)(2)(A), as appropriate.

11 “(2) Upon the issuance of a visa to an applicant re-
12 ferred to in paragraph (1) who is inside the United States,
13 the issuing officer of the Department of Homeland Secu-
14 rity shall provide the applicant with the material described
15 in clauses (i), (ii), and (iii) of subparagraph (A).”.

16 **SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
17 **EES.**

18 (a) IN GENERAL.—The Secretary of Labor is author-
19 ized to hire 200 additional employees to administer, over-
20 see, investigate, and enforce programs involving non-
21 immigrant employees described in section
22 101(a)(15)(H)(i)(B).

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out this section.

1 **SEC. 125. TECHNICAL CORRECTION.**

2 Section 212 of the Immigration and Nationality Act
 3 is amended by redesignating the second subsection (t), as
 4 added by section 1(b)(2)(B) of the Act entitled “An Act
 5 to amend and extend the Irish Peace Process Cultural and
 6 Training Program Act of 1998” (Public Law 108–449
 7 (118 Stat. 3470)), as subsection (u).

8 **SEC. 126. APPLICATION.**

9 Except as specifically otherwise provided, the amend-
 10 ments made by this title shall apply to applications filed
 11 on or after the date of the enactment of this Act.

12 **TITLE II—L-1 VISA FRAUD AND**
 13 **ABUSE PROTECTIONS**

14 **SEC. 201. PROHIBITION ON OUTPLACEMENT OF L-1 NON-**
 15 **IMMIGRANTS.**

16 (a) IN GENERAL.—Subparagraph (F) of section
 17 214(c)(2) of the Immigration and Nationality Act (8
 18 U.S.C. 1184(c)(2)) is amended to read as follows:

19 “(F)(i) Unless an employer receives a waiver under
 20 clause (ii), an employer may not employ an alien, for a
 21 cumulative period of more than 1 year, who—

22 “(I) will serve in a capacity involving specialized
 23 knowledge with respect to an employer for purposes
 24 of section 101(a)(15)(L); and

25 “(II) will be stationed primarily at the worksite
 26 of an employer other than the petitioning employer

1 or its affiliate, subsidiary, or parent, including pur-
2 suant to an outsourcing, leasing, or other con-
3 tracting agreement.”

4 “(ii) The Secretary of Homeland Security may grant
5 a waiver of the requirements of clause (i) for an employer
6 if the Secretary determines that the employer has estab-
7 lished that—

8 “(I) the employer with whom the alien referred
9 to in clause (i) would be placed has not displaced
10 and does not intend to displace a United States
11 worker employed by the employer within the period
12 beginning 180 days after the date of the placement
13 of such alien with the employer;

14 “(II) such alien will not be controlled and su-
15 pervised principally by the employer with whom the
16 nonimmigrant would be placed; and

17 “(III) the placement of the nonimmigrant is not
18 essentially an arrangement to provide labor for hire
19 for an unaffiliated employer with whom the non-
20 immigrant will be placed, rather than a placement in
21 connection with the provision of a product or service
22 for which specialized knowledge specific to the peti-
23 tioning employer is necessary.

1 “(iii) The Secretary shall grant or deny a waiver
2 under clause (ii) not later than 7 days after the date that
3 the Secretary receives the application for the waiver.”.

4 (b) REGULATIONS.—The Secretary of Homeland Se-
5 curity shall promulgate rules, after notice and a period
6 for comment, for an employer to apply for a waiver under
7 subparagraph (F)(ii) of section 214(c)(2), as added by
8 subsection (a).

9 **SEC. 202. L-1 EMPLOYER PETITION REQUIREMENTS FOR**
10 **EMPLOYMENT AT NEW OFFICES.**

11 Section 214(c)(2) of the Immigration and Nationality
12 Act (8 U.S.C. 1184(c)(2)) is amended by adding at the
13 end the following:

14 “(G)(i) If the beneficiary of a petition under this
15 paragraph is coming to the United States to open, or be
16 employed in, a new office, the petition may be approved
17 for up to 12 months only if—

18 “(I) the alien has not been the beneficiary of 2
19 or more petitions under this subparagraph during
20 the immediately preceding 2 years; and

21 “(II) the employer operating the new office
22 has—

23 “(aa) an adequate business plan;

24 “(bb) sufficient physical premises to carry
25 out the proposed business activities; and

1 “(cc) the financial ability to commence
2 doing business immediately upon the approval
3 of the petition.

4 “(ii) An extension of the approval period under clause
5 (i) may not be granted until the importing employer sub-
6 mits an application to the Secretary of Homeland Security
7 that contains—

8 “(I) evidence that the importing employer
9 meets the requirements of this subsection;

10 “(II) evidence that the beneficiary of the peti-
11 tion is eligible for nonimmigrant status under sec-
12 tion 101(a)(15)(L);

13 “(III) a statement summarizing the original pe-
14 tition;

15 “(IV) evidence that the importing employer has
16 fully complied with the business plan submitted
17 under clause (i)(I);

18 “(V) evidence of the truthfulness of any rep-
19 resentations made in connection with the filing of
20 the original petition;

21 “(VI) evidence that the importing employer, for
22 the entire period beginning on the date on which the
23 petition was approved under clause (i), has been
24 doing business at the new office through regular,

1 systematic, and continuous provision of goods and
2 services;

3 “(VII) a statement of the duties the beneficiary
4 has performed at the new office during the approval
5 period under clause (i) and the duties the beneficiary
6 will perform at the new office during the extension
7 period granted under this clause;

8 “(VIII) a statement describing the staffing at
9 the new office, including the number of employees
10 and the types of positions held by such employees;

11 “(IX) evidence of wages paid to employees;

12 “(X) evidence of the financial status of the new
13 office; and

14 “(XI) any other evidence or data prescribed by
15 the Secretary.

16 “(iii) A new office employing the beneficiary of an
17 L-1 petition approved under this paragraph shall do busi-
18 ness only through regular, systematic, and continuous pro-
19 vision of goods and services for the entire period for which
20 the petition is sought.

21 “(iv) Notwithstanding clause (ii), and subject to the
22 maximum period of authorized admission set forth in sub-
23 paragraph (D), the Secretary of Homeland Security, in
24 the Secretary’s discretion, may approve a subsequently
25 filed petition on behalf of the beneficiary to continue em-

1 ployment at the office described in this subparagraph for
2 a period beyond the initially granted 12-month period if
3 the importing employer has been doing business at the
4 new office through regular, systematic, and continuous
5 provision of goods and services for the 6 months imme-
6 diately preceding the date of extension petition filing and
7 demonstrates that the failure to satisfy any of the require-
8 ments described in those subclauses was directly caused
9 by extraordinary circumstances, as determined by the Sec-
10 retary in the Secretary’s discretion.”.

11 **SEC. 203. COOPERATION WITH SECRETARY OF STATE.**

12 Section 214(c)(2) of the Immigration and Nationality
13 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,
14 is further amended by adding at the end the following:

15 “(H) For purposes of approving petitions under this
16 paragraph, the Secretary of Homeland Security shall work
17 cooperatively with the Secretary of State to verify the ex-
18 istence or continued existence of a company or office in
19 the United States or in a foreign country.”.

20 **SEC. 204. INVESTIGATION AND DISPOSITION OF COM-**
21 **PLAINTS AGAINST L-1 EMPLOYERS.**

22 Section 214(c)(2) of the Immigration and Nationality
23 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202
24 and 203, is further amended by adding at the end the
25 following:

1 “(I)(i) The Secretary of Homeland Security may ini-
2 tiate an investigation of any employer that employs non-
3 immigrants described in section 101(a)(15)(L) with re-
4 gard to the employer’s compliance with the requirements
5 of this subsection.

6 “(ii) If the Secretary receives specific credible infor-
7 mation from a source who is likely to have knowledge of
8 an employer’s practices, employment conditions, or com-
9 pliance with the requirements under this subsection, the
10 Secretary may conduct an investigation into the employ-
11 er’s compliance with the requirements of this subsection.
12 The Secretary may withhold the identity of the source
13 from the employer, and the source’s identity shall not be
14 subject to disclosure under section 552 of title 5, United
15 States Code.

16 “(iii) The Secretary shall establish a procedure for
17 any person desiring to provide to the Secretary informa-
18 tion described in clause (ii) that may be used, in whole
19 or in part, as the basis for the commencement of an inves-
20 tigation described in such clause, to provide the informa-
21 tion in writing on a form developed and provided by the
22 Secretary and completed by or on behalf of the person.

23 “(iv) No investigation described in clause (ii) (or
24 hearing described in clause (vi) based on such investiga-
25 tion) may be conducted with respect to information about

1 a failure to comply with the requirements under this sub-
2 section, unless the Secretary receives the information not
3 later than 24 months after the date of the alleged failure.

4 “(v) Before commencing an investigation of an em-
5 ployer under clause (i) or (ii), the Secretary shall provide
6 notice to the employer of the intent to conduct such inves-
7 tigation. The notice shall be provided in such a manner,
8 and shall contain sufficient detail, to permit the employer
9 to respond to the allegations before an investigation is
10 commenced. The Secretary is not required to comply with
11 this clause if the Secretary determines that to do so would
12 interfere with an effort by the Secretary to investigate or
13 secure compliance by the employer with the requirements
14 of this subsection. There shall be no judicial review of a
15 determination by the Secretary under this clause.

16 “(vi) If the Secretary, after an investigation under
17 clause (i) or (ii), determines that a reasonable basis exists
18 to make a finding that the employer has failed to comply
19 with the requirements under this subsection, the Secretary
20 shall provide the interested parties with notice of such de-
21 termination and an opportunity for a hearing in accord-
22 ance with section 556 of title 5, United States Code, not
23 later than 120 days after the date of such determination.
24 If such a hearing is requested, the Secretary shall make

1 a finding concerning the matter by not later than 120 days
2 after the date of the hearing.

3 “(vii) If the Secretary, after a hearing, finds a rea-
4 sonable basis to believe that the employer has violated the
5 requirements under this subsection, the Secretary shall
6 impose a penalty under subparagraph (L).

7 “(viii)(I) The Secretary may conduct surveys of the
8 degree to which employers comply with the requirements
9 under this section.

10 “(II) The Secretary shall—

11 “(aa) conduct annual compliance audits of not
12 less than 1 percent of the employers that employ
13 nonimmigrants described in section 101(a)(15)(L)
14 during the applicable fiscal year;

15 “(bb) conduct annual compliance audits of each
16 employer with more than 100 employees who work
17 in the United States if more than 15 percent of such
18 employees are nonimmigrants described in
19 101(a)(15)(L); and

20 “(cc) make available to the public an executive
21 summary or report describing the general findings of
22 the audits carried out pursuant to this subclause.”.

1 **SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L-**
2 **1 NONIMMIGRANT.**

3 (a) IN GENERAL.—Section 214(c)(2) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1184(c)(2)), as amend-
5 ed by section 202, 203, and 204, is further amended by
6 adding at the end the following:

7 “(J)(i) An employer that employs a nonimmigrant
8 described in section 101(a)(15)(L) for a cumulative period
9 of time in excess of 1 year shall—

10 “(I) offer such nonimmigrant, during the period
11 of authorized employment, wages, based on the best
12 information available at the time the application is
13 filed, which are not less than the highest of—

14 “(aa) the locally determined prevailing
15 wage level for the occupational classification in
16 the area of employment;

17 “(bb) the median average wage for all
18 workers in the occupational classification in the
19 area of employment; and

20 “(cc) the median wage for skill level 2 in
21 the occupational classification found in the
22 most recent Occupational Employment Statis-
23 tics survey; and

24 “(II) provide working conditions for such non-
25 immigrant that will not adversely affect the working
26 conditions of workers similarly employed.

1 “(ii) If an employer, in such previous period specified
2 by the Secretary of Homeland Security, employed 1 or
3 more such nonimmigrants, the employer shall provide to
4 the Secretary of Homeland Security the Internal Revenue
5 Service Form W-2 Wage and Tax Statement filed by the
6 employer with respect to such nonimmigrants for such pe-
7 riod.

8 “(iii) It is a failure to meet a condition under this
9 subparagraph for an employer who has filed a petition to
10 import 1 or more aliens as nonimmigrants described in
11 section 101(a)(15)(L)—

12 “(I) to require such a nonimmigrant to pay a
13 penalty for ceasing employment with the employer
14 before a date mutually agreed to by the non-
15 immigrant and the employer; or

16 “(II) to fail to offer to such a nonimmigrant,
17 during the nonimmigrant’s period of authorized em-
18 ployment, on the same basis, and in accordance with
19 the same criteria, as the employer offers to United
20 States workers, benefits and eligibility for benefits,
21 including—

22 “(aa) the opportunity to participate in
23 health, life, disability, and other insurance
24 plans;

1 “(bb) the opportunity to participate in re-
2 tirement and savings plans; and

3 “(cc) cash bonuses and noncash compensa-
4 tion, such as stock options (whether or not
5 based on performance).

6 “(iv) The Secretary of Homeland Security shall de-
7 termine whether a required payment under clause (iii)(I)
8 is a penalty (and not liquidated damages) pursuant to rel-
9 evant State law.”.

10 (b) REGULATIONS.—The Secretary of Homeland Se-
11 curity shall promulgate rules, after notice and a period
12 of comment, to implement the requirements of subpara-
13 graph (J) of section 214(c)(2) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1184(c)(2)), as added by sub-
15 section (a). In promulgating these rules, the Secretary
16 shall take into consideration any special circumstances re-
17 lating to intracompany transfers.

18 **SEC. 206. PENALTIES.**

19 Section 214(c)(2) of the Immigration and Nationality
20 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202,
21 203, 204, and 205, is further amended by adding at the
22 end the following:

23 “(K)(i) If the Secretary of Homeland Security finds,
24 after notice and an opportunity for a hearing, a failure
25 by an employer to meet a condition under subparagraph

1 (F), (G), (J), or (L) or a misrepresentation of material
2 fact in a petition to employ 1 or more aliens as non-
3 immigrants described in section 101(a)(15)(L)—

4 “(I) the Secretary shall impose such administrative
5 remedies (including civil monetary penalties in an amount
6 not to exceed \$2,000 per violation) as the Secretary deter-
7 mines to be appropriate;

8 “(II) the Secretary may not, during a period of at
9 least 1 year, approve a petition for that employer to em-
10 ploy 1 or more aliens as such nonimmigrants; and

11 “(III) in the case of a violation of subparagraph (J)
12 or (L), the employer shall be liable to the employees
13 harmed by such violation for lost wages and benefits.

14 “(ii) If the Secretary finds, after notice and an oppor-
15 tunity for a hearing, a willful failure by an employer to
16 meet a condition under subparagraph (F), (G), (J), or (L)
17 or a willful misrepresentation of material fact in a petition
18 to employ 1 or more aliens as nonimmigrants described
19 in section 101(a)(15)(L)—

20 “(I) the Secretary shall impose such adminis-
21 trative remedies (including civil monetary penalties
22 in an amount not to exceed \$10,000 per violation)
23 as the Secretary determines to be appropriate;

24 “(II) the Secretary may not, during a period of
25 at least 2 years, approve a petition filed for that em-

1 ployer to employ 1 or more aliens as such non-
2 immigrants; and

3 “(III) in the case of a violation of subparagraph
4 (J) or (L), the employer shall be liable to the em-
5 ployees harmed by such violation for lost wages and
6 benefits.”.

7 **SEC. 207. PROHIBITION ON RETALIATION AGAINST L-1**
8 **NONIMMIGRANTS.**

9 Section 214(c)(2) of the Immigration and Nationality
10 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,
11 203, 204, 205, and 206, is further amended by adding
12 at the end the following:

13 “(L)(i) It is a violation of this subparagraph for an
14 employer who has filed a petition to import 1 or more
15 aliens as nonimmigrants described in section
16 101(a)(15)(L) to take, fail to take, or threaten to take
17 or fail to take, a personnel action, or to intimidate, threat-
18 en, restrain, coerce, blacklist, discharge, or discriminate
19 in any other manner against an employee because the em-
20 ployee—

21 “(I) has disclosed information that the em-
22 ployee reasonably believes evidences a violation of
23 this subsection, or any rule or regulation pertaining
24 to this subsection; or

1 “(II) cooperates or seeks to cooperate with the
2 requirements of this subsection, or any rule or regu-
3 lation pertaining to this subsection.

4 “(ii) In this subparagraph, the term ‘employee’ in-
5 cludes—

6 “(I) a current employee;

7 “(II) a former employee; and

8 “(III) an applicant for employment.”.

9 **SEC. 208. REPORTS ON L-1 NONIMMIGRANTS.**

10 Section 214(c)(8) of the Immigration and Nationality
11 Act (8 U.S.C. 1184(c)(8)) is amended by inserting “(L),”
12 after “(H),”.

13 **SEC. 209. TECHNICAL AMENDMENTS.**

14 Section 214(c)(2) of the Immigration and Nationality
15 Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attor-
16 ney General” each place it appears and inserting “Sec-
17 retary of Homeland Security”.

18 **SEC. 210. APPLICATION.**

19 The amendments made by sections 201 through 207
20 shall apply to applications filed on or after the date of
21 the enactment of this Act.

22 **SEC. 211. REPORT ON L-1 BLANKET PETITION PROCESS.**

23 (a) REQUIREMENT FOR REPORT.—Not later than 6
24 months after the date of the enactment of this Act, the
25 Inspector General of the Department of Homeland Secu-

1 rity shall submit to the appropriate committees of Con-
2 gress a report regarding the use of blanket petitions under
3 section 214(c)(2)(A) of the Immigration and Nationality
4 Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the
5 efficiency and reliability of the process for reviewing such
6 blanket petitions, including whether the process includes
7 adequate safeguards against fraud and abuse.

8 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
9 this section the term “appropriate committees of Con-
10 gress” means—

11 (1) the Committee on Homeland Security and
12 Governmental Affairs of the Senate;

13 (2) the Committee on the Judiciary of the Sen-
14 ate;

15 (3) the Committee on Homeland Security of the
16 House of Representatives; and

17 (4) the Committee on the Judiciary of the
18 House of Representatives.

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