

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d 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 _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for High-
5 Skilled Immigrants Act of 2020”.

6 **SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN**
7 **STATE.**

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

1 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
2 SORED IMMIGRANTS.—Subject to paragraphs (3)
3 and (4), the total number of immigrant visas made
4 available to natives of any single foreign state or de-
5 pendent area under section 203(a) in any fiscal year
6 may not exceed 15 percent (in the case of a single
7 foreign state) or 2 percent (in the case of a depend-
8 ent area) of the total number of such visas made
9 available under such section in that fiscal year.”.

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

12 (1) in subsection (a)—

13 (A) in paragraph (3), by striking “both
14 subsections (a) and (b) of section 203” and in-
15 serting “section 203(a)”; and

16 (B) by striking paragraph (5); and

17 (2) by amending subsection (e) to read as fol-
18 lows:

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

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

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

10 (1) in subsection (a), by striking “(as defined
11 in subsection (e))”;

12 (2) by striking subsection (d); and

13 (3) by redesignating subsection (e) as sub-
14 section (d).

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the first day of the second
17 fiscal year beginning after the date of enactment of this
18 Act, and shall apply to that fiscal year and each subse-
19 quent fiscal year.

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

22 (1) IN GENERAL.—Subject to paragraphs (2)
23 through (4), and notwithstanding title II of the Im-
24 migration and Nationality Act (8 U.S.C. 1151 et
25 seq.), the following rules shall apply:

1 (A) During the first nine fiscal years after
2 the date of enactment of this Act, certain visas
3 will be reserved within the immigrant visas
4 made available under each of paragraphs (2)
5 and (3) of section 203(b) of the Immigration
6 and Nationality Act (8 U.S.C. 1153(b)).

7 (B) With regard to immigrant visas made
8 available under paragraphs (2) and (3) of sec-
9 tion 203(b) of the Immigration and Nationality
10 Act (8 U.S.C. 1153(b)) for the first nine fiscal
11 years after the date of enactment of this Act,
12 visas will be reserved for immigrants native to
13 countries other than the two states with the
14 largest aggregate number of natives who are
15 beneficiaries of approved but backlogged peti-
16 tions for immigrant status under section 203(b)
17 of the Immigration and Nationality Act (8
18 U.S.C. 1153(b)), as follows:

19 (i) For the first fiscal year after the
20 date of enactment of this Act, 30 percent
21 of the immigrant visas made available
22 under paragraphs (2) and (3) of section
23 203(b) of the Immigration and Nationality
24 Act (8 U.S.C. 1153(b)) shall be allotted to
25 immigrants who are natives of a foreign

1 state or dependent area that is not one of
2 the two states with the largest aggregate
3 numbers of natives waiting for immigrant
4 status.

5 (ii) For the second fiscal year after
6 the date of enactment of this Act, 25 per-
7 cent of the immigrant visas made available
8 under paragraphs (2) and (3) of section
9 203(b) of the Immigration and Nationality
10 Act (8 U.S.C. 1153(b)) shall be allotted to
11 immigrants who are natives of a foreign
12 state or dependent area that is not one of
13 the two states with the largest aggregate
14 numbers of natives waiting for immigrant
15 status.

16 (iii) For the third fiscal year after the
17 date of enactment of this Act, 20 percent
18 of the immigrant visas made available
19 under paragraphs (2) and (3) of section
20 203(b) of the Immigration and Nationality
21 Act (8 U.S.C. 1153(b)) shall be allotted to
22 immigrants who are natives of a foreign
23 state or dependent area that is not one of
24 the two states with the largest aggregate

1 numbers of natives waiting for immigrant
2 status.

3 (iv) For the fourth fiscal year after
4 the date of enactment of this Act, 15 per-
5 cent of the immigrant visas made available
6 under paragraphs (2) and (3) of section
7 203(b) of the Immigration and Nationality
8 Act (8 U.S.C. 1153(b)) shall be allotted to
9 immigrants who are natives of a foreign
10 state or dependent area that is not one of
11 the two states with the largest aggregate
12 numbers of natives waiting for immigrant
13 status.

14 (v) For the fifth and sixth fiscal years
15 after the date of enactment of this Act, 10
16 percent of the immigrant visas made avail-
17 able under paragraphs (2) and (3) of sec-
18 tion 203(b) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1153(b)) shall be
20 allotted to immigrants who are natives of
21 a foreign state or dependent area that is
22 not one of the two states with the largest
23 aggregate numbers of natives waiting for
24 immigrant status.

1 (vi) For the seventh, eighth, and
2 ninth fiscal years after the date of enact-
3 ment of this Act, 5 percent of the immi-
4 grant visas made available under para-
5 graphs (2) and (3) of section 203(b) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1153(b)) shall be allotted to immigrants
8 who are natives of a foreign state or de-
9 pendent area that is not one of the two
10 states with the largest aggregate numbers
11 of natives waiting for immigrant status.

12 (C) 5.75 percent of the immigrant visas
13 made available under paragraphs (2) and (3) of
14 section 203(b) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1153(b)) shall be reserved
16 annually for the first nine fiscal years after the
17 date of enactment of this Act for immigrants
18 who are native to countries other than the two
19 states with the largest aggregate number of na-
20 tives who are beneficiaries of approved but
21 backlogged petitions for immigrant status under
22 such section. Such visas will be made available
23 by the following priority ordering:

24 (i) Derivative dependents described in
25 section 203(d) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1153(d)) who seek
2 to join a principal beneficiary of a petition
3 for an immigrant visa under paragraphs
4 (2) and (3) of section 203(b) of the Immig-
5 ration and Nationality Act (8 U.S.C.
6 1153(b)).

7 (ii) Immigrants who seek to enter the
8 United States as new arrivals and who
9 have not resided or worked in the United
10 States at any point in the four-year period
11 immediately preceding the filing of their
12 petition for an immigrant visa under sec-
13 tion 203(b) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1153(b)).

15 (iii) Other immigrants who meet the
16 criteria of this subparagraph.

17 (D) The two states with the largest aggre-
18 gate numbers of natives who are beneficiaries of
19 approved petitions referred to in subparagraphs
20 (B) and (C) are the two states with the largest
21 aggregate number of approved but backlogged
22 cases for immigrant visas under section 203(b)
23 of the Immigration and Nationality Act (8
24 U.S.C. 1153(b)), as identified by adding the
25 numbers associated with aliens awaiting em-

1 employment-based immigrant status in the most
2 recent and available Count Of Approved Em-
3 ployment-Based Immigrant Petitions With Pri-
4 ority Dates On Or After the State Depart-
5 ment's Visa Bulletin from the Department of
6 Homeland Security and such numbers in the
7 most recent Annual Report of Immigrant Visa
8 Applicants in the Employment-Based Pref-
9 erences Registered at the National Visa Center
10 from the Department of State.

11 (E) Notwithstanding subparagraphs (A)
12 through (D), for each of the seven fiscal years
13 after the date of enactment of this Act, not
14 fewer than 4,400 of the immigrant visas made
15 available under paragraph (3) of section 203(b)
16 of the Immigration and Nationality Act (8
17 U.S.C. 1153(b)) and not reserved by subpara-
18 graphs (B) and (C) shall be allotted to immi-
19 grants who are described in section 656.5(a) of
20 title 20, Code of Federal Regulations (or a suc-
21 cessor regulation) and are seeking admission to
22 the United States to work in an occupation de-
23 scribed in that section.

24 (F) Family members described in section
25 203(d) of the Immigration and Nationality Act

1 (8 U.S.C. 1153(d)) who are accompanying or
2 following to join a principal beneficiary seeking
3 admission under subparagraph (E) shall be en-
4 titled to an unreserved visa in the same status
5 and in the same order of consideration as such
6 principal beneficiary, but shall not be counted
7 against the 4,400 immigrant visas allotted
8 under that subparagraph.

9 (2) PER-COUNTRY LEVELS.—

10 (A) RESERVED VISAS.—The number of
11 visas reserved under each of clauses (i) through
12 (iv) of paragraph (1)(B) and each of clauses (i)
13 through (iii) of paragraph (1)(C) made avail-
14 able to natives of any single foreign state or de-
15 pendent area in the appropriate fiscal year may
16 not exceed 25 percent (in the case of a single
17 foreign state) or 2 percent (in the case of a de-
18 pendent area) of the total number of such visas.

19 (B) UNRESERVED VISAS.—Not more than
20 85 percent of the immigrant visas made avail-
21 able under each of paragraphs (2) and (3) of
22 section 203(b) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1153(b)) and not reserved
24 under paragraph (1), for each of the first four
25 fiscal years after the date of enactment of this

1 Act, may be allotted to immigrants who are na-
2 tives of any single foreign state.

3 (3) SPECIAL RULE TO PREVENT UNUSED
4 VISAS.—If, with respect to first nine fiscal years
5 after the enactment of this Act, the application of
6 paragraphs (1) and (2) would prevent the total num-
7 ber of immigrant visas made available under para-
8 graph (2) or (3) of section 203(b) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1153(b)) from
10 being issued, such visas may be issued during the re-
11 mainder of such fiscal year without regard to para-
12 graphs (1) and (2).

13 (4) RULES FOR CHARGEABILITY AND DEPEND-
14 ENTS.—Section 202(b) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1152(b)) shall apply in deter-
16 mining the foreign state to which an alien is charge-
17 able, and section 203(d) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1153(d)) shall apply in allo-
19 cating immigrant visas to dependents, for purposes
20 of this subsection.

21 **SEC. 3. POSTING AVAILABLE POSITIONS THROUGH THE DE-**
22 **PARTMENT OF LABOR.**

23 (a) DEPARTMENT OF LABOR WEBSITE.—Section
24 212(n)(6) of the Immigration and Nationality Act (8
25 U.S.C. 1182(n)(6)) is amended to read as follows:

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

3 “(A) Not later than 180 days after the
4 date of the enactment of the Fairness for High-
5 Skilled Immigrants Act of 2020, the Secretary
6 of Labor shall establish a searchable internet
7 website for posting positions in accordance with
8 paragraph (1)(C) that is available to the public
9 without charge, except that the Secretary may
10 delay the launch of such website for a single pe-
11 riod identified by the Secretary by notice in the
12 Federal Register that shall not exceed 30 days.

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

17 “(C) The Secretary shall promulgate rules,
18 after notice and a period for comment, to carry
19 out this paragraph.”.

20 (b) **PUBLICATION REQUIREMENT.**—The Secretary of
21 Labor shall submit to Congress, and publish in the Fed-
22 eral Register and in other appropriate media, a notice of
23 the date on which the internet website required under sec-
24 tion 212(n)(6) of the Immigration and Nationality Act,
25 as established by subsection (a), will be operational.

1 (c) APPLICATION.—The amendment made by sub-
2 section (a) shall apply to any application filed on or after
3 the date that is 90 days after the date described in sub-
4 section (b).

5 (d) INTERNET POSTING REQUIREMENT.—Section
6 212(n)(1)(C) of the Immigration and Nationality Act (8
7 U.S.C. 1182(n)(1)(C)) is amended—

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

10 (2) by striking “(i) has provided” and inserting
11 the following:

12 “(ii)(I) has provided”; and

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

15 “(i) except in the case of an employer
16 filing a petition on behalf of an H–1B non-
17 immigrant who has already been counted
18 against the numerical limitations and is
19 not eligible for a full 6-year period, as de-
20 scribed in section 214(g)(7), or on behalf
21 of an H–1B nonimmigrant authorized to
22 accept employment under section 214(n),
23 has posted on the internet website de-
24 scribed in paragraph (6), for at least 30
25 calendar days, a description of each posi-

1 tion for which a nonimmigrant is sought,
2 that includes—

3 “(I) the occupational classifica-
4 tion, and if different the employer’s
5 job title for the position, in which the
6 nonimmigrant(s) will be employed;

7 “(II) the education, training, or
8 experience qualifications for the posi-
9 tion;

10 “(III) the salary or wage range
11 and employee benefits offered;

12 “(IV) the location(s) at which the
13 nonimmigrant(s) will be employed;
14 and

15 “(V) the process for applying for
16 a position; and”.

17 **SEC. 4. H-1B EMPLOYER APPLICATION REQUIREMENTS.**

18 (a) **WAGE DETERMINATION INFORMATION.**—Section
19 212(n)(1)(D) of the Immigration and Nationality Act (8
20 U.S.C. 1182(n)(1)(D)) is amended by inserting “the pre-
21 vailing wage determination methodology used under sub-
22 paragraph (A)(i)(II),” after “shall contain”.

23 (b) **NEW APPLICATION REQUIREMENTS.**—Section
24 212(n)(1) of the Immigration and Nationality Act (8

1 U.S.C. 1182(n)(1)) is amended by inserting after subpara-
2 graph (G)(ii) the following:

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

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

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

14 “(ii) The employer has not primarily recruited
15 individuals who are or who will be H–1B non-
16 immigrants to fill such position.

17 “(I) If the employer, in a previous period speci-
18 fied by the Secretary, employed one or more H–1B
19 nonimmigrants, the employer shall submit to the
20 Secretary the Internal Revenue Service Form W–2
21 Wage and Tax Statements filed by the employer
22 with respect to the H–1B nonimmigrants for such
23 period.”.

24 (c) ADDITIONAL APPLICATION REQUIREMENT FOR
25 NEW H–1B APPLICATIONS.—

1 (1) IN GENERAL.—Section 212(n)(1) of the Im-
2 migration and Nationality Act (8 U.S.C.
3 1182(n)(1)), as amended by subsection (b), is fur-
4 ther amended by inserting after subparagraph (I),
5 the following:

6 “(J)(i) If the employer employs 50 or more em-
7 ployees in the United States, the sum of the number
8 of such employees who are H–1B nonimmigrants
9 plus the number of such employees who are non-
10 immigrants described in section 101(a)(15)(L) does
11 not exceed 50 percent of the total number of em-
12 ployees.

13 “(ii) Any group treated as a single employer
14 under subsection (b), (c), (m), or (o) of section 414
15 of the Internal Revenue Code of 1986 shall be treat-
16 ed as a single employer for purposes of clause (i).”.

17 (2) RULE OF CONSTRUCTION.—Nothing in sub-
18 paragraph (J) of section 212(n)(1) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1182(n)(1)), as
20 added by paragraph (1), may be construed to pro-
21 hibit renewal applications for H–1B nonimmigrants
22 employed by an employer on the date of enactment
23 of this Act.

1 (d) LABOR CONDITION APPLICATION FEE.—Section
2 212(n) of the Immigration and Nationality Act (8 U.S.C.
3 1182(n)) is amended by adding at the end the following:

4 “(6)(A) The Secretary of Labor shall promulgate a
5 regulation that requires applicants under this subsection
6 to pay an administrative fee to cover the average paper-
7 work processing costs and other administrative costs.

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

14 “(ii) The Secretary of the Treasury shall refund
15 amounts in such account to the Secretary of Labor for
16 salaries and related expenses associated with the adminis-
17 tration, oversight, investigation, and enforcement of the
18 H–1B nonimmigrant visa program.”.

19 (e) ELIMINATION OF B–1 IN LIEU OF H–1.—Section
20 214(g) of the Immigration and Nationality Act (8 U.S.C.
21 1184(g)) is amended by adding at the end the following:

22 “(12)(A) Unless otherwise authorized by law, an alien
23 normally classifiable under section 101(a)(15)(H)(i) who
24 seeks admission to the United States to provide services
25 in a specialty occupation described in paragraph (1) or

1 (3) of subsection (i) may not be issued a visa or admitted
2 under section 101(a)(15)(B) for such purpose.

3 “(B) Nothing in this paragraph may be construed to
4 authorize the admission of an alien under section
5 101(a)(15)(B) who is coming to the United States for the
6 purpose of performing skilled or unskilled labor if such
7 admission is not otherwise authorized by law.”.

8 **SEC. 5. INVESTIGATION AND DISPOSITION OF COMPLAINTS**
9 **AGAINST H-1B EMPLOYERS.**

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

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

7 “(III) In this clause, the term ‘employee’ includes—

8 “(aa) a current employee;

9 “(bb) a former employee; and

10 “(cc) an applicant for employment.”.

11 (b) INFORMATION SHARING.—Section 212(n)(2)(H)
12 of the Immigration and Nationality Act (8 U.S.C.
13 1182(n)(2)(H)) is amended to read as follows:

14 “(H)(i) The Director of U.S. Citizenship and Immi-
15 gration Services shall provide the Secretary of Labor with
16 any information contained in the materials submitted by
17 employers of H–1B nonimmigrants as part of the petition
18 adjudication process that indicates that the employer is
19 not complying with visa program requirements for H–1B
20 nonimmigrants.

21 “(ii) The Secretary may initiate and conduct an in-
22 vestigation and hearing under this paragraph after receiv-
23 ing information of noncompliance under this subpara-
24 graph.”.

1 **SEC. 6. LABOR CONDITION APPLICATIONS.**

2 (a) APPLICATION REVIEW REQUIREMENTS.—Section
3 212(n)(1) of the Immigration and Nationality Act (8
4 U.S.C. 1182(n)(1)) is amended, in the undesignated mat-
5 ter following subparagraph (I), as added by section 4(b)—

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

9 (2) in the fifth sentence, by striking “only for
10 completeness” and inserting “for completeness, clear
11 indicators of fraud or misrepresentation of material
12 fact,”;

13 (3) in the sixth sentence, by striking “or obvi-
14 ously inaccurate” and inserting “, presents clear in-
15 dicators of fraud or misrepresentation of material
16 fact, or is obviously inaccurate”; and

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

22 (b) ENSURING PREVAILING WAGES ARE FOR AREA
23 OF EMPLOYMENT AND ACTUAL WAGES ARE FOR SIMI-
24 LARLY EMPLOYED.—Section 212(n)(1)(A) of the Immi-
25 gration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is
26 amended—

1 (1) in clause (i), in the undesignated matter fol-
2 lowing subclause (II), by striking “and” at the end;

3 (2) in clause (ii), by striking the period at the
4 end and inserting “, and”; and

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

6 “(iii) will ensure that—

7 (I) the actual wages or range
8 identified in clause (i) relate solely to
9 employees having substantially the
10 same duties and responsibilities as the
11 H-1B nonimmigrant in the geo-
12 graphical area of intended employ-
13 ment, considering experience, quali-
14 fications, education, job responsibility
15 and function, specialized knowledge,
16 and other legitimate business factors,
17 except in a geographical area there
18 are no such employees, and

19 (II) the prevailing wages identi-
20 fied in clause (ii) reflect the best
21 available information for the geo-
22 graphical area within normal com-
23 muting distance of the actual address
24 of employment at which the H-1B

1 nonimmigrant is or will be em-
2 ployed.”.

3 (c) PROCEDURES FOR INVESTIGATION AND DISPOSI-
4 TION.—Section 212(n)(2)(A) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

6 (1) by striking “(2)(A) Subject” and inserting
7 “(2)(A)(i) Subject”;

8 (2) by striking the fourth sentence; and

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

10 “(ii)(I) Upon receipt of a complaint under
11 clause (i), the Secretary may initiate an inves-
12 tigation to determine whether such a failure or
13 misrepresentation has occurred.

14 “(II) The Secretary may conduct—

15 “(aa) surveys of the degree to which
16 employers comply with the requirements
17 under this subsection; and

18 “(bb) subject to subclause (IV), an-
19 nual compliance audits of any employer
20 that employs H–1B nonimmigrants during
21 the applicable calendar year.

22 “(III) Subject to subclause (IV), the Sec-
23 retary shall—

24 “(aa) conduct annual compliance au-
25 dits of each employer that employs more

1 than 100 full-time equivalent employees
2 who are employed in the United States if
3 more than 15 percent of such full-time em-
4 ployees are H-1B nonimmigrants; and

5 “(bb) make available to the public an
6 executive summary or report describing the
7 general findings of the audits conducted
8 under this subclause.

9 “(IV) In the case of an employer subject to
10 an annual compliance audit in which there was
11 no finding of a willful failure to meet a condi-
12 tion under subparagraph (C)(ii), no further an-
13 nual compliance audit shall be conducted with
14 respect to such employer for a period of not less
15 than 4 years, absent evidence of misrepresenta-
16 tion or fraud.”

17 (d) PENALTIES FOR VIOLATIONS.—Section
18 212(n)(2)(C) of the Immigration and Nationality Act (8
19 U.S.C. 1182(n)(2)(C)) is amended –

20 (1) in clause (i)—

21 (A) in the matter preceding subclause (I),
22 by striking “a condition of paragraph (1)(B),
23 (1)(E), or (1)(F)” and inserting “a condition of
24 paragraph (1)(B), (1)(E), (1)(F), (1)(H), or
25 1(I)”; and

1 (B) in subclause (I), by striking “\$1,000”
2 and inserting “\$3,000”;

3 (2) in clause (ii)(I), by striking “\$5,000” and
4 inserting “\$15,000”;

5 (3) in clause (iii)(I), by striking “\$35,000” and
6 inserting “\$100,000”; and

7 (4) in clause (vi)(III), by striking “\$1,000” and
8 inserting “\$3,000”.

9 (e) INITIATION OF INVESTIGATIONS.—Section
10 212(n)(2)(G) of the Immigration and Nationality Act (8
11 U.S.C. 1182(n)(2)(G)) is amended—

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

15 (2) in clause (ii), in the first sentence, by strik-
16 ing “and whose identity” and all that follows
17 through “failure or failures.” and inserting “the
18 Secretary of Labor may conduct an investigation
19 into the employer’s compliance with the require-
20 ments under this subsection.”;

21 (3) in clause (iii), by striking the second sen-
22 tence;

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

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

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

2 (A) by striking “clause (viii)” and inserting
3 “clause (vi)”;

4 (B) by striking “meet a condition de-
5 scribed in clause (ii)” and inserting “comply
6 with the requirements under this subsection”;

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

9 “(v)(I) The Secretary of Labor shall pro-
10 vide notice to an employer of the intent to con-
11 duct an investigation under clause (i) or (ii).

12 “(II) The notice shall be provided in such
13 a manner, and shall contain sufficient detail, to
14 permit the employer to respond to the allega-
15 tions before an investigation is commenced.

16 “(III) The Secretary is not required to
17 comply with this clause if the Secretary deter-
18 mines that such compliance would interfere
19 with an effort by the Secretary to investigate or
20 secure compliance by the employer with the re-
21 quirements of this subsection.

22 “(IV) A determination by the Secretary
23 under this clause shall not be subject to judicial
24 review.”;

1 (8) in clause (vi), as so redesignated, by strik-
2 ing “An investigation” in the first sentence and all
3 that follows through “the determination.” in the sec-
4 ond sentence and inserting “If the Secretary of
5 Labor, after an investigation under clause (i) or (ii),
6 determines that a reasonable basis exists to make a
7 finding that the employer has failed to comply with
8 the requirements under this subsection, the Sec-
9 retary shall provide interested parties with notice of
10 such determination and an opportunity for a hearing
11 in accordance with section 556 of title 5, United
12 States Code, not later than 60 days after the date
13 of such determination.”; and

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

15 “(vii) If the Secretary of Labor, after a
16 hearing, finds that the employer has violated a
17 requirement under this subsection, the Sec-
18 retary may impose a penalty pursuant to sub-
19 paragraph (C).”.

20 **SEC. 7. ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED**
21 **IMMIGRANTS.**

22 (a) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
23 BASED IMMIGRANTS.—

1 (1) IN GENERAL.—Section 245 of such Act (8
2 U.S.C. 1255) is amended by adding at the end the
3 following:

4 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
5 BASED IMMIGRANTS.—

6 “(1) IN GENERAL.—An alien who has status
7 under section 214, other than an alien described in
8 subsection (c) (as remedied by subsection (k), as
9 amended by the Fairness for High-Skilled Immigrants Act of 2020) or subparagraph (B) or (C) of
10 section 101(a)(15), and any eligible dependents of
11 such alien, who has filed a petition or on whose behalf a petition has been filed for immigrant status
12 pursuant to subparagraph (E) or (F) of section
13 204(a)(1), may file an application with the Secretary
14 of Homeland Security for adjustment of status if
15 such petition was approved not less than two years
16 before the date on which the application for adjustment of status is filed, regardless of whether an immigrant visa is immediately available on that date.
17 For any dependent child who files an application
18 under this subsection, that individual may continue
19 to qualify as a dependent child for purposes of the
20 application regardless of the individual’s age or
21 whether the principal beneficiary is deceased at the
22
23
24
25

1 time an immigrant visa becomes available. Except as
2 otherwise provided in paragraphs (3), (4), and (5),
3 an alien who files an application under this sub-
4 section shall be eligible for work authorization and
5 travel permission on the same terms as an alien who
6 files an application under subsection (a).

7 “(2) AVAILABILITY.—An adjustment of status
8 application filed pursuant to paragraph (1) may not
9 be approved until the date on which an immigrant
10 visa becomes available. An admissible alien who has
11 properly filed such an application shall have the
12 same status as an alien who files under subsection
13 (a).

14 “(3) DUTIES, HOURS, AND COMPENSATION.—
15 The terms and conditions of a qualifying employ-
16 ment position offered to an alien who has filed a pe-
17 tition or on whose behalf a petition has been filed,
18 for immigrant status pursuant to subparagraph (E)
19 or (F) of section 204(a)(1), including duties, hours,
20 and compensation, during the period following the
21 filing of an application for adjustment under para-
22 graph (1) and before a visa becomes immediately
23 available, must be commensurate with the terms and
24 conditions applicable to the employer’s similarly situ-
25 ated United States workers in the area of employ-

1 ment. If the employer does not employ and has not
2 recently employed more than two similarly situated
3 U.S. workers in the area of employment, the em-
4 ployer nevertheless remains obligated to attest that
5 the terms and conditions of the alien’s employment
6 are commensurate with the terms and conditions of
7 employment for other similarly situated United
8 States workers in the area of employment. ‘Similarly
9 situated United States workers’ includes United
10 States workers performing similar duties, subject to
11 similar supervision, and with similar educational
12 backgrounds, industry expertise, employment experi-
13 ence, levels of responsibility, and skill sets as the
14 alien in the same geographic area of employment as
15 the alien. The duties, hours, and compensation of
16 such aliens are ‘commensurate’ with those offered to
17 United States workers employed by the employer in
18 the same area of employment when the employer can
19 show that the duties, hours, and compensation are
20 consistent with the range of such terms and condi-
21 tions the employer has offered or would offer to
22 similarly situated United States employees.

23 “(4) ENFORCEMENT.—A principal applicant fil-
24 ing for adjustment pursuant to paragraph (1) shall
25 file a Confirmation of Bona Fide Job Offer or Port-

1 ability with any request for an employment author-
2 ization document. Any employment authorization
3 document issued to such a principal applicant shall
4 expire after three years, and another Confirmation
5 of Bona Fide Offer or Portability shall be filed with
6 any request for a renewal of employment authoriza-
7 tion. No final decision on an application under para-
8 graph (1) may be issued without a filing of a Con-
9 firmation of Bona Fide Job Offer or Portability by
10 the principal applicant received within 12 months of
11 such decision. A principal applicant shall provide
12 sufficient information to verify compliance with
13 paragraph (3), and an indication that the filing is to
14 ensure compliance for an adjustment applicant
15 under this subsection, when the applicant files a
16 Confirmation. A principal applicant shall also pro-
17 vide a signed letter from his or her current or pro-
18 spective employer attesting that the terms and con-
19 ditions of the alien's employment are commensurate
20 with the terms and conditions of employment for
21 other similarly situated United States workers in the
22 area of employment. If a required Confirmation is
23 not timely received by United States Citizenship and
24 Immigration Services, the underlying Application to
25 Adjust Status filed under paragraph (1), including

1 the applications for eligible dependents, shall be de-
2 nied. In adjudicating the Application to Adjust Sta-
3 tus, when an immigrant visa becomes available,
4 United States Citizenship and Immigration Services
5 shall request the filing of a Confirmation of Bona
6 Fide Job Offer or Portability if a Confirmation of
7 Bona Fide Job Offer or Portability has not been
8 filed within the previous 12 months and may con-
9 sider the validity of any Confirmation filing that has
10 not already been reviewed and found satisfactory. If
11 the most recent Confirmation filing or prior filings
12 not previously found satisfactory do not warrant a
13 finding of compliance with section 204(j) or para-
14 graph (3), United States Citizenship and Immigra-
15 tion Services shall issue a Notice of Intent to Deny
16 the underlying Application to Adjust Status pro-
17 viding an opportunity for further evidence to be sub-
18 mitted on such deficiency after which any applicant
19 that does not meet his or her burden of proof shall
20 receive a denial of the underlying Application to Ad-
21 just Status and the applications of eligible depend-
22 ents.

23 “(5) LIMITATION ON WORK AUTHORIZATION.—
24 An alien who was neither authorized to work nor eli-
25 gible to request work authorization at the time an

1 application was filed under paragraph (1) shall not
2 be eligible to receive work authorization pursuant to
3 paragraph (1) or section 274a.12(c)(9) of title 8,
4 Code of Federal Regulations.”.

5 (2) FEES.—Section 286 of the Immigration and
6 Nationality Act (8 U.S.C. 1356) is amended by add-
7 ing at the end the following:

8 “(w) CONFIRMATIONS OF BONA FIDE JOB OFFER OR
9 PORTABILITY FEE.—Notwithstanding any other provision
10 of law, the Secretary of Homeland Security is authorized
11 to establish, by regulation, a fee that may be charged and
12 collected for the adjudication of Confirmations of Bona
13 Fide Job Offer or Portability under section 245(n). Such
14 fee shall be set at a level that will ensure recovery of the
15 full costs of providing such adjudication and any addi-
16 tional costs associated with the administration of the fees
17 collected.”.

18 (b) CONFORMING AMENDMENT.— Section 245(k) of
19 the Immigration and Nationality Act (8 U.S.C. 1255(k))
20 is amended by adding “or (n)” after “pursuant to sub-
21 section (a)”.

22 (c) EFFECTIVE DATE.—

23 (1) This section and the amendments made by
24 this section—

1 (A) shall take effect one year after the
2 date of enactment of this Act; and

3 (B) except as provided in paragraph (2),
4 shall cease to have effect as of the date that is
5 nine years after that date of enactment.

6 (2) This section shall continue in effect with re-
7 spect to any alien who has filed an application under
8 this section any time prior to the date on which this
9 section otherwise ceases to have effect.

10 **SEC. 8. PROTECTING CHILDREN OF CERTAIN IMMIGRANT**
11 **WORKERS FROM DETENTION AND REMOVAL**
12 **AND AGING OUT OF LAWFUL STATUS.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law, subject to subsection (b), with respect to an
15 individual whose parent is the principal beneficiary of an
16 approved employment-based immigrant worker petition
17 filed on a date on which the individual was a child (as
18 defined in section 101(b) of the Immigration and Nation-
19 ality Act (8 U.S.C. 1101(b))—

20 (1) the Secretary of Homeland Security shall
21 not detain, refer for removal, initiate removal pro-
22 ceedings against, or remove the individual; and

23 (2) the individual shall—

1 (A) without regard to immigrant intent
2 and on application by the individual, be eligi-
3 ble—

4 (i) to extend nonimmigrant dependent
5 status connected to the nonimmigrant sta-
6 tus of such parent until the date on which
7 an application for lawful permanent resi-
8 dent status filed by the individual pursuant
9 to subparagraph (B) is adjudicated; or

10 (ii) to extend or change status to an
11 alternative nonimmigrant status inde-
12 pendent of such parent's visa status until
13 the date on which an application for lawful
14 permanent resident status filed by the indi-
15 vidual pursuant to that subparagraph is
16 adjudicated; and

17 (B) qualify as a derivative beneficiary child
18 for immigrant visa purposes beginning on the
19 date on which such parent's employment-based
20 immigrant worker petition is approved and end-
21 ing on the date on which the individual's appli-
22 cation for lawful permanent resident status is
23 adjudicated, regardless of whether such parent
24 is living or deceased.

1 (b) APPLICABILITY.—Subsection (a) shall not apply
2 to any individual who the Secretary determines, on an in-
3 dividualized basis, poses a threat to public safety or na-
4 tional security.