

116TH CONGRESS
1ST SESSION

H. R. 5174

To amend the Immigration and Nationality Act to provide for a State-sponsored nonimmigrant pilot program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2019

Mr. CURTIS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, Ways and Means, Agriculture, Financial Services, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to provide for a State-sponsored nonimmigrant pilot program, 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 This Act may be cited as the “State Sponsored Visa
5 Pilot Program Act of 2019”.

6 **SEC. 2. STATE-SPONSORED NONIMMIGRANT PROGRAM.**

7 Section 101(a)(15) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)) is amended—

1 (1) in subparagraph (U)(iii), by striking the
2 “or” at the end;

3 (2) in subparagraph (V), by striking the period
4 at the end and inserting “; or”; and

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

6 “(W)(i) an alien who is sponsored by a
7 State and who is coming temporarily to the
8 United States to reside in the State to perform
9 services, provide capital investment, direct the
10 operations of an enterprise, or otherwise con-
11 tribute to the economic development agenda of
12 the State in a manner determined by the State;
13 and

14 “(ii) the alien spouse and minor children of
15 any alien described in clause (i).”.

16 **SEC. 3. ADMISSION OF STATE-SPONSORED NON-**
17 **IMMIGRANTS.**

18 (a) REQUIREMENTS FOR STATE-SPONSORED NON-
19 IMMIGRANTS.—Section 214 of the Immigration and Na-
20 tionality Act (8 U.S.C. 1184) is amended—

21 (1) in subsection (h), by striking “(H)(i)(b) or
22 (c), (L), or (V)” and inserting “(H)(i)(b), (H)(i)(c),
23 (L), (V), or (W)”; and

24 (2) by adding at the end the following:

1 “(s) REQUIREMENTS APPLICABLE TO STATE-SPON-
2 SORED NONIMMIGRANT VISAS.—

3 “(1) DEFINITIONS.—In this subsection:

4 “(A) RESIDE.—The term ‘reside’ means to
5 live and establish a residence in a State for a
6 consecutive period of more than 14 days (not
7 including any period after the approval of the
8 resident’s petition for immigrant status).

9 “(B) SECRETARY.—Except as otherwise
10 specifically provided in this subsection, the term
11 ‘Secretary’ means the Secretary of Homeland
12 Security.

13 “(C) STATE.—Notwithstanding section
14 101(a)(36), the term ‘State’ means a State of
15 the United States and the District of Columbia.

16 “(D) STATE-SPONSORED NON-
17 IMMIGRANT.—The term ‘State-sponsored non-
18 immigrant’ means an alien who has been spon-
19 sored by a State for admission under section
20 101(a)(15)(W).

21 “(E) STATE-SPONSORED NONIMMIGRANT
22 PROGRAM.—The term ‘State-sponsored non-
23 immigrant program’ means a nonimmigrant
24 program to regulate the employment, invest-

1 ment, and residence of State-sponsored non-
2 immigrants.

3 “(F) STATE-SPONSORED NONIMMIGRANT
4 STATUS.—The term ‘State-sponsored non-
5 immigrant status’ means status granted to an
6 alien admitted as a nonimmigrant pursuant to
7 section 101(a)(15)(W).

8 “(2) STATE-SPONSORED NONIMMIGRANT PRO-
9 GRAM.—Any State may submit an application to the
10 Secretary to participate in the State-sponsored non-
11 immigrant program by sponsoring aliens for admis-
12 sion to the United States.

13 “(3) STATE-SPONSORED NONIMMIGRANT PRO-
14 GRAM APPROVAL.—The Secretary shall approve any
15 application submitted by a State (or compact of
16 States) under paragraph (2) for a State-sponsored
17 nonimmigrant program that—

18 “(A) was approved by the legislature of the
19 State;

20 “(B) regulates, in a manner determined by
21 the State, the employment and residence of
22 State-sponsored nonimmigrants;

23 “(C) implements procedures, in a manner
24 determined by the Secretary, to inform the Sec-
25 retary of the failure of a nonimmigrant to com-

1 ply with the terms of State-sponsored non-
2 immigrant status when the State is made aware
3 of such failure;

4 “(D) allows, in a manner determined by
5 the State, a State-sponsored nonimmigrant who
6 has been admitted to seek employment with an
7 employer other than the employer with which
8 the nonimmigrant was initially employed; and

9 “(E) implements procedures, in a manner
10 determined by the Secretary, to annually inform
11 the Secretary of the address and employment of
12 all State-sponsored nonimmigrants residing in
13 the State.

14 “(4) STATE PETITION.—

15 “(A) IN GENERAL.—A State that partici-
16 pates in the State-sponsored nonimmigrant pro-
17 gram shall submit a petition in such form and
18 containing such information as the Secretary
19 shall specify to sponsor an alien under this sub-
20 section.

21 “(B) APPROVAL.—A visa may not be
22 granted to an alien described in subparagraph
23 (A) until the Secretary approves a petition sub-
24 mitted pursuant to subparagraph (A). Such ap-

1 proval does not, of itself, establish that the
2 alien is a nonimmigrant.

3 “(C) FEE.—A State that submits a peti-
4 tion under subparagraph (A) shall pay a fee in
5 amount determined by the Secretary to cover
6 the cost of the adjudication of the application.

7 “(5) STATE-SPONSORED NONIMMIGRANTS.—

8 The Secretary of State shall approve a non-
9 immigrant visa for an alien and the Secretary of
10 Homeland Security shall admit the alien to the
11 United States as a State-sponsored nonimmigrant or
12 grant State-sponsored nonimmigrant status to the
13 alien if the alien—

14 “(A) is otherwise admissible under this
15 Act;

16 “(B) has not been convicted of a felony,
17 any crime of violence (as defined in section 16
18 of title 18, United States Code), or any crime
19 of reckless driving or of driving while intoxi-
20 cated or under the influence of alcohol or of
21 prohibited substances;

22 “(C) is petitioned for by a State that par-
23 ticipates in the State-sponsored nonimmigrant
24 program approved by the Secretary under para-
25 graph (3);

1 “(D) has not previously violated any term
2 or condition of State-sponsored nonimmigrant
3 status; and

4 “(E) has paid any bond that the State may
5 require under paragraph (13).

6 “(6) PERIOD OF AUTHORIZED STATUS.—

7 “(A) IN GENERAL.—The period of author-
8 ized status for a State-sponsored nonimmigrant
9 shall be a period determined by the State, but
10 may not exceed 3 years.

11 “(B) RENEWAL.—

12 “(i) LOCATION.—Subject to clause
13 (ii), the period of authorized status under
14 subparagraph (A) shall be renewable inside
15 or outside of the United States.

16 “(ii) CONDITION.—Renewals under
17 clause (i) may be granted only if—

18 “(I) the sponsoring State re-
19 quests such renewal; and

20 “(II) the State-sponsored non-
21 immigrant has resided continuously in
22 such sponsoring State, or States sub-
23 ject to an interstate compact (not in-
24 cluding any period of residence after
25 the approval of a petition for immi-

1 grant status of which the alien is a
2 beneficiary).

3 “(C) TERMINATION.—The Secretary shall
4 terminate the period of authorized status if—

5 “(i) the State-sponsored non-
6 immigrant resides or works outside of the
7 State, or States subject to an interstate
8 compact under paragraph (7), that spon-
9 sored the alien;

10 “(ii) the State-sponsored non-
11 immigrant fails to follow all rules and reg-
12 ulations required by the State, as deter-
13 mined by the State (following any appeals
14 process the State may create); or

15 “(iii) the State that sponsored the
16 nonimmigrant requests that the status of
17 the nonimmigrant be terminated (following
18 any appeals process the State may create)
19 unless another State sponsors the non-
20 immigrant.

21 “(D) EMPLOYMENT AUTHORIZATION.—

22 “(i) IN GENERAL.—All aliens admit-
23 ted as State-sponsored nonimmigrants
24 under section 101(a)(15)(W)—

1 “(I) shall be authorized for em-
2 ployment for purposes of section
3 274A; and

4 “(II) shall be issued appropriate
5 documentation evidencing such au-
6 thorization.

7 “(ii) STATE REGULATION.—Notwith-
8 standing clause (i), the employment of
9 State-sponsored nonimmigrants may be
10 regulated in a manner determined by each
11 State that participates in the State-spon-
12 sored nonimmigrant program.

13 “(7) STATE COMPACTS.—

14 “(A) IN GENERAL.—States may enter into
15 interstate compacts for the joint implementa-
16 tion or administration of the State-sponsored
17 nonimmigrant program in such States.

18 “(B) CONSIDERATION.—A State-sponsored
19 nonimmigrant shall be considered to be spon-
20 sored by a State if the State-sponsored non-
21 immigrant is sponsored by any State subject to
22 an interstate compact under subparagraph (A)
23 and resides in any such State.

24 “(8) APPEALS.—

1 “(A) FEDERAL APPEALS.—The denial of
2 an application by a State to be a State-spon-
3 sored nonimmigrant or the request to terminate
4 the period of authorized status by a State—

5 “(i) is not reviewable by any Federal
6 department, agency, or court; and

7 “(ii) may not be grounds for an ap-
8 peal of a termination of a visa or status
9 for a State-sponsored nonimmigrant.

10 “(B) STATE APPEALS.—At the sole discre-
11 tion of the State and in a manner determined
12 by the State, a State that participates in the
13 State-sponsored nonimmigrant program may
14 create a process for a State-sponsored non-
15 immigrant or an alien that has applied for par-
16 ticipation in the State-sponsored nonimmigrant
17 program in the State to appeal an adjudication
18 of an application by the State or determination
19 by the State that the State-sponsored non-
20 immigrant violated the terms or conditions that
21 were created by the State for the participation
22 of the alien in the State-sponsored non-
23 immigrant program in the State.

24 “(9) WAIVER OF RIGHTS PROHIBITED.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (C), a State-sponsored non-
3 immigrant may not be required to waive any
4 substantive rights or protections under this Act.

5 “(B) CONSTRUCTION.—Nothing under this
6 paragraph may be construed to affect the inter-
7 pretation of any other law.

8 “(C) EXCEPTION.—Notwithstanding sub-
9 paragraph (A) or any other provision of law, an
10 alien may not be provided State-sponsored non-
11 immigrant status unless the alien has waived
12 any right—

13 “(i) to review or appeal under this Act
14 of an immigration officer’s determination
15 as to the admissibility of the alien at the
16 port of entry into the United States; or

17 “(ii) to contest or appeal, other than
18 on the basis of an application for asylum,
19 any action for removal of the alien.

20 “(10) TAX RESPONSIBILITIES.—An employer
21 shall comply with all applicable Federal, State, and
22 local tax laws with respect to each State-sponsored
23 nonimmigrant employed by the employer.

24 “(11) LABOR AND TAX LAWS.—State-sponsored
25 nonimmigrants shall be subject to all Federal, State,

1 and local laws regarding taxation, employment, or
2 hiring of persons in the State.

3 “(12) FEDERAL PUBLIC BENEFITS.—

4 “(A) IN GENERAL.—State-sponsored non-
5 immigrants—

6 “(i) are not entitled to the premium
7 assistance tax credit authorized under sec-
8 tion 36B of the Internal Revenue Code of
9 1986;

10 “(ii) shall be subject to the rules ap-
11 plicable to individuals who are not lawfully
12 present set forth in subsection (e) of such
13 section; and

14 “(iii)(I) shall not be allowed any cred-
15 it under section 24 or 32 of the Internal
16 Revenue Code of 1986; and

17 “(II) in the case of a joint return, no
18 credit shall be allowed under either such
19 section if both spouses are State-sponsored
20 nonimmigrants.

21 “(B) EMPLOYER FEE.—For purposes of
22 subsections (a)(2) and (b)(1)(B) of 4980H of
23 the Internal Revenue Code of 1986, a State-
24 sponsored nonimmigrant shall be treated as a
25 full-time employee certified as having enrolled

1 in a qualified health plan with respect to which
2 an applicable premium tax credit or cost-shar-
3 ing reduction is allowed or paid with respect to
4 the employee.

5 “(C) OTHER BENEFITS.—Notwithstanding
6 any other provision of law, a State-sponsored
7 nonimmigrant shall not be eligible for—

8 “(i) any assistance or benefits pro-
9 vided under a State program funded under
10 the temporary assistance for needy families
11 program under part A of title IV of the
12 Social Security Act (42 U.S.C. 601 et
13 seq.);

14 “(ii) any medical assistance provided
15 under a State Medicaid plan under title
16 XIX of the Social Security Act (42 U.S.C.
17 1396 et seq.) or under a waiver of such
18 plan, other than emergency medical assist-
19 ance provided under paragraphs (2) and
20 (3) of section 1903(v), and any child
21 health assistance provided under a State
22 child health plan under title XXI of the
23 Social Security Act (42 U.S.C. 1397aa et
24 seq.) or under a waiver of such plan;

1 “(iii) any benefits or assistance pro-
2 vided under the supplemental nutrition as-
3 sistance program established under the
4 Food and Nutrition Act of 2008 (7 U.S.C.
5 2011 et seq.);

6 “(iv) supplemental security income
7 benefits provided under title XVI of the
8 Social Security Act (42 U.S.C. 1381);

9 “(v) Federal Pell Grants under sec-
10 tion 401 of the Higher Education Act of
11 1965 (20 U.S.C. 1070a);

12 “(vi) housing vouchers under section
13 8 of the United States Housing Act of
14 1937 (42 U.S.C. 1437f);

15 “(vii) Federal old-age, survivors, and
16 disability insurance benefits under title II
17 of the Social Security Act (42 U.S.C. 401
18 et seq.);

19 “(viii) health insurance benefits for
20 the aged and disabled under the Medicare
21 Program established under title XVIII of
22 the Social Security Act (42 U.S.C. 1395 et
23 seq.); or

24 “(ix) assistance or benefits provided
25 under the program of block grants to

1 States for social services under subtitle A
2 of title XX of the Social Security Act (42
3 U.S.C. 1397 et seq.).

4 “(D) EMPLOYER PAYMENTS.—An em-
5 ployer of a State-sponsored nonimmigrant shall
6 pay into the general fund of the Treasury an
7 amount equivalent to the Federal tax on the
8 wages paid to the nonimmigrants that the em-
9 ployer would be obligated to pay under chapters
10 21 and 23 of the Internal Revenue Code of
11 1986 had the nonimmigrants been subject to
12 such chapters, subject to the same penalties as
13 provided for failure to pay such tax.

14 “(E) INCLUSION OF NONIMMIGRANTS IN
15 SAVE.—Not later than 30 days after the date of
16 the enactment of the State Sponsored Visa
17 Pilot Program Act of 2019, the Secretary shall
18 modify the Systematic Alien Verification for
19 Entitlements Program of the United States
20 Citizenship and Immigration Services to add
21 any status under section 101(a)(15)(W) as an
22 alien category that is ineligible for any benefit
23 program listed in subparagraph (C).

24 “(13) BONDS.—

1 “(A) IN GENERAL.—States may require
2 State-sponsored nonimmigrants to pay a bond
3 in an amount determined by the State to
4 incentivize voluntary compliance with the terms
5 and conditions of the State-sponsored non-
6 immigrant program.

7 “(B) STUDY.—

8 “(i) IN GENERAL.—At the end of each
9 fiscal year, the Inspector General of the
10 Department of Homeland Security and the
11 Comptroller General of the United States
12 shall each independently submit a report to
13 the congressional committees specified in
14 clause (iii) that identifies, for each State
15 that participates in the State-sponsored
16 nonimmigrant program, the percentage of
17 State-sponsored nonimmigrants that have
18 resided or worked illegally in a State other
19 than the State that sponsored them (not
20 including any State-sponsored non-
21 immigrants who are beneficiaries of ap-
22 proved immigration petitions).

23 “(ii) ASSIGNMENT.—A State-spon-
24 sored nonimmigrant who resides or works
25 illegally in a State other than the State

1 that sponsored them shall be assigned to
2 the percentage of the State that initially
3 sponsored the alien if the State partici-
4 pates in an interstate compact.

5 “(iii) CONGRESSIONAL COMMIT-
6 TEES.—The congressional committees
7 specified in this clause are—

8 “(I) the Committee on Homeland
9 Security and Governmental Affairs of
10 the Senate;

11 “(II) the Committee on the Judi-
12 ciary of the Senate;

13 “(III) the Committee on Home-
14 land Security of the House of Rep-
15 resentatives; and

16 “(IV) the Committee on the Ju-
17 diciary of the House of Representa-
18 tives.

19 “(C) MANDATORY BONDS.—

20 “(i) IN GENERAL.—During the first
21 fiscal year following a determination under
22 subparagraph (B) by the Comptroller Gen-
23 eral or the Inspector General of the De-
24 partment of Homeland Security that more
25 than 3 percent of the State-sponsored non-

1 immigrants sponsored by a State violated
2 the terms and conditions of State-spon-
3 sored nonimmigrant status in the most re-
4 cently completed fiscal year, the State shall
5 require each State-sponsored non-
6 immigrant in the State, as a condition of
7 participation in the State-sponsored non-
8 immigrant program, to post a bond equal
9 to not less than \$4,000.

10 “(ii) SUBSEQUENT BONDS.—The bond
11 amount under clause (i) shall be raised by
12 \$1,000 during each fiscal year following a
13 subsequent determination under subpara-
14 graph (B) by the Comptroller General or
15 the Inspector General of the Department
16 of Homeland Security that more than 3
17 percent of the State-sponsored non-
18 immigrants sponsored by the State violated
19 the terms and conditions of State-spon-
20 sored nonimmigrant status in the most re-
21 cently completed fiscal year.

22 “(iii) INFLATION ADJUSTMENT.—Ef-
23 fective for the first fiscal year that begins
24 more than 6 months after the date of the
25 enactment of the State Sponsored Visa

1 Pilot Program Act of 2019, and for each
2 fiscal year thereafter, the amounts de-
3 scribed in this subparagraph shall be in-
4 creased by the percentage (if any) by
5 which the Consumer Price Index for the
6 month of June preceding the date on
7 which such increase takes effect exceeds
8 the Consumer Price Index for all urban
9 consumers published by the Department of
10 Labor for the same month of the preceding
11 calendar year.

12 “(D) REIMBURSEMENT OF BONDS.—

13 “(i) IN GENERAL.—Bonds paid to a
14 State under this paragraph shall be reim-
15 bursed to any State-sponsored non-
16 immigrant that has not worked or resided
17 in a State other than the State that spon-
18 sored the nonimmigrant or otherwise re-
19 sided in the United States without status
20 under the immigration laws in accordance
21 with this subparagraph.

22 “(ii) FULL REIMBURSEMENT.—The
23 full amount of the bond shall be reim-
24 bursed in full immediately after—

1 “(I)(aa) the alien applies to the
2 Secretary of State (or the designee of
3 such Secretary) at a United States
4 embassy, consulate, or, if specified by
5 the Secretary, other locations outside
6 the United States; and

7 “(bb) in connection with the ap-
8 plication, the State-sponsored non-
9 immigrant confirms his or her iden-
10 tity, or verifies his or her departure at
11 such time from the United States pur-
12 suant to a biometric entry and exit
13 data system;

14 “(II) an approved petition for
15 lawful permanent residency is ap-
16 proved on behalf of the State-spon-
17 sored nonimmigrant; or

18 “(III) the State-sponsored non-
19 immigrant dies.

20 “(iii) PAYEE.—

21 “(I) DEATH OF NON-
22 IMMIGRANT.—Upon the death of a
23 State-sponsored nonimmigrant, pay-
24 ment shall be immediately paid to
25 such State-sponsored nonimmigrant’s

1 next of kin, as designated by such
2 State-sponsored nonimmigrant on the
3 application to be a State-sponsored
4 nonimmigrant.

5 “(II) BANK ACCOUNT.—A State-
6 sponsored nonimmigrant may specify
7 on the application to be a State-spon-
8 sored nonimmigrant a bank account
9 to which such amount be sent after
10 the satisfaction of a condition speci-
11 fied in clause (ii).

12 “(iv) DENIAL OF REIMBURSEMENT.—
13 Funds of a State-sponsored nonimmigrant
14 held under this paragraph may not be de-
15 nied by a State to the nonimmigrant un-
16 less the State demonstrates, by clear and
17 convincing evidence, that the non-
18 immigrant knowingly violated a term or
19 condition of State-sponsored nonimmigrant
20 status—

21 “(I) by failing to depart the
22 United States at the end of the period
23 of authorized status; or

1 “(II) working or residing in a
2 State that did not sponsor the non-
3 immigrant.

4 “(v) NOTICE.—The Secretary of
5 State, in conjunction with the Secretary of
6 Homeland Security, shall inform the State
7 that the State-sponsored nonimmigrant
8 has complied with clause (i).

9 “(14) PENALTIES.—If a State-sponsored non-
10 immigrant works or resides outside of the State, or
11 any of the States under an interstate compact that
12 sponsored the nonimmigrant or fails to comply with
13 any term or condition of State-sponsored non-
14 immigrant status, the Secretary shall—

15 “(A) revoke the employment authorization
16 of such nonimmigrant; and

17 “(B) initiate and expedited removal in ac-
18 cordance with section 235.

19 “(15) STATE ENFORCEMENT.—

20 “(A) IN GENERAL.—A State that partici-
21 pates in the State-sponsored nonimmigrant pro-
22 gram may enforce all rules and regulations of
23 the State-sponsored nonimmigrant program in
24 the State against employers to the same extent
25 as any other labor laws under State law.

1 “(B) APPREHENSION.—As a condition of
2 participation in the State-sponsored non-
3 immigrant program, a State shall reimburse
4 any other State and any Federal agency that
5 has apprehended and detained a State-spon-
6 sored nonimmigrant sponsored by the State for
7 the full costs of apprehension, detention, or re-
8 moval of the nonimmigrant upon request of the
9 apprehending State or Federal agency.

10 “(C) PROCESS.—The Secretary shall es-
11 tablish a process through which a State may
12 seek reimbursement under subparagraph (B).

13 “(16) SUSPENSION OF PROGRAM APPROVAL.—
14 The Secretary shall suspend admissions under the
15 State-sponsored nonimmigrant program for any
16 State that fails—

17 “(A) to reimburse another State or a Fed-
18 eral agency under paragraph (15)(B) not later
19 than 1 year after a final judgment against the
20 State; or

21 “(B) to reimburse, in accordance with
22 paragraph (13)(D), a State-sponsored non-
23 immigrant who—

24 “(i) has departed the United States;

1 “(ii) did not seek employment without
2 authorization in a State that did not spon-
3 sor the nonimmigrant; and

4 “(iii) did not otherwise reside in the
5 United States without status under the im-
6 migration laws.

7 “(17) FEES.—

8 “(A) FEDERAL FEES.—A State shall pay a
9 fee to the Secretary for each year in which the
10 State participates in the State-sponsored non-
11 immigrant program in an amount determined
12 by the Secretary to be necessary to cover the
13 Federal costs of overseeing the State-sponsored
14 nonimmigrant program in the State.

15 “(B) STATE FEES.—Nothing in this sub-
16 section may be construed to limit or regulate
17 fees required by the State for State-sponsored
18 nonimmigrants or employers of State-sponsored
19 nonimmigrants.

20 “(18) NUMERICAL LIMITATIONS.—

21 “(A) IN GENERAL.—The total number of
22 aliens who may be issued visas or otherwise
23 provided State-sponsored nonimmigrant status
24 under this subsection during any fiscal year

1 may not exceed the total number of visas com-
2 puted under subparagraph (B).

3 “(B) DISTRIBUTION.—Subject to subpara-
4 graphs (C), (D), and (E), the number of State-
5 sponsored nonimmigrant visas made available in
6 a fiscal year to a State that participates in the
7 State-sponsored nonimmigrant program shall be
8 the sum of—

9 “(i) 5,000;

10 “(ii) the sum of the amounts com-
11 puted under subparagraphs (C) and (D) in
12 the prior year; and

13 “(iii) the percentage of the total popu-
14 lation in all States participating in the
15 State-sponsored nonimmigrant program
16 represented by the population of that State
17 multiplied by the sum of—

18 “(I) 245,000;

19 “(II) the number of nonpartici-
20 pating States multiplied by 5,000; and

21 “(III) the total number of visas
22 available in the previous fiscal year
23 that were revoked or not used.

24 “(C) ECONOMIC GROWTH.—The amounts
25 computed under subparagraphs (A) and (B) for

1 the prior fiscal year shall be adjusted annually
2 in proportion to the percentage increase or de-
3 crease in the Gross Domestic Product of the
4 United States in the prior year, as determined
5 by the Bureau of Economic Analysis of the De-
6 partment of Commerce.

7 “(D) COMPLIANCE.—

8 “(i) INCREASES.—The number of
9 State-sponsored nonimmigrant visas made
10 available to a State under subparagraph
11 (C) shall be increased by 10 percent over
12 the prior fiscal year in each fiscal year im-
13 mediately following a fiscal year in which
14 less than 3 percent of the State-sponsored
15 nonimmigrants sponsored by the State vio-
16 lated the terms and conditions of State-
17 sponsored nonimmigrant status, as deter-
18 mined by the Inspector General of the De-
19 partment of Homeland Security or the
20 Comptroller General of the United States
21 in the reports required under paragraph
22 (13)(B).

23 “(ii) DECREASES.—The number of
24 State-sponsored nonimmigrant visas made
25 available to a State under subparagraph

1 (C) shall be decreased by 50 percent in
2 each fiscal year immediately following a
3 fiscal year in which more than 3 percent of
4 the State-sponsored nonimmigrants spon-
5 sored by the State complied with the terms
6 and conditions of State-sponsored non-
7 immigrant status, as determined by the In-
8 spector General of the Department of
9 Homeland Security or the Comptroller
10 General of the United States in the reports
11 required under paragraph (13)(B).

12 “(iii) SUSPENSION.—State-sponsored
13 nonimmigrant visas shall not be made
14 available for a State during the 5-year pe-
15 riod following four consecutive fiscal years
16 in which more than 3 percent of the State-
17 sponsored nonimmigrants sponsored by the
18 State violated the terms and conditions of
19 State-sponsored nonimmigrant status, as
20 determined by the Inspector General of the
21 Department of Homeland Security or the
22 Comptroller General of the United States
23 in the reports required under paragraph
24 (13)(B).

25 “(E) PRINCIPAL ALIENS.—

1 “(i) IN GENERAL.—The numerical
2 limitations under this paragraph shall
3 apply only to principal aliens being admit-
4 ted to the United States from abroad and
5 not to aliens accompanying or following to
6 join the principal alien under section
7 101(a)(15)(W)(ii) or aliens previously ad-
8 mitted.

9 “(ii) STATE EXCLUSION.—The Sec-
10 retary may not grant a visa or status to an
11 alien who is not the principal alien spon-
12 sored by a State if the State request that
13 no such aliens be admitted.

14 “(19) ADMISSIBILITY DETERMINATION.—

15 “(A) IN GENERAL.—At the request of a
16 State that participates in the State-based non-
17 immigrant program, the Secretary shall waive
18 the grounds of inadmissibility under subpara-
19 graphs (A), (B), (C), and (G) of section
20 212(a)(6), paragraphs (7) and (9) of section
21 212(a), and sections 240B(d)(1)(B) and
22 241(a)(5) and the grounds of deportability
23 under subparagraphs (A) through (D) of sec-
24 tion 237(a)(1) and section 237(a)(3) on behalf
25 of an alien described in subparagraph (B).

1 “(B) ALIENS DESCRIBED.—An alien de-
2 scribed in this subsection is an alien who—

3 “(i) was physically present in the
4 United States on December 31, 2016;

5 “(ii) is sponsored by a State under
6 the State-based nonimmigrant program;

7 “(iii) otherwise meets the require-
8 ments of State-based nonimmigrant status
9 under paragraph (4); and

10 “(iv) fulfills the requirements under
11 paragraph (20).

12 “(C) SAVINGS PROVISION.—Nothing in
13 this paragraph may be construed to exempt an
14 alien described in subparagraph (B) or the
15 State from the numerical limitation under para-
16 graph (18).

17 “(20) REQUIREMENTS.—

18 “(A) APPLICATION.—An alien may apply
19 to the Secretary for a waiver of inadmissibility
20 or deportability under paragraph (19) concu-
21 rently with an application for a visa or status
22 under section 101(a)(15)(W).

23 “(B) EVIDENCE OF PRESENCE OR EM-
24 PLOYMENT.—

1 “(i) CONCLUSIVE DOCUMENTS.—An
2 alien may conclusively demonstrate pres-
3 ence in the United States in compliance
4 with paragraph (19)(B)(i) by submitting
5 records demonstrating such presence that
6 have been maintained by the Social Secu-
7 rity Administration, the Internal Revenue
8 Service, or any other Federal, State, or
9 local government agency or educational in-
10 stitution.

11 “(ii) OTHER DOCUMENTS.—An alien
12 who is unable to submit a document de-
13 scribed in subparagraph (A) may satisfy
14 the requirements under this section by sub-
15 mitting at least three other types of reli-
16 able documents that provide evidence of
17 presence, employment or study in the
18 United States, including—

19 “(I) bank or remittance records;

20 “(II) business or employer
21 records;

22 “(III) records of any organiza-
23 tion that assists workers in employ-
24 ment;

25 “(IV) education records; and

1 “(V) deeds, mortgages, or con-
2 tracts to which the alien has been a
3 party.

4 “(C) FEES.—

5 “(i) IN GENERAL.—An alien submit-
6 ting an application under subparagraph
7 (A) shall pay a fee in an amount deter-
8 mined by the Secretary to be necessary to
9 cover the cost of adjudicating the applica-
10 tion and reviewing the application for
11 fraud.

12 “(ii) PENALTY.—In addition to the
13 fee under clause (i), an alien seeking a
14 waiver under paragraph (19) shall pay a
15 penalty of not less than \$1,000, which
16 shall be deposited into the Treasury of the
17 United States after the approval of the ap-
18 plication under subparagraph (A).

19 “(D) CRIMINAL PENALTY.—

20 “(i) VIOLATION.—It shall be unlawful
21 for any person to knowingly—

22 “(I) file, or assist in filing, an
23 application under this paragraph if
24 such application—

1 “(aa) falsifies, misrep-
2 sents, conceals, or covers up a
3 material fact;

4 “(bb) makes any false, ficti-
5 tious, or fraudulent statements or
6 representations; or

7 “(cc) makes or uses any
8 false writing or document know-
9 ing the same to contain any false,
10 fictitious, or fraudulent state-
11 ment or entry; or

12 “(II) create or supply a false
13 writing or document for use in mak-
14 ing such an application.

15 “(ii) PENALTY.—Any person who vio-
16 lates clause (i) shall be fined in accordance
17 with title 18, United States Code, impris-
18 oned not more than 5 years, or both.

19 “(iii) INADMISSIBILITY.—An alien
20 who is convicted of violating clause (i) shall
21 be considered to be inadmissible to the
22 United States on the grounds described in
23 section 212(a)(6)(C)(i) and subject to im-
24 mediate removal from the United States.

1 “(E) FRAUD PREVENTION PROGRAM.—The
2 Secretary and the Attorney General shall jointly
3 develop an administrative program to prevent
4 fraud with respect to applications submitted
5 under this paragraph that provides for—

6 “(i) fraud prevention training for ad-
7 ministrative adjudicators;

8 “(ii) the regular audit of pending and
9 approved applications for examples and
10 patterns of fraud or abuse;

11 “(iii) the receipt and evaluation of re-
12 ports of fraud or abuse;

13 “(iv) the identification of deficiencies
14 in administrative practice or procedure
15 that encourage fraud or abuse;

16 “(v) the remedy of any identified defi-
17 ciencies; and

18 “(vi) the referral of cases of identified
19 or suspected fraud or other misconduct for
20 investigation.

21 “(F) INELIGIBLE ALIENS.—

22 “(i) REMOVAL AUTHORIZED.—Except
23 as provided in clause (ii), if the Secretary
24 makes a final determination to deny an ap-
25 plication under this section, the Secretary

1 shall place the applicant in removal pro-
2 ceedings to which the alien would otherwise
3 be subject.

4 “(ii) ALIENS WITH PRIOR ORDERS.—

5 If the final determination to deny an appli-
6 cation concerns an alien with an existing
7 order of exclusion, deportation, removal, or
8 voluntary departure from the United
9 States, such order shall be enforced to the
10 same extent as if the application had not
11 been made.

12 “(G) EMPLOYMENT RECORDS.—Copies of

13 employment records or other evidence of em-
14 ployment provided by an alien or by an alien’s
15 employer in support of an alien’s application
16 under this subsection may not be used in a civil
17 or criminal prosecution or investigation of that
18 employer under section 247A or the tax laws of
19 the United States for the prior unlawful em-
20 ployment of that alien, regardless of the adju-
21 dication of such application or reconsideration
22 by the Secretary of such alien’s prima facie eli-
23 gibility determination. Employers that provide
24 unauthorized aliens with copies of employment
25 records or other evidence of employment pursu-

1 ant to an application under this title shall not
2 be subject to civil and criminal liability pursu-
3 ant to such section 274A for employing such
4 unauthorized aliens. The protections for em-
5 ployers and aliens shall not apply if the aliens
6 or employers submit employment records that
7 are deemed to be fraudulent.

8 “(H) CONSTRUCTION.—Nothing in this
9 subsection may be construed to limit the au-
10 thority of the State to require additional mone-
11 tary penalties, other evidence of physical pres-
12 ence, or any other requirement for aliens de-
13 scribed in paragraph (19)(B) to participate in
14 the State-based nonimmigrant program in such
15 State.”.

16 (b) JUDICIAL REVIEW.—Section 242(a)(2) of the Im-
17 migration and Nationality Act (8 U.S.C. 1252(a)(2)) is
18 amended by adding at the end the following:

19 “(E) JUDICIAL REVIEW OF CERTAIN ELIGI-
20 BILITY DETERMINATIONS.—If an alien’s appli-
21 cation under section 214(s)(20) is denied or re-
22 voked, judicial review shall be instituted in the
23 United States District Court for the District of
24 Columbia and shall be limited to determinations
25 of the constitutionality of section 214(s), or any

1 regulations implemented pursuant to such sec-
 2 tion.”.

3 (c) NONIMMIGRANTS WITH APPROVED IMMIGRANT
 4 PETITIONS.—Section 245 of the Immigration and Nation-
 5 ality Act (8 U.S.C. 1255) is amended—

6 (1) in subsection (a)—

7 (A) by striking “if (1) the alien” and in-
 8 serting the following: “if—

9 “(1) the alien”;

10 (B) by striking “adjustment, (2) the alien”
 11 and inserting the following: “adjustment;
 12 “(2) the alien”;

13 (C) by striking “residence, and (3) an im-
 14 migrant visa” and inserting the following: “resi-
 15 dence; and

16 “(3) an immigrant visa”; and

17 (D) in paragraph (3), by striking “him at
 18 the time his application is filed” and inserting
 19 “the alien at the time the alien’s application is
 20 adjudicated”; and

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

22 “(n) ADJUSTMENT OF STATUS APPLICATION AFTER
 23 AN APPROVED IMMIGRANT PETITION.—

24 “(1) APPLICATION.—An alien who has an ap-
 25 proved immigrant petition may file an adjustment of

1 status application under subsection (a), which shall
2 remain pending until a visa number becomes avail-
3 able.

4 “(2) STATUS.—An alien who has properly filed
5 an adjustment of status application under subsection
6 (a) shall, throughout the pendency of such applica-
7 tion—

8 “(A) have a lawful status and be consid-
9 ered lawfully present for purposes of section
10 212; and

11 “(B) following a biometric background
12 check, be eligible for employment and travel au-
13 thorization incident to such status.”.

14 **SEC. 4. EFFECTIVE DATE.**

15 The amendments made by this Act shall take effect
16 on the first day of the first fiscal year that begins after
17 the date of the enactment of this Act.

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