AMENDMENT NO._____ Calendar No._____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

H. R. 1044

To amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LEE

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fairness for High-Skilled Immigrants Act of 2019''.

SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.

(a) IN GENERAL.—Section 202(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(2)) is amended to read as follows:

''(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED IMMIGRANTS.—Subject to paragraphs (3) and (4), the total number of immigrant visas made available to natives of any single foreign state or dependent area under section 203(a) in any fiscal year may not exceed 15 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such section in that fiscal year.''.

(b) CONFORMING AMENDMENTS.—Section 202 of such Act (8 U.S.C. 1152) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking ''both subsections (a) and (b) of section 203'' and inserting ''section 203(a)''; and

(B) by striking paragraph (5); and

(2) by amending subsection (e) to read as follows:

''(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If the total number of immigrant visas made available under section 203(a) to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, immigrant visas shall be allotted to such natives under section 203(a) (to the extent practicable and otherwise consistent with

this section and section 203) in a manner so that, except as provided in subsection (a)(4), the proportion of the visas made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total visas made available under the respective paragraph to the total visas made available under section 203(a).''.

(c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the Chinese Student Protection Act of 1992 (8 U.S.C. 1255 note) is amended—

(1) in subsection (a), by striking ''(as defined in subsection (e))'';

(2) by striking subsection (d); and

(3) by redesignating subsection (e) as subsection (d).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted on September 30, 2019, and shall apply to fiscal year 2020 and each subsequent fiscal year.

(e) TRANSITION RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Subject to paragraphs (2) through (5), and notwithstanding title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.), the following rules shall apply:

(A) For fiscal year 2020, 15 percent of the immigrant visas made available under each of paragraphs (2) and (3) of section 203(b) of such Act (8 U.S.C. 1153(b)) shall be allotted to immigrants who are natives of a foreign state or dependent area that is not one of the two states with the largest aggregate numbers of natives obtaining immigrant visas under such paragraphs.

(B) For fiscal year 2021, 10 percent of the immigrant visas made available under each of such paragraphs shall be allotted to immigrants who are natives of a foreign state or dependent area that is not one of the two states with the largest aggregate numbers of natives obtaining immigrant visas under such paragraphs.

(C) For fiscal year 2022, 10 percent of the immigrant visas made available under each of such paragraphs shall be allotted to immigrants who are natives of a foreign state or dependent area that is not one of the two states with the largest aggregate numbers of natives obtaining immigrant visas under such paragraphs.

(2) PER-COUNTRY LEVELS.—

(A) RESERVED VISAS.—The number of visas reserved under each of subparagraphs (A) through (C) of paragraph (1) made available to natives of any single foreign state or dependent area in the appropriate fiscal year may not exceed 25 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas.

(B) UNRESERVED VISAS.—Not more than 85 percent of the immigrant visas made available under each of paragraphs (2) and (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) and not reserved under paragraph (1), for each of the fiscal years 2020, 2021, and 2022, may be allotted to immigrants who are natives of any single foreign state.

(3) SPECIAL RULE TO PREVENT UNUSED VISAS.—If, with respect to fiscal year 2020, 2021, or 2022, the application of paragraphs (1) and (2) would prevent the total number of immigrant visas made available under paragraph (2) or (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) from being issued, such visas may

be issued during the remainder of such fiscal year without regard to paragraphs (1) and (2).

(4) TRANSITION RULE FOR CURRENTLY APPROVED BENEFICIARIES.—

(A) IN GENERAL.—Notwithstanding section 202 of the Immigration and Nationality Act, as amended by this Act, immigrant visas under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be allocated such that no alien described in subparagraph (B) receives a visa later than the alien otherwise would have received said visa had this Act not been enacted.

(B) ALIEN DESCRIBED.—An alien is described in this subparagraph if the alien is the beneficiary of a petition for an immigrant visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) that was approved prior to the date of enactment of this Act.

(5) RULES FOR CHARGEABILITY.—Section 202(b) of such Act (8 U.S.C. 1152(b)) shall apply in determining the foreign state to which an alien is chargeable for purposes of this subsection.

(6) SHORTAGE OCCUPATIONS.—

(A) IN GENERAL.—For each of fiscal years 2020 through 2028, not fewer than 5,000 of the immigrant visas made available under paragraph (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be allotted to immigrants who are—

(i) described in section 656.5(a) of title 20, Code of Federal Regulations (or a successor regulation); and

(ii) seeking admission to the United States to work in an occupation described in that section.

(B) FISCAL YEARS 2020, 2021, AND 2022.—The visas allotted under this paragraph for fiscal years 2020, 2021, and 2022 shall be allotted in addition to the visas allotted for such fiscal years under paragraph (1).

SEC. 3. POSTING AVAILABLE POSITIONS THROUGH THE DEPARTMENT OF LABOR.

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

''(6) For purposes of complying with paragraph (1)(C)—

"(A) Not later than 180 days after the date of the enactment of the Fairness for High-Skilled Immigrants Act of 2019, the Secretary of Labor shall establish a searchable internet website for posting positions in accordance with paragraph (1)(C) that is available to the public without charge, except that the Secretary may delay the launch of such website for a single period identified by the Secretary by notice in the Federal Register that shall not exceed 30 days.

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

"(C) The Secretary shall promulgate rules, after notice and a period for comment, to carry out this paragraph.".

(b) PUBLICATION REQUIREMENT.—The Secretary of Labor shall submit to Congress, and publish in the Federal Register and in other appropriate media, a notice of the date on which the Internet website required under section 212(n)(6) of the Immigration and Nationality Act, as established by subsection (a), will be operational.

(c) APPLICATION.—The amendment made by subsection (a) shall apply to any application filed on or after

the date that is 90 days after the date described in subsection (b).

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

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

(2) by striking ''(i) has provided'' and inserting the following:

''(ii)(I) has provided''; and

(3) by inserting before clause (ii), as redesignated by paragraph (2), the following:

''(i) except in the case of an employer filing a petition on behalf of an H–1B nonimmigrant who has already been counted against the numerical limitations and is not eligible for a full 6-year period, as described in section 214(g)(7), or on behalf of an H–1B nonimmigrant authorized to accept employment under section 214(n), has posted on the internet website described in paragraph (6), for at least 30 calendar days, a description of each position for which a nonimmigrant is sought, that includes—

''(I) the occupational classification, and if different the employer's job title for the position, in which the nonimmigrant(s) will be employed;

''(II) the education, training, or experience qualifications for the position;

''(III) the salary or wage range and employee benefits offered;

''(IV) the location(s) at which the nonimmigrant(s) will be employed; and

''(V) the process for applying for a position; and''.

SEC. 4. H–1B EMPLOYER APPLICATION REQUIREMENTS.

(a) WAGE DETERMINATION INFORMATION.—Section 212(n)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(D)) is amended by inserting ''the prevailing wage determination methodology used under subparagraph (A)(i)(II),'' after ''shall contain''.

(b) NEW APPLICATION REQUIREMENTS.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (G)(ii) the following:

''(H)(i) The employer, or a person or entity acting on the employer's behalf, has not advertised any available position specified in the application in an advertisement that states or indicates that—

''(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

''(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

''(ii) The employer has not primarily recruited individuals who are or who will be H–1B nonimmigrants to fill such position.

''(I) If the employer, in a previous period specified by the Secretary, employed one or more H–1B nonimmigrants, the employer shall submit to the Secretary the Internal Revenue Service Form W–2 Wage and Tax Statements filed by the employer with respect to the H–1B nonimmigrants for such period.''.

(c) LABOR CONDITION APPLICATION FEE.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended by adding at the end the following:

''(6)(A) The Secretary of Labor shall promulgate a regulation that requires applicants under this subsection to pay an administrative fee to cover the average paperwork processing costs and other administrative costs.

''(B)(i) Fees collected under this paragraph shall be deposited as offsetting receipts within the general fund of the Treasury in a separate account, which shall be known as the 'H–1B Administration, Oversight, Investigation, and Enforcement Account' and shall remain available until expended.

''(ii) The Secretary of the Treasury shall refund amounts in such account to the Secretary of Labor for salaries and related expenses associated with the administration, oversight, investigation, and enforcement of the H–1B nonimmigrant visa program.''.

(d) ELIMINATION OF B–1 IN LIEU OF H–1.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

''(12)(A) Unless otherwise authorized by law, an alien normally classifiable under section 101(a)(15)(H)(i) who seeks admission to the United States to provide services in a specialty occupation described in paragraph (1) or (3) of subsection (i) may not be issued a visa or admitted under section 101(a)(15)(B) for such purpose.

''(B) Nothing in this paragraph may be construed to authorize the admission of an alien under section 101(a)(15)(B) who is coming to the United States for the purpose of performing skilled or unskilled labor if such admission is not otherwise authorized by law.''.

SEC. 5. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST H–1B EMPLOYERS.

(a) INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.—Section 212(n)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended by striking clause (iv) and inserting the following:

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

''(aa) disclosed information that the employee reasonably believes evidences a violation of this subsection or any rule or regulation pertaining to this subsection; or

''(bb) cooperated or sought to cooperate with the requirements under this subsection or any rule or regulation pertaining to this subsection.

''(II) An employer that violates this clause shall be liable to the employee harmed by such violation for lost wages and benefits.

''(III) In this clause, the term 'employee' includes—

''(aa) a current employee;

''(bb) a former employee; and

''(cc) an applicant for employment.''.

(b) INFORMATION SHARING.—Section 212(n)(2)(H) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(H)) is amended to read as follows:

''(H)(i) The Director of U.S. Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the petition adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants.

''(ii) The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.''.

SEC. 6. LABOR CONDITION APPLICATIONS.

(a) APPLICATION REVIEW REQUIREMENTS.—Section 212(n)(1) of the Immigration and Nationality Act (8

U.S.C. 1182(n)(1)) is amended, in the undesignated matter following subparagraph (I), as added by section 4(b)—

(1) in the fourth sentence, by inserting ", and through the internet website of the Department of Labor, without charge." after "Washington, D.C.";

(2) in the fifth sentence, by striking "only for completeness" and inserting "for completeness, clear indicators of fraud or misrepresentation of material fact,";

(3) in the sixth sentence, by striking "or obviously inaccurate" and inserting ", presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate"; and

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

(b) ENSURING PREVAILING WAGES ARE FOR AREA OF EMPLOYMENT AND ACTUAL WAGES ARE FOR SIMILARLY EMPLOYED.—Section 212(n)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is amended—

(1) in clause (i), in the undesignated matter following subclause (II), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting ", and"; and

(3) by adding at the end the following:

"(iii) will ensure that—

"(I) the actual wages or range identified in clause (i) relate solely to employees having substantially the same duties and responsibilities as the H–1B nonimmigrant in the geographical area of intended employment, considering experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors, except in a geographical area there are no such employees, and

"(II) the prevailing wages identified in clause (ii) reflect the best available information for the geographical area within normal commuting distance of the actual address of employment at which the H–1B nonimmigrant is or will be employed.".

(c) PROCEDURES FOR INVESTIGATION AND DISPOSITION.—Section 212(n)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

(1) by striking ''(2)(A) Subject'' and inserting ''(2)(A)(i) Subject'';

(2) by striking the fourth sentence; and

(3) by adding at the end the following:

''(ii)(I) Upon receipt of a complaint under clause (i), the Secretary may initiate an investigation to determine whether such a failure or misrepresentation has occurred.

''(II) The Secretary may conduct—

''(aa) surveys of the degree to which employers comply with the requirements under this subsection; and

''(bb) subject to subclause (IV), annual compliance audits of any employer that employs H–1B nonimmigrants during the applicable calendar year.

''(III) Subject to subclause (IV), the Secretary shall—

''(aa) conduct annual compliance audits of each employer that employs more than 100 full-time equivalent employees who are employed in the United States if

more than 15 percent of such full-time employees are H–1B nonimmigrants; and

''(bb) make available to the public an executive summary or report describing the general findings of the audits conducted under this subclause.

''(IV) In the case of an employer subject to an annual compliance audit in which there was no finding of a willful failure to meet a condition under subparagraph (C)(ii), no further annual compliance audit shall be conducted with respect to such employer for a period of not less than 4 years, absent evidence of misrepresentation or fraud.''.

(d) PENALTIES FOR VIOLATIONS.—Section 212(n)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended –

(1) in clause (i)—

(A) in the matter preceding subclause (I), by striking ''a condition of paragraph (1)(B), (1)(E), or (1)(F)'' and inserting ''a condition of paragraph (1)(B), (1)(E), (1)(F), (1)(H), or 1(I)''; and

(B) in subclause (I), by striking ''$1,000'' and inserting ''$3,000'';

(2) in clause (ii)(I), by striking ''$5,000'' and inserting ''$15,000'';

(3) in clause (iii)(I), by striking ''$35,000'' and inserting ''$100,000''; and

(4) in clause (vi)(III), by striking ''$1,000'' and inserting ''$3,000''.

(e) INITIATION OF INVESTIGATIONS.—Section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)) is amended—

(1) in clause (i), by striking ''In the case of an investigation'' in the second sentence and all that follows through the period at the end of the clause;

(2) in clause (ii), in the first sentence, by striking ''and whose identity'' and all that follows through ''failure or failures.'' and inserting ''the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements under this subsection.'';

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

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

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

(6) in clause (iv), as so redesignated—

(A) by striking‘‘clause (viii)’’ and inserting ‘‘clause (vi)’’; and

(B) by striking ‘‘meet a condition described in clause (ii)’’ and inserting ‘‘comply with the requirements under this subsection’’;

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

‘‘(v)(I) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation under clause (i) or (ii).

‘‘(II) The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced.

‘‘(III) The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection.

‘‘(IV) A determination by the Secretary under this clause shall not be subject to judicial review.’’;

(8) in clause (vi), as so redesignated, by striking ‘‘An investigation’’ in the first sentence and all

that follows through ''the determination.'' in the second sentence and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 60 days after the date of such determination.''; and

(9) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds that the employer has violated a requirement under this subsection, the Secretary may impose a penalty pursuant to subparagraph (C).''.