

117TH CONGRESS
2D SESSION

S. 3720

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

MARCH 1, 2022

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. BLUMENTHAL, Mr. TUBERVILLE, Mr. BROWN, Mr. HAGERTY, and Mr. SANDERS) 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “H–1B and L–1 Visa Reform Act of 2022”.

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

Sec. 1. Short title; table of contents.

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.
- Sec. 104. H-1B visa allocation.
- Sec. 105. H-1B workers employed by institutions of higher education.
- Sec. 106. Specialty occupation to require an actual degree.
- Sec. 107. Labor condition application fee.
- Sec. 108. H-1B subpoena authority for the Department of Labor.
- Sec. 109. Limitation on extension of H-1B petition.
- Sec. 110. Elimination of B-1 visas in lieu of H-1 visas.

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. Transparency and report on wage system.
- 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 replacement of United States workers and restricting 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 nonimmigrants.
- Sec. 206. Penalties.
- Sec. 207. Prohibition on retaliation against L-1 nonimmigrants.
- Sec. 208. Adjudication by Department of Homeland Security of petitions under blanket petition.
- Sec. 209. Reports on employment-based nonimmigrants.
- Sec. 210. Specialized knowledge.
- Sec. 211. Technical amendments.
- Sec. 212. Application.

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.—Sec-
 8 tion 212(n)(1)(A) of the Immigration and Nationality Act
 9 (8 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

10 “(A) The employer—

11 “(i) is offering and will offer to H-1B non-
 12 immigrants, during the period of authorized
 13 employment for each H-1B nonimmigrant,
 14 wages that are determined based on the best in-
 15 formation available at the time the application
 16 is filed and which are not less than the highest
 17 of—

18 “(I) the locally determined prevailing
 19 wage level for the occupational classifica-
 20 tion in the area of employment;

21 “(II) the median wage for all workers
 22 in the occupational classification in the
 23 area of employment; and

24 “(III) the median wage for skill level
 25 2 in the occupational classification found

1 in the most recent Occupational Employ-
 2 ment Statistics survey; and

3 “(ii) will provide working conditions for
 4 such H–1B nonimmigrant that will not ad-
 5 versely affect the working conditions of United
 6 States workers similarly employed by the em-
 7 ployer or by an employer with which such H–
 8 1B nonimmigrant is placed pursuant to a waiv-
 9 er under paragraph (2)(E).”.

10 (b) INTERNET POSTING REQUIREMENT.—Section
 11 212(n)(1)(C) of such Act is amended—

12 (1) by redesignating clause (ii) as subclause
 13 (II);

14 (2) by striking “(i) has provided” and inserting
 15 the following:

16 “(ii)(I) has provided”; and

17 (3) by inserting before clause (ii), as redesign-
 18 nated by paragraph (2), the following:

19 “(i) has posted on the Internet website de-
 20 scribed in paragraph (3), for at least 30 cal-
 21 endar days, a detailed description of each posi-
 22 tion for which a nonimmigrant is sought that
 23 includes a description of—

24 “(I) the wages and other terms and
 25 conditions of employment;

1 “(II) the minimum education, train-
 2 ing, experience, and other requirements for
 3 the position; and

4 “(III) the process for applying for the
 5 position; and”.

6 (c) WAGE DETERMINATION INFORMATION.—Section
 7 212(n)(1)(D) of such Act is amended by inserting “the
 8 wage determination methodology used under subpara-
 9 graph (A)(i),” after “shall contain”.

10 (d) APPLICATION OF REQUIREMENTS TO ALL EM-
 11 PLOYERS.—

12 (1) NONDISPLACEMENT.—Section 212(n)(1)(E)
 13 of such Act is amended to read as follows:

14 “(E)(i) The employer—

15 “(I) will not at any time replace a United
 16 States worker with 1 or more H-1B non-
 17 immigrants; and

18 “(II) did not displace and will not displace
 19 a United States worker employed by the em-
 20 ployer within the period beginning 180 days be-
 21 fore and ending 180 days after the date of the
 22 placement of the nonimmigrant with the em-
 23 ployer.

24 “(ii) The 180-day period referred to in clause
 25 (i) may not include any period of on-site or virtual

1 training of H–1B nonimmigrants by employees of
 2 the employer.”.

3 (2) RECRUITMENT.—Section 212(n)(1)(G)(i) of
 4 such Act is amended by striking “In the case of an
 5 application described in subparagraph (E)(ii), sub-
 6 ject” and inserting “Subject”.

7 (e) WAIVER REQUIREMENT.—Section 212(n)(1)(F)
 8 of such Act is amended to read as follows:

9 “(F) The employer will not place, outsource,
 10 lease, or otherwise contract for the services or place-
 11 ment of H–1B nonimmigrants with another em-
 12 ployer, regardless of the physical location where such
 13 services will be performed, unless the employer of
 14 the alien has been granted a waiver under paragraph
 15 (2)(E).”.

16 **SEC. 102. NEW APPLICATION REQUIREMENTS.**

17 Section 212(n)(1) of the Immigration and Nationality
 18 Act (8 U.S.C. 1182(n)(1)), as amended by section 101,
 19 is further amended by inserting after subparagraph (G)(ii)
 20 the following:

21 “(H)(i) The employer, or a person or entity act-
 22 ing on the employer’s behalf, has not advertised any
 23 available position specified in the application in an
 24 advertisement that states or indicates that—

1 “(I) such position is only available to an
2 individual who is or will be an H-1B non-
3 immigrant; or

4 “(II) an individual who is or will be an H-
5 1B nonimmigrant shall receive priority or a
6 preference in the hiring process for such posi-
7 tion.

8 “(ii) The employer has not primarily recruited
9 individuals who are or who will be H-1B non-
10 immigrants to fill such position.

11 “(I) If the employer employs 50 or more em-
12 ployees in the United States—

13 “(i) the sum of the number of such em-
14 ployees who are H-1B nonimmigrants plus the
15 number of such employees who are non-
16 immigrants described in section 101(a)(15)(L)
17 does not exceed 50 percent of the total number
18 of employees; and

19 “(ii) the employer’s corporate organization
20 has not been restructured to evade the limita-
21 tion under clause (i).

22 “(J) If the employer, in such previous period as
23 the Secretary shall specify, employed 1 or more H-
24 1B nonimmigrants, the employer will submit to the
25 Secretary the Internal Revenue Service Form W-2

1 Wage and Tax Statements filed by the employer
 2 with respect to the H-1B nonimmigrants for such
 3 period.”.

4 **SEC. 103. APPLICATION REVIEW REQUIREMENTS.**

5 (a) TECHNICAL AMENDMENT.—Section 212(n)(1) of
 6 the Immigration and Nationality Act (8 U.S.C.
 7 1182(n)(1)), as amended by sections 101 and 102, is fur-
 8 ther amended, in the undesignated paragraph at the end,
 9 by striking “The employer” and inserting the following:
 10 “(K) The employer.”.

11 (b) APPLICATION REVIEW REQUIREMENTS.—Section
 12 212(n)(1)(K), as designated by subsection (a), is amend-
 13 ed—

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

17 (2) in the fifth sentence, by striking “only for
 18 completeness” and inserting “for completeness, indi-
 19 cators of fraud or misrepresentation of material
 20 fact,”;

21 (3) in the sixth sentence—

22 (A) by striking “or obviously inaccurate”
 23 and inserting “, presents indicators of fraud or
 24 misrepresentation of material fact, or is obvi-
 25 ously inaccurate”; and

1 (B) by striking “within 7 days of” and in-
 2 serting “not later than 14 days after”; and

3 (4) by adding at the end the following: “If the
 4 Secretary of Labor’s review of an application identi-
 5 fies indicators of fraud or misrepresentation of ma-
 6 terial fact, the Secretary may conduct an investiga-
 7 tion and hearing in accordance with paragraph
 8 (2).”.

9 **SEC. 104. H-1B VISA ALLOCATION.**

10 Section 214(g)(3) of the Immigration and Nationality
 11 Act (8 U.S.C. 1184(g)(3)), is amended—

12 (1) by striking the first sentence and inserting
 13 the following:

14 “(A) Subject to subparagraph (B), aliens who
 15 are subject to the numerical limitations under para-
 16 graph (1)(A) shall be issued visas, or otherwise pro-
 17 vided nonimmigrant status, in a manner and order
 18 established by the Secretary by regulation.”; and

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

20 “(B) The Secretary shall consider petitions for
 21 nonimmigrant status under section
 22 101(a)(15)(H)(i)(b) in the following order:

23 “(i) Petitions for nonimmigrants described
 24 in section 101(a)(15)(F) who, while physically
 25 present in the United States, have earned an

1 advanced degree in a field of science, tech-
2 nology, engineering, or mathematics from a
3 United States institution of higher education
4 (as defined in section 101(a) of the Higher
5 Education Act of 1965 (20 U.S.C. 1001(a)))
6 that has been accredited by an accrediting enti-
7 ty that is recognized by the Department of
8 Education.

9 “(ii) Petitions certifying that the employer
10 will be paying the nonimmigrant the median
11 wage for skill level 4 in the occupational classi-
12 fication found in the most recent Occupational
13 Employment Statistics survey.

14 “(iii) Petitions for nonimmigrants de-
15 scribed in section 101(a)(15)(F) who are grad-
16 uates of any other advanced degree program,
17 undertaken while physically present in the
18 United States, from an institution of higher
19 education described in clause (i).

20 “(iv) Petitions certifying that the employer
21 will be paying the nonimmigrant the median
22 wage for skill level 3 in the occupational classi-
23 fication found in the most recent Occupational
24 Employment Statistics survey.

1 “(v) Petitions for nonimmigrants described
2 in section 101(a)(15)(F) who are graduates of
3 a bachelor’s degree program, undertaken while
4 physically present in the United States, in a
5 field of science, technology, engineering, or
6 mathematics from an institution of higher edu-
7 cation described in clause (i).

8 “(vi) Petitions for nonimmigrants de-
9 scribed in section 101(a)(15)(F) who are grad-
10 uates of bachelor’s degree programs, under-
11 taken while physically present in the United
12 States, in any other fields from an institution
13 of higher education described in clause (i).

14 “(vii) Petitions for aliens who will be work-
15 ing in occupations listed in Group I of the De-
16 partment of Labor’s Schedule A of occupations
17 in which the Secretary of Labor has determined
18 there are not sufficient United States workers
19 who are able, willing, qualified, and available.

20 “(viii) Petitions filed by employers meeting
21 the following criteria of good corporate citizen-
22 ship and compliance with the immigration laws:

23 “(I) The employer is in possession
24 of—

1 “(aa) a valid E-Verify company
2 identification number; or

3 “(bb) if the enterprise is using a
4 designated agent to perform E-Verify
5 queries, a valid E-Verify client com-
6 pany identification number and docu-
7 mentation from U.S. Citizenship and
8 Immigration Services that the com-
9 mercial enterprise is a participant in
10 good standing in the E-Verify pro-
11 gram.

12 “(II) The employer is not under inves-
13 tigation by any Federal agency for viola-
14 tion of the immigration laws or labor laws.

15 “(III) A Federal agency has not de-
16 termined, during the immediately pre-
17 ceding 5 years, that the employer violated
18 the immigration laws or labor laws.

19 “(IV) During each of the preceding 3
20 fiscal years, at least 90 percent of the peti-
21 tions filed by the employer under section
22 101(a)(15)(H)(i)(b) were approved.

23 “(V) The employer has filed, pursuant
24 to section 204(a)(1)(F), employment-based
25 immigrant petitions, including an approved

1 labor certification application under section
 2 212(a)(5)(A), for at least 90 percent of
 3 employees imported under section
 4 101(a)(15)(H)(i)(b) during the preceding 3
 5 fiscal years.

6 “(ix) Any remaining petitions.

7 “(C) In this paragraph the term ‘field of
 8 science, technology, engineering, or mathematics’
 9 means a field included in the Department of Edu-
 10 cation’s Classification of Instructional Programs tax-
 11 onomy within the summary groups of computer and
 12 information sciences and support services, engineer-
 13 ing, biological and biomedical sciences, mathematics
 14 and statistics, and physical sciences.”.

15 **SEC. 105. H-1B WORKERS EMPLOYED BY INSTITUTIONS OF**
 16 **HIGHER EDUCATION.**

17 Section 214(g)(5) of the Immigration and Nationality
 18 Act (8 U.S.C. 1184(g)(5)) is amended by striking “is em-
 19 ployed (or has received an offer of employment) at” each
 20 place such phrase appears and inserting “is employed by
 21 (or has received an offer of employment from)”.

22 **SEC. 106. SPECIALTY OCCUPATION TO REQUIRE AN AC-**
 23 **TUAL DEGREE.**

24 Section 214(i) of the Immigration and Nationality
 25 Act (8 U.S.C. 1184(i)) is amended—

1 (1) in paragraph (1), by amending subpara-
 2 graph (B) to read as follows:

3 “(B) attainment of a bachelor’s or higher de-
 4 gree in the specific specialty directly related to the
 5 occupation as a minimum for entry into the occupa-
 6 tion in the United States.”; and

7 (2) by striking paragraph (2) and inserting the
 8 following:

9 “(2) For purposes of section 101(a)(15)(H)(i)(b), the
 10 requirements under this paragraph, with respect to a spe-
 11 cialty occupation, are—

12 “(A) full State licensure to practice in the occu-
 13 pation, if such licensure is required to practice in the
 14 occupation; or

15 “(B) if a license is not required to practice in
 16 the occupation—

17 “(i) completion of a United States degree
 18 described in paragraph (1)(B) for the occupa-
 19 tion; or

20 “(ii) completion of a foreign degree that is
 21 equivalent to a United States degree described
 22 in paragraph (1)(B) for the occupation.”.

23 **SEC. 107. LABOR CONDITION APPLICATION FEE.**

24 Section 212(n) of the Immigration and Nationality
 25 Act (8 U.S.C. 1182(n)), as amended by sections 101

1 through 103, is further amended by adding at the end the
 2 following:

3 “(6)(A) The Secretary of Labor shall promulgate a
 4 regulation that requires applicants under this subsection
 5 to pay a reasonable application processing fee.

6 “(B) All of the fees collected under this paragraph
 7 shall be deposited as offsetting receipts within the general
 8 fund of the Treasury in a separate account, which shall
 9 be known as the ‘H–1B Administration, Oversight, Inves-
 10 tigation, and Enforcement Account’ and shall remain
 11 available until expended. The Secretary of the Treasury
 12 shall refund amounts in such account to the Secretary of
 13 Labor for salaries and related expenses associated with the
 14 administration, oversight, investigation, and enforcement
 15 of the H–1B nonimmigrant visa program.”.

16 **SEC. 108. H-1B SUBPOENA AUTHORITY FOR THE DEPART-**
 17 **MENT OF LABOR.**

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

20 (1) by redesignating subparagraph (I) as sub-
 21 paragraph (J); and

22 (2) by inserting after subparagraph (H) the fol-
 23 lowing:

24 “(I) The Secretary of Labor is authorized to take
 25 such actions, including issuing subpoenas and seeking ap-

1 appropriate injunctive relief and specific performance of con-
 2 tractual obligations, as may be necessary to ensure em-
 3 ployer compliance with the terms and conditions under
 4 this subsection. The rights and remedies provided to H-
 5 1B nonimmigrants under this subsection are in addition
 6 to any other contractual or statutory rights and remedies
 7 of such nonimmigrants and are not intended to alter or
 8 affect such rights and remedies.”.

9 **SEC. 109. LIMITATION ON EXTENSION OF H-1B PETITION.**

10 Section 214(g)(4) of the Immigration and Nationality
 11 Act (8 U.S.C. 1184(g)(4)) is amended to read as follows:

12 “(4)(A) Except as provided in subparagraph (B), the
 13 period of authorized admission as a nonimmigrant de-
 14 scribed in section 101(a)(15)(H)(i)(b) may not exceed 3
 15 years.

16 “(B) The period of authorized admission as a non-
 17 immigrant described in subparagraph (A) who is the bene-
 18 ficiary of an approved employment-based immigrant peti-
 19 tion under section 204(a)(1)(F) may be authorized for a
 20 period of up to 3 additional years if the total period of
 21 stay does not exceed six years, except for an extension
 22 under section 104(c) or 106(b) of the American Competi-
 23 tiveness in the Twenty-first Century Act of 2000 (8
 24 U.S.C. 1184 note).”.

1 **SEC. 110. ELIMINATION OF B-1 VISAS IN LIEU OF H-1 VISAS.**

2 Section 214(g) of the Immigration and Nationality
3 Act (8 U.S.C. 1184(g)) is amended by adding at the end
4 the following:

5 “(12) Unless otherwise authorized by law, an alien
6 normally classifiable under section 101(a)(15)(H)(i) who
7 seeks admission to the United States to provide services
8 in a specialty occupation described in paragraph (1) or
9 (3) of subsection (i) may not be issued a visa or admitted
10 under section 101(a)(15)(B) for such purpose. Nothing in
11 this paragraph may be construed to authorize the admis-
12 sion of an alien under section 101(a)(15)(B) who is com-
13 ing to the United States for the purpose of performing
14 skilled or unskilled labor if such admission is not otherwise
15 authorized by law.”.

16 **Subtitle B—Investigation and Dis-**
17 **position of Complaints Against**
18 **H-1B Employers**

19 **SEC. 111. GENERAL MODIFICATION OF PROCEDURES FOR**
20 **INVESTIGATION AND DISPOSITION.**

21 Section 212(n)(2)(A) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

23 (1) by striking “(A) Subject” and inserting the
24 following:

25 “(A)(i) Subject”;

1 (2) by striking “12 months” and inserting “two
2 years”;

3 (3) by striking the last sentence; and

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

5 “(ii)(I) Upon the receipt of a complaint under clause
6 (i), the Secretary may initiate an investigation to deter-
7 mine if such failure or misrepresentation has occurred.

8 “(II) In conducting an investigation under subclause
9 (I), the Secretary may—

10 “(aa) conduct surveys of the degree to which
11 employers comply with the requirements under this
12 subsection; and

13 “(bb) conduct compliance audits of employers
14 that employ H–1B nonimmigrants.

15 “(III) The Secretary shall—

16 “(aa) conduct annual compliance audits of not
17 fewer than 1 percent of the employers that employ
18 H–1B nonimmigrants during the applicable calendar
19 year;

20 “(bb) conduct annual compliance audits of each
21 employer with more than 100 employees who work
22 in the United States if more than 15 percent of such
23 employees are H–1B nonimmigrants; and

1 “(cc) make available to the public an executive
 2 summary or report describing the general findings of
 3 the audits carried out pursuant to this subclause.

4 “(iii) The process for receiving complaints under
 5 clause (i) shall include a hotline that is accessible 24 hours
 6 a day, by telephonic and electronic means.”.

7 **SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND**
 8 **PENALTIES.**

9 Section 212(n)(2)(C) of the Immigration and Nation-
 10 ality Act (8 U.S.C. 1182(n)(2)(C)) is amended—

11 (1) in clause (i)—

12 (A) in the matter preceding subclause (I),
 13 by striking “a condition of paragraph (1)(B),
 14 (1)(E), or (1)(F), a substantial failure to meet
 15 a condition of paragraph (1)(C), (1)(D), or
 16 (1)(G)(i)(I)” and inserting “a condition under
 17 subparagraph (A), (B), (C), (D), (E), (F),
 18 (G)(i), (H), (I), or (J) of paragraph (1)”;

19 (B) in subclause (I)—

20 (i) by striking “\$1,000” and inserting
 21 “\$5,000”; and

22 (ii) by striking “and” at the end;

23 (C) in subclause (II), by striking the pe-
 24 riod at the end and inserting “; and”; and

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

1 “(III) an employer that violates paragraph
 2 (1)(A) shall be liable to the employees harmed by
 3 such violation for lost wages and benefits.”;

4 (2) in clause (ii)—

5 (A) in subclause (I)—

6 (i) by striking “may” and inserting
 7 “shall”; and

8 (ii) by striking “\$5,000” and insert-
 9 ing “\$25,000”;

10 (B) in subclause (II), by striking the pe-
 11 riod at the end and inserting “; and”; and

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

13 “(III) an employer that violates paragraph
 14 (1)(A) shall be liable to the employees harmed by
 15 such violation for lost wages and benefits.”;

16 (3) in clause (iii)—

17 (A) in the matter preceding subclause (I),
 18 by striking “displaced a United States worker
 19 employed by the employer within the period be-
 20 ginning 90 days before and ending 90 days
 21 after the date of filing of any visa petition sup-
 22 ported by the application” and inserting “dis-
 23 placed or replaced a United States worker in
 24 violation of subparagraph (E)”;

25 (B) in subclause (I)—

1 (i) by striking “may” and inserting
2 “shall”;

3 (ii) by striking “\$35,000” and insert-
4 ing “\$150,000”; and

5 (iii) by striking “and” at the end;

6 (C) in subclause (II), by striking the pe-
7 riod at the end and inserting “; and”; and

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

9 “(III) an employer that violates paragraph
10 (1)(A) shall be liable to the employees harmed by
11 such violation for lost wages and benefits.”;

12 (4) by striking clause (iv) and inserting the fol-
13 lowing:

14 “(iv)(I) An employer that has filed an application
15 under this subsection violates this clause by taking, failing
16 to take, or threatening to take or fail to take a personnel
17 action, or intimidating, threatening, restraining, coercing,
18 blacklisting, discharging, or discriminating in any other
19 manner against an employee because the employee—

20 “(aa) disclosed information that the employee
21 reasonably believes evidences a violation of this sub-
22 section or any rule or regulation pertaining to this
23 subsection; or

1 “(bb) cooperated or sought to cooperate with
 2 the requirements under this subsection or any rule
 3 or regulation pertaining to this subsection.

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

6 “(aa) a current employee;

7 “(bb) a former employee; and

8 “(cc) an applicant for employment.

9 “(III) An employer that violates this clause shall be
 10 liable to the employee harmed by such violation for lost
 11 wages and benefits.”; and

12 (5) in clause (vi)—

13 (A) by amending subclause (I) to read as
 14 follows:

15 “(I) It is a violation of this clause for an employer
 16 that has filed an application under this subsection—

17 “(aa) to require an H–1B nonimmigrant to pay
 18 a penalty or liquidated damages for ceasing employ-
 19 ment with the employer before a date agreed to by
 20 the nonimmigrant and the employer; or

21 “(bb) to fail to offer to an H–1B non-
 22 immigrant, during the nonimmigrant’s period of au-
 23 thorized employment, on the same basis, and in ac-
 24 cordance with the same criteria, as the employer of-

1 fers to United States workers, benefits and eligibility
2 for benefits, including—

3 “(AA) the opportunity to participate in
4 health, life, disability, and other insurance
5 plans;

6 “(BB) the opportunity to participate in re-
7 tirement and savings plans; and

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

11 (B) in subclause (III), by striking
12 “\$1,000” and inserting “\$5,000”.

13 **SEC. 113. WAIVER REQUIREMENTS.**

14 (a) IN GENERAL.—Section 212(n)(2)(E) of the Im-
15 migration and Nationality Act (8 U.S.C. 1182(n)(2)(E))
16 is amended to read as follows:

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

21 “(I) the employer with which the H–1B non-
22 immigrant would be placed—

23 “(aa) does not intend to replace a United
24 States worker with 1 or more H–1B non-
25 immigrants; and

1 “(bb) has not displaced, and does not in-
2 tend to displace, a United States worker em-
3 ployed by the employer within the period begin-
4 ning 180 days before the date of the placement
5 of the nonimmigrant with the employer and
6 ending 180 days after such date (not including
7 any period of on-site or virtual training of H-
8 1B nonimmigrants by employees of the em-
9 ployer);

10 “(II) the H-1B nonimmigrant will be prin-
11 cipally controlled and supervised by the petitioning
12 employer; and

13 “(III) the placement of the H-1B non-
14 immigrant is not essentially an arrangement to pro-
15 vide labor for hire for the employer with which the
16 H-1B nonimmigrant will be placed.

17 “(ii) The Secretary shall grant or deny a waiver
18 under this subparagraph not later than seven days after
19 the date on which the Secretary receives an application
20 for such waiver.”.

21 (b) RULEMAKING.—

22 (1) RULES FOR WAIVERS.—The Secretary of
23 Labor, after notice and a period for comment, shall
24 promulgate a final rule for an employer to apply for
25 a waiver under section 212(n)(2)(E) of the Immigra-

1 tion and Nationality Act, as amended by subsection
2 (a).

3 (2) REQUIREMENT FOR PUBLICATION.—The
4 Secretary of Labor shall submit to Congress, and
5 publish in the Federal Register and in other appro-
6 priate media, a notice of the date on which the rules
7 required under paragraph (1) are promulgated.

8 **SEC. 114. INITIATION OF INVESTIGATIONS.**

9 Section 212(n)(2)(G) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1182(n)(2)(G)) is amended—

11 (1) in clause (i), by striking “if the Secretary
12 of Labor” and all that follows and inserting “with
13 regard to the employer’s compliance with the re-
14 quirements under this subsection.”;

15 (2) in clause (ii), by striking “and whose iden-
16 tity” and all that follows through “failure or fail-
17 ures.” and inserting “the Secretary may conduct an
18 investigation into the employer’s compliance with the
19 requirements under this subsection.”;

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

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

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

24 (6) in clause (iv), as redesignated, by striking
25 “meet a condition described in clause (ii), unless the

1 Secretary of Labor receives the information not later
2 than 12 months” and inserting “comply with the re-
3 quirements under this subsection unless the Sec-
4 retary of Labor receives the information not later
5 than 2 years”;

6 (7) by amending clause (v), as redesignated, to
7 read as follows:

8 “(v)(I) Except as provided in subclause (II), the Sec-
9 retary of Labor shall provide notice to an employer of the
10 intent to conduct an investigation under this subpara-
11 graph. Such notice shall be provided in such a manner,
12 and shall contain sufficient detail, to permit the employer
13 to respond to the allegations before an investigation is
14 commenced.

15 “(II) The Secretary of Labor is not required to com-
16 ply with subclause (I) if the Secretary determines that
17 such compliance would interfere with an effort by the Sec-
18 retary to investigate or secure compliance by the employer
19 with the requirements under this subsection.

20 “(III) A determination by the Secretary of Labor
21 under this clause shall not be subject to judicial review.”;

22 (8) in clause (vi), as redesignated, by striking
23 “An investigation” and all that follows through “the
24 determination.” and inserting “If the Secretary of
25 Labor, after an investigation under clause (i) or (ii),

1 determines that a reasonable basis exists to make a
2 finding that the employer has failed to comply with
3 the requirements under this subsection, the Sec-
4 retary, not later than 120 days after the date of
5 such determination, shall provide interested parties
6 with notice of such determination and an oppor-
7 tunity for a hearing in accordance with section 556
8 of title 5, United States Code.”; and

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

10 “(vii) If the Secretary of Labor, after a hearing, finds
11 a reasonable basis to believe that the employer has violated
12 the requirements under this subsection, the Secretary
13 shall impose a penalty in accordance with subparagraph
14 (C).”.

15 **SEC. 115. INFORMATION SHARING.**

16 Section 212(n)(2)(H) of the Immigration and Na-
17 tionality Act (8 U.S.C. 1182(n)(2)(H)) is amended to read
18 as follows:

19 “(H) The Director of U.S. Citizenship and Immigra-
20 tion Services shall provide the Secretary of Labor with any
21 information contained in the materials submitted by em-
22 ployers of H–1B nonimmigrants as part of the petition
23 adjudication process that indicates that the employer is
24 not complying with visa program requirements for H–1B
25 nonimmigrants. The Secretary may initiate and conduct

1 an investigation and hearing under this paragraph after
 2 receiving information of noncompliance under this sub-
 3 paragraph.”.

4 **SEC. 116. CONFORMING AMENDMENT.**

5 Section 212(n)(2)(F) of the Immigration and Nation-
 6 ality Act (8 U.S.C. 1182(n)(2)(F)) is amended by striking
 7 “The preceding sentence shall apply to an employer re-
 8 gardless of whether or not the employer is an H–1B-de-
 9 pendent employer.”.

10 **Subtitle C—Other Protections**

11 **SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE**
 12 **DEPARTMENT OF LABOR.**

13 (a) DEPARTMENT OF LABOR WEBSITE.—Section
 14 212(n)(3) of the Immigration and Nationality Act (8
 15 U.S.C. 1182(n)(3)) is amended to read as follows:

16 “(3)(A) Not later than 90 days after the date of the
 17 enactment of the H–1B and L–1 Visa Reform Act of
 18 2022, the Secretary of Labor shall establish a searchable
 19 Internet website for posting positions in accordance with
 20 paragraph (1)(C) that is available to the public without
 21 charge.

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

1 “(C) The Secretary may promulgate rules, after no-
 2 tice and a period for comment, to carry out this para-
 3 graph.”.

4 (b) PUBLICATION REQUIREMENT.—The Secretary of
 5 Labor shall submit to Congress, and publish in the Fed-
 6 eral Register and in other appropriate media, a notice of
 7 the date on which the internet website required under sec-
 8 tion 212(n)(3) of the Immigration and Nationality Act,
 9 as amended by subsection (a), will be operational.

10 (c) APPLICATION.—The amendment made by sub-
 11 section (a) shall apply to any application filed on or after
 12 the date that is 30 days after the date described in sub-
 13 section (b).

14 **SEC. 122. TRANSPARENCY AND REPORT ON WAGE SYSTEM.**

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

18 “(m) EMPLOYER TO PROVIDE IMMIGRATION PAPER-
 19 WORK EXCHANGED WITH FEDERAL AGENCIES.—

20 “(1) IN GENERAL.—Not later than 21 business
 21 days after receiving a written request from a former,
 22 current, or prospective employee of an employer who
 23 is the beneficiary of an employment-based non-
 24 immigrant petition filed by the employer, such em-
 25 ployer shall provide such employee or beneficiary

1 with the original (or a certified copy of the original)
2 of all petitions, notices, and other written commu-
3 nication exchanged between the employer and the
4 Department of Labor, the Department of Homeland
5 Security, or any other Federal agency or department
6 that is related to an immigrant or nonimmigrant pe-
7 tition filed by the employer for such employee or
8 beneficiary.

9 “(2) WITHHOLDING OF FINANCIAL OR PROPRI-
10 ETARY INFORMATION.—If a document required to be
11 provided to an employee or prospective employee
12 under paragraph (1) includes any sensitive financial
13 or proprietary information of the employer, the em-
14 ployer may redact such information from the copies
15 provided to such person.”.

16 (b) GAO REPORT ON JOB CLASSIFICATION AND
17 WAGE DETERMINATIONS.—Not later than 1 year after
18 the date of the enactment of this Act, the Comptroller
19 General of the United States shall prepare a report that—

20 (1) analyzes the accuracy and effectiveness of
21 the Secretary of Labor’s current job classification
22 and wage determination system;

23 (2) specifically addresses whether the systems
24 in place accurately reflect the complexity of current
25 job types and geographic wage differences; and

1 (3) makes recommendations concerning nec-
2 essary updates and modifications.

3 **SEC. 123. REQUIREMENTS FOR INFORMATION FOR H-1B**
4 **AND L-1 NONIMMIGRANTS.**

5 Section 214 of the Immigration and Nationality Act
6 (8 U.S.C. 1184) is amended by adding at the end the fol-
7 lowing:

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

10 “(1) IN GENERAL.—Upon issuing a visa to an
11 applicant, who is outside the United States, for non-
12 immigrant status pursuant to subparagraph
13 (H)(i)(b) or (L) of section 101(a)(15), the issuing
14 office shall provide the applicant with—

15 “(A) a brochure outlining the obligations
16 of the applicant’s employer and the rights of
17 the applicant with regard to employment under
18 Federal law, including labor and wage protec-
19 tions;

20 “(B) the contact information for appro-
21 priate Federal agencies or departments that
22 offer additional information or assistance in
23 clarifying such obligations and rights; and

24 “(C) a copy of the petition submitted for
25 the nonimmigrant under section 212(n) or the

1 petition submitted for the nonimmigrant under
2 subsection (c)(2)(A), as appropriate.

3 “(2) APPLICANTS INSIDE THE UNITED
4 STATES.—Upon the approval of an initial petition
5 filed for an alien who is in the United States and
6 seeking status under subparagraph (H)(i)(b) or (L)
7 of section 101(a)(15), the Secretary of Homeland
8 Security shall provide the applicant with the mate-
9 rial described in subparagraphs (A), (B), and (C) of
10 paragraph (1).”.

11 **SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
12 **EES.**

13 (a) IN GENERAL.—The Secretary of Labor is author-
14 ized to hire up to 200 additional employees to administer,
15 oversee, investigate, and enforce programs involving non-
16 immigrant employees described in section
17 101(a)(15)(H)(i)(b) of the Immigration and Nationality
18 Act (8 U.S.C. 1101(a)(15)(H)(i)(b)).

19 (b) SOURCE OF FUNDS.—The cost of hiring the addi-
20 tional employees authorized to be hired under subsection
21 (a) shall be recovered with funds from the H–1B Adminis-
22 tration, Oversight, Investigation, and Enforcement Ac-
23 count established under section 212(n)(6) of the Immigra-
24 tion and Nationality Act, as added by section 107.

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

2 Section 212 of the Immigration and Nationality Act
 3 (8 U.S.C. 1182) is amended by redesignating the second
 4 subsection (t), as added by section 1(b)(2)(B) of the Act
 5 entitled “An Act to amend and extend the Irish Peace
 6 Process Cultural and Training Program Act of 1998”
 7 (Public Law 108–449; 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 petitions and appli-
 11 cations filed on or after the date of the enactment of this
 12 Act.

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

15 **SEC. 201. PROHIBITION ON REPLACEMENT OF UNITED**
 16 **STATES WORKERS AND RESTRICTING OUT-**
 17 **PLACEMENT OF L-1 NONIMMIGRANTS.**

18 (a) RESTRICTION ON OUTPLACEMENT OF L-1
 19 WORKERS.—Section 214(c)(2)(F) of the Immigration and
 20 Nationality Act (8 U.S.C. 1184(c)(2)(F)) is amended to
 21 read as follows:

22 “(F)(i) Unless an employer receives a waiver under
 23 clause (ii), an employer may not employ an alien, for a
 24 cumulative period exceeding 1 year, who—

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

4 “(II) will be stationed primarily at the worksite
5 of an employer other than the petitioning employer
6 or its affiliate, subsidiary, or parent, including pur-
7 suant to an outsourcing, leasing, or other con-
8 tracting agreement.

9 “(ii) The Secretary of Labor may grant a waiver of
10 the requirements under clause (i) if the Secretary deter-
11 mines that the employer requesting such waiver has estab-
12 lished that—

13 “(I) the employer with which the alien referred
14 to in clause (i) would be placed—

15 “(aa) will not at any time replace a United
16 States worker with 1 or more nonimmigrants
17 described in section 101(a)(15)(L); and

18 “(bb) has not displaced and does not in-
19 tend to displace a United States worker em-
20 ployed by the employer within the period begin-
21 ning 180 days before the date of the placement
22 of such alien with the employer and ending 180
23 days after such date (not including any period
24 of on-site or virtual training of nonimmigrants

1 described in section 101(a)(15)(L) by employees
 2 of the employer);

3 “(II) such alien will be principally controlled
 4 and supervised by the petitioning employer; and

5 “(III) the placement of the nonimmigrant is not
 6 essentially an arrangement to provide labor for hire
 7 for an unaffiliated employer with which the non-
 8 immigrant will be placed, rather than a placement in
 9 connection with the provision of a product or service
 10 for which specialized knowledge specific to the peti-
 11 tioning employer is necessary.

12 “(iii) The Secretary shall grant or deny a waiver
 13 under clause (ii) not later than seven days after the date
 14 on which the Secretary receives the application for the
 15 waiver.”.

16 (b) PROHIBITION ON REPLACEMENT OF UNITED
 17 STATES WORKERS.—Section 214(c)(2) of the Immigra-
 18 tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
 19 ed by adding at the end the following:

20 “(G)(i) An employer importing an alien as a non-
 21 immigrant under section 101(a)(15)(L)—

22 “(I) may not at any time replace a United
 23 States worker (as defined in section 212(n)(4)(E))
 24 with 1 or more such nonimmigrants; and

1 “(II) may not displace a United States worker
 2 (as defined in section 212(n)(4)(E)) employed by the
 3 employer during the period beginning 180 days be-
 4 fore and ending 180 days after the date of the place-
 5 ment of such a nonimmigrant with the employer.

6 “(ii) The 180-day period referenced in clause (i)(II)
 7 may not include any period of on-site or virtual training
 8 of nonimmigrants described in clause (i) by employees of
 9 the employer.”.

10 (c) RULEMAKING.—The Secretary of Homeland Se-
 11 curity, after notice and a period for comment, shall pro-
 12 mulgate rules for an employer to apply for a waiver under
 13 section 214(c)(2)(F)(ii), as added by subsection (a).

14 **SEC. 202. L-1 EMPLOYER PETITION REQUIREMENTS FOR**
 15 **EMPLOYMENT AT NEW OFFICES.**

16 Section 214(c)(2) of the Immigration and Nationality
 17 Act (8 U.S.C. 1184(c)(2)), as amended by section 201,
 18 is further amended by adding at the end the following:

19 “(H)(i) If the beneficiary of a petition under this
 20 paragraph is coming to the United States to open, or to
 21 be employed in, a new office, the petition may be approved
 22 for up to 12 months only if—

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

1 “(II) the employer operating the new office
2 has—

3 “(aa) an adequate business plan;

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

6 “(cc) the financial ability to commence
7 doing business immediately upon the approval
8 of the petition.

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

13 “(I) evidence that the importing employer
14 meets the requirements of this subsection;

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

18 “(III) a statement summarizing the original pe-
19 tition;

20 “(IV) evidence that the importing employer has
21 fully complied with the business plan submitted
22 under clause (i)(I);

23 “(V) evidence of the truthfulness of any rep-
24 resentations made in connection with the filing of
25 the original petition;

1 “(VI) evidence that the importing employer, for
2 the entire period beginning on the date on which the
3 petition was approved under clause (i), has been
4 doing business at the new office through regular,
5 systematic, and continuous provision of goods and
6 services;

7 “(VII) a statement of the duties the beneficiary
8 has performed at the new office during the approval
9 period under clause (i) and the duties the beneficiary
10 will perform at the new office during the extension
11 period granted under this clause;

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

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

16 “(X) evidence of the financial status of the new
17 office; and

18 “(XI) any other evidence or data prescribed by
19 the Secretary.

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

1 “(iv) Notwithstanding clause (ii), and subject to the
2 maximum period of authorized admission set forth in sub-
3 paragraph (D), the Secretary of Homeland Security, in
4 the Secretary’s discretion, may approve a subsequently
5 filed petition on behalf of the beneficiary to continue em-
6 ployment at the office described in this subparagraph for
7 a period beyond the initially granted 12-month period if
8 the importing employer has been doing business at the
9 new office through regular, systematic, and continuous
10 provision of goods and services for the 6 months imme-
11 diately preceding the date of extension petition filing and
12 demonstrates that the failure to satisfy any of the require-
13 ments described in those subclauses was directly caused
14 by extraordinary circumstances, as determined by the Sec-
15 retary in the Secretary’s discretion.”.

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

17 Section 214(c)(2) of the Immigration and Nationality
18 Act (8 U.S.C. 1184(c)(2)), as amended by sections 201
19 and 202, is further amended by adding at the end the
20 following:

21 “(I) The Secretary of Homeland Security shall work
22 cooperatively with the Secretary of State to verify the ex-
23 istence or continued existence of a company or office in
24 the United States or in a foreign country for purposes of
25 approving petitions under this paragraph.”.

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

3 Section 214(c)(2) of the Immigration and Nationality
4 Act (8 U.S.C. 1184(c)(2)), as amended by sections 201
5 through 203, is further amended by adding at the end the
6 following:

7 “(J)(i) The Secretary of Homeland Security may ini-
8 tiate an investigation of any employer that employs non-
9 immigrants described in section 101(a)(15)(L) with re-
10 gard to the employer’s compliance with the requirements
11 under this subsection.

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

22 “(iii) The Secretary shall establish a procedure for
23 any person desiring to provide to the Secretary informa-
24 tion described in clause (ii) that may be used, in whole
25 or in part, as the basis for the commencement of an inves-
26 tigation described in such clause, to provide the informa-

1 tion in writing on a form developed and provided by the
2 Secretary and completed by or on behalf of the person.

3 “(iv) No investigation described in clause (ii) (or
4 hearing described in clause (vi) based on such investiga-
5 tion) may be conducted with respect to information about
6 a failure to comply with the requirements under this sub-
7 section, unless the Secretary receives the information not
8 later than 24 months after the date of the alleged failure.

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

21 “(vi) If the Secretary, after an investigation under
22 clause (i) or (ii), determines that a reasonable basis exists
23 to make a finding that the employer has failed to comply
24 with the requirements under this subsection, the Secretary
25 shall provide the interested parties with notice of such de-

1 termination and an opportunity for a hearing in accord-
2 ance with section 556 of title 5, United States Code, not
3 later than 120 days after the date of such determination.
4 If such a hearing is requested, the Secretary shall make
5 a finding concerning the matter by not later than 120 days
6 after the date of the hearing.

7 “(vii) If the Secretary, after a hearing, finds a rea-
8 sonable basis to believe that the employer has violated the
9 requirements under this subsection, the Secretary shall
10 impose a penalty under subparagraph (K).

11 “(viii)(I) The Secretary may conduct surveys of the
12 degree to which employers comply with the requirements
13 under this section.

14 “(II) The Secretary shall—

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

19 “(bb) conduct annual compliance audits of each
20 employer with more than 100 employees who work
21 in the United States if more than 15 percent of such
22 employees are nonimmigrants described in section
23 101(a)(15)(L); and

1 “(cc) make available to the public an executive
2 summary or report describing the general findings of
3 the audits carried out pursuant to this subclause.

4 “(ix) The Secretary is authorized to take other such
5 actions, including issuing subpoenas and seeking appro-
6 priate injunctive relief and specific performance of con-
7 tractual obligations, as may be necessary to assure em-
8 ployer compliance with the terms and conditions under
9 this paragraph. The rights and remedies provided to non-
10 immigrants described in section 101(a)(15)(L) under this
11 paragraph are in addition to, and not in lieu of, any other
12 contractual or statutory rights and remedies of such non-
13 immigrants, and are not intended to alter or affect such
14 rights and remedies.”.

15 **SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L-**
16 **1 NONIMMIGRANTS.**

17 (a) IN GENERAL.—Section 214(c)(2) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1184(c)(2)), as amend-
19 ed by sections 201 through 204, is further amended by
20 adding at the end the following:

21 “(K)(i) An employer that employs a nonimmigrant
22 described in section 101(a)(15)(L) for a cumulative period
23 of time in excess of 1 year shall—

24 “(I) offer such nonimmigrant, during the period
25 of authorized employment, wages, based on the best

1 information available at the time the application is
2 filed, which are not less than the highest of—

3 “(aa) the locally determined prevailing
4 wage level for the occupational classification in
5 the area of employment;

6 “(bb) the median wage for all workers in
7 the occupational classification in the area of
8 employment; and

9 “(cc) the median wage for skill level 2 in
10 the occupational classification found in the
11 most recent Occupational Employment Statis-
12 tics survey; and

13 “(II) provide working conditions for such non-
14 immigrant that will not adversely affect the working
15 conditions of workers similarly employed by the em-
16 ployer or by an employer with which such non-
17 immigrant is placed pursuant to a waiver under sub-
18 paragraph (F)(ii).

19 “(ii) If an employer, in such previous period specified
20 by the Secretary of Homeland Security, employed 1 or
21 more such nonimmigrants, the employer shall provide to
22 the Secretary of Homeland Security the Internal Revenue
23 Service Form W–2 Wage and Tax Statement filed by the
24 employer with respect to such nonimmigrants for such pe-
25 riod.

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

5 “(I) to require such a nonimmigrant to pay a
 6 penalty or liquidated damages for ceasing employ-
 7 ment with the employer before a date mutually
 8 agreed to by the nonimmigrant and the employer; or

9 “(II) to fail to offer to such a nonimmigrant,
 10 during the nonimmigrant’s period of authorized em-
 11 ployment, on the same basis, and in accordance with
 12 the same criteria, as the employer offers to United
 13 States workers, benefits and eligibility for benefits,
 14 including—

15 “(aa) the opportunity to participate in
 16 health, life, disability, and other insurance
 17 plans;

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

20 “(cc) cash bonuses and noncash compensa-
 21 tion, such as stock options (whether or not
 22 based on performance).”.

23 (b) RULEMAKING.—The Secretary of Homeland Se-
 24 curity, after notice and a period of comment and taking
 25 into consideration any special circumstances relating to

1 intracompany transfers, shall promulgate rules to imple-
2 ment the requirements under section 214(c)(2)(K) of the
3 Immigration and Nationality Act, as added by subsection
4 (a).

5 **SEC. 206. PENALTIES.**

6 Section 214(c)(2) of the Immigration and Nationality
7 Act (8 U.S.C. 1184(c)(2)), as amended by sections 201
8 through 205, is further amended by adding at the end the
9 following:

10 “(L)(i) If the Secretary of Homeland Security deter-
11 mines, after notice and an opportunity for a hearing, that
12 an employer failed to meet a condition under subpara-
13 graph (F), (G), (K), or (M), or misrepresented a material
14 fact in a petition to employ 1 or more aliens as non-
15 immigrants described in section 101(a)(15)(L)—

16 “(I) the Secretary shall impose such adminis-
17 trative remedies (including civil monetary penalties
18 in an amount not to exceed \$5,000 per violation) as
19 the Secretary determines to be appropriate;

20 “(II) the Secretary may not, during a period of
21 at least 1 year, approve a petition for that employer
22 to employ 1 or more aliens as such nonimmigrants;
23 and

24 “(III) in the case of a violation of subparagraph
25 (K) or (M), the employer shall be liable to the em-

1 ployees harmed by such violation for lost wages and
 2 benefits.

3 “(ii) If the Secretary finds, after notice and an oppor-
 4 tunity for a hearing, a willful failure by an employer to
 5 meet a condition under subparagraph (F), (G), (K), or
 6 (M) or a willful misrepresentation of material fact in a
 7 petition to employ 1 or more aliens as nonimmigrants de-
 8 scribed in section 101(a)(15)(L)—

9 “(I) the Secretary shall impose such adminis-
 10 trative remedies (including civil monetary penalties
 11 in an amount not to exceed \$25,000 per violation)
 12 as the Secretary determines to be appropriate;

13 “(II) the Secretary may not, during a period of
 14 at least 2 years, approve a petition filed for that em-
 15 ployer to employ 1 or more aliens as such non-
 16 immigrants; and

17 “(III) in the case of a violation of subparagraph
 18 (K) or (M), the employer shall be liable to the em-
 19 ployees harmed by such violation for lost wages and
 20 benefits.”.

21 **SEC. 207. PROHIBITION ON RETALIATION AGAINST L-1**
 22 **NONIMMIGRANTS.**

23 Section 214(c)(2) of the Immigration and Nationality
 24 Act (8 U.S.C. 1184(c)(2)), as amended by sections 201

1 through 206, is further amended by adding at the end the
2 following:

3 “(M)(i) An employer that has filed a petition to im-
4 port 1 or more aliens as nonimmigrants described in sec-
5 tion 101(a)(15)(L) violates this subparagraph by taking,
6 failing to take, or threatening to take or fail to take, a
7 personnel action, or intimidating, threatening, restraining,
8 coercing, blacklisting, discharging, or discriminating in
9 any other manner against an employee because the em-
10 ployee—

11 “(I) has disclosed information that the em-
12 ployee reasonably believes evidences a violation of
13 this subsection, or any rule or regulation pertaining
14 to this subsection; or

15 “(II) cooperates or seeks to cooperate with the
16 requirements under this subsection, or any rule or
17 regulation pertaining to this subsection.

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

20 “(I) a current employee;

21 “(II) a former employee; and

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

1 **SEC. 208. ADJUDICATION BY DEPARTMENT OF HOMELAND**
2 **SECURITY OF PETITIONS UNDER BLANKET**
3 **PETITION.**

4 (a) IN GENERAL.—Section 214(c)(2)(A) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1184(c)(2)(A)) is
6 amended to read as follows:

7 “(A) The Secretary of Homeland Security shall es-
8 tablish a procedure under which an importing employer
9 that meets the requirements established by the Secretary
10 may file a blanket petition to authorize aliens to enter the
11 United States as nonimmigrants described in section
12 101(a)(15)(L) instead of filing individual petitions under
13 paragraph (1) on behalf of such aliens. Such procedure
14 shall permit—

15 “(i) the expedited processing by the Secretary
16 of State of visas for admission of aliens covered
17 under such blanket petitions; and

18 “(ii) the expedited adjudication by the Sec-
19 retary of Homeland Security of individual petitions
20 covered under such blanket petitions.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to petitions filed on or after the
23 date of the enactment of this Act.

1 **SEC. 209. REPORTS ON EMPLOYMENT-BASED NON-**
2 **IMMIGRANTS.**

3 (a) IN GENERAL.—Section 214(c)(8) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1184(c)(8)) is amend-
5 ed to read as follows—

6 “(8) The Secretary of Homeland Security or Sec-
7 retary of State, as appropriate, shall submit an annual re-
8 port to the Committee on the Judiciary of the Senate and
9 the Committee on the Judiciary of the House of Rep-
10 resentatives that describes, with respect to petitions under
11 subsection (e) and each subcategory of subparagraphs
12 (H), (L), (O), (P), and (Q) of section 101(a)(15)—

13 “(A) the number of such petitions (or applica-
14 tions for admission, in the case of applications by
15 Canadian nationals seeking admission under sub-
16 section (e) or section 101(a)(15)(L)) which have
17 been filed;

18 “(B) the number of such petitions which have
19 been approved and the number of workers (by occu-
20 pation) included in such approved petitions;

21 “(C) the number of such petitions which have
22 been denied and the number of workers (by occupa-
23 tion) requested in such denied petitions;

24 “(D) the number of such petitions which have
25 been withdrawn;

1 “(E) the number of such petitions which are
2 awaiting final action;

3 “(F) the number of aliens in the United States
4 under each subcategory under section
5 101(a)(15)(H); and

6 “(G) the number of aliens in the United States
7 under each subcategory under section
8 101(a)(15)(L).”.

9 (b) NONIMMIGRANT CHARACTERISTICS REPORT.—
10 Section 416(c) of the American Competitiveness and
11 Workforce Improvement Act of 1998 (8 U.S.C. 1184 note)
12 is amended—

13 (1) by amending paragraph (2) to read as fol-
14 lows:

15 “(2) ANNUAL H-1B NONIMMIGRANT CHARAC-
16 TERISTICS REPORT.—The Secretary of Homeland
17 Security shall submit an annual report to the Com-
18 mittee on the Judiciary of the Senate and the Com-
19 mittee on the Judiciary of the House of Representa-
20 tives that contains—

21 “(A) for the previous fiscal year—

22 “(i) information on the countries of
23 origin of, occupations of, educational levels
24 attained by, and compensation paid to,
25 aliens who were issued visas or provided

1 nonimmigrant status under section
2 101(a)(15)(H)(i)(b) of the Immigration
3 and Nationality Act (8 U.S.C.
4 1101(a)(15)(H)(i)(b));

5 “(ii) a list of all employers who peti-
6 tioned for H–1B workers, the number of
7 such petitions filed and approved for each
8 such employer, the occupational classifica-
9 tions for the approved positions, and the
10 number of H–1B nonimmigrants for whom
11 each such employer filed an employment-
12 based immigrant petition pursuant to sec-
13 tion 204(a)(1)(F) of the Immigration and
14 Nationality Act (8 U.S.C. 1154(a)(1)(F));
15 and

16 “(iii) the number of employment-
17 based immigrant petitions filed pursuant
18 to such section 204(a)(1)(F) on behalf of
19 H–1B nonimmigrants;

20 “(B) a list of all employers for whom more
21 than 15 percent of their United States work-
22 force is H–1B or L–1 nonimmigrants;

23 “(C) a list of all employers for whom more
24 than 50 percent of their United States work-
25 force is H–1B or L–1 nonimmigrants;

1 “(D) a gender breakdown by occupation
2 and by country of origin of H-1B non-
3 immigrants;

4 “(E) a list of all employers who have been
5 granted a waiver under section 214(n)(2)(E) of
6 the Immigration and Nationality Act (8 U.S.C.
7 1184(n)(2)(E)); and

8 “(F) the number of H-1B nonimmigrants
9 categorized by their highest level of education
10 and whether such education was obtained in the
11 United States or in a foreign country.”;

12 (2) by redesignating paragraph (3) as para-
13 graph (5);

14 (3) by inserting after paragraph (2) the fol-
15 lowing:

16 “(3) ANNUAL L-1 NONIMMIGRANT CHARACTER-
17 ISTICS REPORT.—The Secretary of Homeland Secu-
18 rity shall submit an annual report to the Committee
19 on the Judiciary of the Senate and the Committee
20 on the Judiciary of the House of Representatives
21 that contains—

22 “(A) for the previous fiscal year—

23 “(i) information on the countries of
24 origin of, occupations of, educational levels
25 attained by, and compensation paid to,

1 aliens who were issued visas or provided
2 nonimmigrant status under section
3 101(a)(15)(L) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1101(a)(15)(L));

5 “(ii) a list of all employers who peti-
6 tioned for L–1 workers, the number of
7 such petitions filed and approved for each
8 such employer, the occupational classifica-
9 tions for the approved positions, and the
10 number of L–1 nonimmigrants for whom
11 each such employer filed an employment-
12 based immigrant petition pursuant to sec-
13 tion 204(a)(1)(F) of the Immigration and
14 Nationality Act (8 U.S.C. 1154(a)(1)(F));
15 and

16 “(iii) the number of employment-
17 based immigrant petitions filed pursuant
18 to such section 204(a)(1)(F) on behalf of
19 L–1 nonimmigrants;

20 “(B) a gender breakdown by occupation
21 and by country of L–1 nonimmigrants;

22 “(C) a list of all employers who have been
23 granted a waiver under section 214(c)(2)(F)(ii)
24 of the Immigration and Nationality Act (8
25 U.S.C. 1184(c)(2)(F)(ii));

1 “(D) the number of L-1 nonimmigrants
 2 categorized by their highest level of education
 3 and whether such education was obtained in the
 4 United States or in a foreign country;

5 “(E) the number of applications that have
 6 been filed for each subcategory of non-
 7 immigrant described under section
 8 101(a)(15)(L) of the Immigration and Nation-
 9 ality Act (8 U.S.C. 1101(a)(15)(L)), based on
 10 an approved blanket petition under section
 11 214(c)(2)(A) of such Act; and

12 “(F) the number of applications that have
 13 been approved for each subcategory of non-
 14 immigrant described under such section
 15 101(a)(15)(L), based on an approved blanket
 16 petition under such section 214(c)(2)(A).

17 “(4) ANNUAL H-1B EMPLOYER SURVEY.—The
 18 Secretary of Labor shall—

19 “(A) conduct an annual survey of employ-
 20 ers hiring foreign nationals under the H-1B
 21 visa program; and

22 “(B) issue an annual report that—

23 “(i) describes the methods employers
 24 are using to meet the requirement under
 25 section 212(n)(1)(G)(i) of the Immigration

1 and Nationality Act (8 U.S.C.
 2 1182(n)(1)(G)(i)) of taking good faith
 3 steps to recruit United States workers for
 4 the occupational classification for which
 5 the nonimmigrants are sought, using pro-
 6 cedures that meet industry-wide standards;
 7 “(ii) describes the best practices for
 8 recruiting among employers; and
 9 “(iii) contains recommendations on
 10 which recruiting steps employers can take
 11 to maximize the likelihood of hiring Amer-
 12 ican workers.”; and
 13 (4) in paragraph (5), as redesignated, by strik-
 14 ing “paragraph (2)” and inserting “paragraphs (2)
 15 and (3)”.

16 **SEC. 210. SPECIALIZED KNOWLEDGE.**

17 Section 214(c)(2)(B) of the Immigration and Nation-
 18 ality Act (8 U.S.C. 1184(c)(2)(B)) is amended to read as
 19 follows:

20 “(B)(i) For purposes of section 101(a)(15)(L), the
 21 term ‘specialized knowledge’—

22 “(I) means knowledge possessed by an indi-
 23 vidual whose advanced level of expertise and propri-
 24 etary knowledge of the employer’s product, service,
 25 research, equipment, techniques, management, or

1 other interests of the employer are not readily avail-
2 able in the United States labor market;

3 “(II) is clearly different from those held by oth-
4 ers employed in the same or similar occupations; and

5 “(III) does not apply to persons who have gen-
6 eral knowledge or expertise which enables them
7 merely to produce a product or provide a service.

8 “(ii)(I) The ownership of patented products or copy-
9 righted works by a petitioner under section 101(a)(15)(L)
10 does not establish that a particular employee has special-
11 ized knowledge. In order to meet the definition under
12 clause (i), the beneficiary shall be a key person with
13 knowledge that is critical for performance of the job duties
14 and is protected from disclosure through patent, copy-
15 right, or company policy.

16 “(II) Different procedures are not proprietary knowl-
17 edge within this context unless the entire system and phi-
18 losophy behind the procedures are clearly different from
19 those of other firms, they are relatively complex, and they
20 are protected from disclosure to competition.”.

21 **SEC. 211. TECHNICAL AMENDMENTS.**

22 Section 214(c)(2) of the Immigration and Nationality
23 Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attor-
24 ney General” each place such term appears and inserting
25 “Secretary of Homeland Security”.

1 **SEC. 212. APPLICATION.**

2 Except as otherwise specifically provided, the amend-
3 ments made by this title shall apply to petitions and appli-
4 cations filed on or after the date of the enactment of this
5 Act.

○