

118TH CONGRESS
1ST SESSION

S. 979

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 27, 2023

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. SANDERS, Mr. TUBERVILLE, Mr. BROWN, and Mr. BLUMENTHAL) 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 2023”.

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 displacement 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 (8 U.S.C. 1182(n)(1)(C)) is
12 amended—

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

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

17 “(ii)(I) has provided”; and

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

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

1 “(I) the wages and other terms and
2 conditions of employment;

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

6 “(III) the process for applying for the
7 position; and”.

8 (c) WAGE DETERMINATION INFORMATION.—Section
9 212(n)(1)(D) of such Act (8 U.S.C. 1182(n)(1)(D)) is
10 amended by inserting “the wage determination method-
11 ology used under subparagraph (A)(i),” after “shall con-
12 tain”.

13 (d) APPLICATION OF REQUIREMENTS TO ALL EM-
14 PLOYERS.—

15 (1) NONDISPLACEMENT.—Section 212(n)(1)(E)
16 of such Act (8 U.S.C. 1182(n)(1)(E)) is amended to
17 read as follows:

18 “(E)(i) The employer—

19 “(I) will not at any time displace a United
20 States worker with 1 or more H-1B non-
21 immigrants; and

22 “(II) did not displace and will not displace
23 a United States worker employed by the em-
24 ployer within the period beginning 180 days be-
25 fore and ending 180 days after the date of the

1 placement of the nonimmigrant with the em-
2 ployer.

3 “(ii) The 180-day periods referred to in clause
4 (i) may not include any period of on-site or virtual
5 training of H–1B nonimmigrants by employees of
6 the employer.”.

7 (2) RECRUITMENT.—Section 212(n)(1)(G)(i) of
8 such Act (8 U.S.C. 1182(n)(1)(G)(i)) is amended by
9 striking “In the case of an application described in
10 subparagraph (E)(ii), subject” and inserting “Sub-
11 ject”.

12 (e) WAIVER REQUIREMENT.—Section 212(n)(1)(F)
13 of such Act (8 U.S.C. 1182(n)(1)(F)) is amended to read
14 as follows:

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

22 **SEC. 102. NEW APPLICATION REQUIREMENTS.**

23 Section 212(n)(1) of the Immigration and Nationality
24 Act (8 U.S.C. 1182(n)(1)), as amended by section 101,

1 is further amended by inserting after subparagraph (G)
2 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 employs 50 or more em-
18 ployees in the United States—

19 “(i) the sum of the number of such em-
20 ployees who are H–1B nonimmigrants plus the
21 number of such employees who are non-
22 immigrants described in section 101(a)(15)(L)
23 does not exceed 50 percent of the total number
24 of employees; and

1 “(ii) the employer’s corporate organization
2 has not been restructured to evade the limita-
3 tion under clause (i).

4 “(J) If the employer, in such previous period as
5 the Secretary shall specify, employed 1 or more H-
6 1B nonimmigrants, the employer shall submit to the
7 Secretary the Internal Revenue Service Form W-2
8 Wage and Tax Statements filed by the employer
9 with respect to the H-1B nonimmigrants for such
10 period.”.

11 **SEC. 103. APPLICATION REVIEW REQUIREMENTS.**

12 (a) **TECHNICAL AMENDMENT.**—Section 212(n)(1) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1182(n)(1)), as amended by sections 101 and 102, is fur-
15 ther amended, in the undesignated paragraph at the end,
16 by striking “The employer” and inserting the following:

17 “(K) The employer.”.

18 (b) **APPLICATION REVIEW REQUIREMENTS.**—Section
19 212(n)(1)(K), as designated by subsection (a), is amend-
20 ed—

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

24 (2) in the fifth sentence, by striking “only for
25 completeness” and inserting “for completeness, indi-

1 cators of fraud or misrepresentation of material
2 fact,”;

3 (3) in the sixth sentence—

4 (A) by striking “or obviously inaccurate”
5 and inserting “, presents indicators of fraud or
6 misrepresentation of material fact, or is obvi-
7 ously inaccurate”; and

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

10 (4) by adding at the end the following: “If the
11 Secretary of Labor’s review of an application identi-
12 fies indicators of fraud or misrepresentation of ma-
13 terial fact, the Secretary may conduct an investiga-
14 tion and hearing in accordance with paragraph
15 (2).”.

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

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

19 (1) by striking the first sentence and inserting
20 the following:

21 “(A) Subject to subparagraph (B), aliens who
22 are subject to the numerical limitations under para-
23 graph (1)(A) shall be issued visas, or otherwise pro-
24 vided nonimmigrant status, in a manner and order

1 established by the Secretary of Homeland Security,
2 by regulation.”; and

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

4 “(B) The Secretary shall consider petitions for
5 nonimmigrant status under section
6 101(a)(15)(H)(i)(b) in the following order:

7 “(i) Petitions for nonimmigrants described
8 in section 101(a)(15)(F) who, while physically
9 present in the United States, have earned an
10 advanced degree in a field of science, tech-
11 nology, engineering, or mathematics from a
12 United States institution of higher education
13 (as defined in section 101(a) of the Higher
14 Education Act of 1965 (20 U.S.C. 1001(a)))
15 that has been accredited by an accrediting enti-
16 ty that is recognized by the Department of
17 Education.

18 “(ii) Petitions certifying that the employer
19 will be paying the nonimmigrant the median
20 wage for skill level 4 in the occupational classi-
21 fication found in the most recent Occupational
22 Employment Statistics survey.

23 “(iii) Petitions for nonimmigrants de-
24 scribed in section 101(a)(15)(F) who are grad-
25 uates of any other advanced degree program,

1 undertaken while physically present in the
2 United States, from an institution of higher
3 education described in clause (i).

4 “(iv) Petitions certifying that the employer
5 will be paying the nonimmigrant the median
6 wage for skill level 3 in the occupational classi-
7 fication found in the most recent Occupational
8 Employment Statistics survey.

9 “(v) Petitions for nonimmigrants described
10 in section 101(a)(15)(F) who are graduates of
11 a bachelor’s degree program, undertaken while
12 physically present in the United States, in a
13 field of science, technology, engineering, or
14 mathematics from an institution of higher edu-
15 cation described in clause (i).

16 “(vi) Petitions for nonimmigrants de-
17 scribed in section 101(a)(15)(F) who are grad-
18 uates of bachelor’s degree programs, under-
19 taken while physically present in the United
20 States, in any other fields from an institution
21 of higher education described in clause (i).

22 “(vii) Petitions for aliens who will be work-
23 ing in occupations listed in Group I of the De-
24 partment of Labor’s Schedule A of occupations
25 in which the Secretary of Labor has determined

1 there are not sufficient United States workers
2 who are able, willing, qualified, and available.

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

6 “(I) The employer is in possession
7 of—

8 “(aa) a valid E-Verify company
9 identification number; or

10 “(bb) if the enterprise is using a
11 designated agent to perform E-Verify
12 queries, a valid E-Verify client com-
13 pany identification number and docu-
14 mentation from U.S. Citizenship and
15 Immigration Services that the com-
16 mercial enterprise is a participant in
17 good standing in the E-Verify pro-
18 gram.

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

22 “(III) A Federal agency has not de-
23 termined, during the immediately pre-
24 ceding 5 years, that the employer violated
25 the immigration laws or labor laws.

1 “(IV) During each of the preceding 3
2 fiscal years, at least 90 percent of the peti-
3 tions filed by the employer under section
4 101(a)(15)(H)(i)(b) were approved.

5 “(V) The employer has filed, pursuant
6 to section 204(a)(1)(F), employment-based
7 immigrant petitions, including an approved
8 labor certification application under section
9 212(a)(5)(A), for at least 90 percent of
10 employees imported under section
11 101(a)(15)(H)(i)(b) during the preceding 3
12 fiscal years.

13 “(ix) Any remaining petitions.

14 “(C) In this paragraph the term ‘field of
15 science, technology, engineering, or mathematics’
16 means a field included in the Department of Edu-
17 cation’s Classification of Instructional Programs tax-
18 onomy within the summary groups of computer and
19 information sciences and support services, engineer-
20 ing, biological and biomedical sciences, mathematics
21 and statistics, and physical sciences.”.

22 **SEC. 105. H-1B WORKERS EMPLOYED BY INSTITUTIONS OF**
23 **HIGHER EDUCATION.**

24 Section 214(g)(5) of the Immigration and Nationality
25 Act (8 U.S.C. 1184(g)(5)) is amended by striking “is em-

1 employed (or has received an offer of employment) at” each
2 place such phrase appears and inserting “is employed by
3 (or has received an offer of employment from)”.

4 **SEC. 106. SPECIALTY OCCUPATION TO REQUIRE AN AC-**
5 **TUAL DEGREE.**

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

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

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

14 (2) by striking paragraph (2) and inserting the
15 following:

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

19 “(A) full State licensure to practice in the occu-
20 pation, if such licensure is required to practice in the
21 occupation; or

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

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

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

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

8 Section 212(n) of the Immigration and Nationality
9 Act (8 U.S.C. 1182(n)), as amended by sections 101
10 through 103, is further amended by adding at the end the
11 following:

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

15 “(B) All of the fees collected under this paragraph
16 shall be deposited as offsetting receipts within the general
17 fund of the Treasury in a separate account, which shall
18 be known as the ‘H–1B Administration, Oversight, Inves-
19 tigation, and Enforcement Account’ and shall remain
20 available until expended. The Secretary of the Treasury
21 shall refund amounts in such account to the Secretary of
22 Labor for salaries and related expenses associated with the
23 administration, oversight, investigation, and enforcement
24 of the H–1B nonimmigrant visa program.”.

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

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

5 (1) by redesignating subparagraph (I) as sub-
6 paragraph (J); and

7 (2) by inserting after subparagraph (H) the fol-
8 lowing:

9 “(I) The Secretary of Labor is authorized to take
10 such actions, including issuing subpoenas and seeking ap-
11 propriate injunctive relief and specific performance of con-
12 tractual obligations, as may be necessary to ensure em-
13 ployer compliance with the terms and conditions under
14 this subsection. The rights and remedies provided to H-
15 1B nonimmigrants under this subsection are in addition
16 to any other contractual or statutory rights and remedies
17 of such nonimmigrants and are not intended to alter or
18 affect such rights and remedies.”

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

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

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

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

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

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

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

1 **Subtitle B—Investigation and Dis-**
2 **position of Complaints Against**
3 **H-1B Employers**

4 **SEC. 111. GENERAL MODIFICATION OF PROCEDURES FOR**
5 **INVESTIGATION AND DISPOSITION.**

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

8 (1) by striking “(A) Subject” and inserting the
9 following:

10 “(A)(i) Subject”;

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

13 (3) by striking the last sentence; and

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

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

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

20 “(aa) conduct surveys of the degree to which
21 employers comply with the requirements under this
22 subsection; and

23 “(bb) conduct compliance audits of employers
24 that employ H-1B nonimmigrants.

25 “(III) The Secretary shall—

1 “(aa) conduct annual compliance audits of not
2 fewer than 1 percent of the employers that employ
3 H–1B nonimmigrants during the applicable calendar
4 year;

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

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

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

15 **SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND**
16 **PENALTIES.**

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

19 (1) in clause (i)—

20 (A) in the matter preceding subclause (I),
21 by striking “a condition of paragraph (1)(B),
22 (1)(E), or (1)(F), a substantial failure to meet
23 a condition of paragraph (1)(C), (1)(D), or
24 (1)(G)(i)(I)” and inserting “a condition under

1 subparagraph (A), (B), (C), (D), (E), (F),
2 (G)(i), (H), (I), or (J) of paragraph (1)”;

3 (B) in subclause (I)—

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

6 (ii) by striking “and” at the end;

7 (C) in subclause (II)—

8 (i) by striking “the Attorney General
9 shall not approve petitions” and inserting
10 “the Secretary of Homeland Security or
11 the Secretary of State, as appropriate,
12 shall not approve petitions or applica-
13 tions”;

14 (ii) by striking “under section 204 or
15 214(e)” and inserting “under section
16 101(a)(15)(E)(iii), 101(a)(15)(H)(i)(b1),
17 204, 214(e), or 214(e)”; and

18 (iii) by striking the period at the end
19 and inserting “; and”; and

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

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

24 (2) in clause (ii)—

25 (A) in subclause (I)—

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

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

5 (B) in subclause (II)—

6 (i) by striking “the Attorney General
7 shall not approve petitions” and inserting
8 “the Secretary of Homeland Security or
9 the Secretary of State, as appropriate,
10 shall not approve petitions or applica-
11 tions”;

12 (ii) by striking “under section 204 or
13 214(c)” and inserting “under section
14 101(a)(15)(E)(iii), 101(a)(15)(H)(i)(b1),
15 204, 214(c), or 214(e)”; and

16 (iii) by striking the period at the end
17 and inserting “; and”; and

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

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

22 (3) in clause (iii)—

23 (A) in the matter preceding subclause (I),
24 by striking “the employer displaced a United
25 States worker employed by the employer within

1 the period beginning 90 days before and ending
2 90 days after the date of filing of any visa peti-
3 tion supported by the application” and inserting
4 “a United States worker employed at a worksite
5 that the employer supplies with nonimmigrant
6 workers was displaced in violation of paragraph
7 (1)(E) or the conditions of a waiver under sub-
8 paragraph (E)”;

9 (B) in subclause (I)—

10 (i) by striking “may” and inserting
11 “shall”;

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

14 (iii) by striking “and” at the end;

15 (C) in subclause (II)—

16 (i) by striking “the Attorney General
17 shall not approve petitions” and inserting
18 “the Secretary of Homeland Security or
19 the Secretary of State, as appropriate,
20 shall not approve petitions or applica-
21 tions”;

22 (ii) by striking “under section 204 or
23 214(e)” and inserting “under section
24 101(a)(15)(E)(iii), 101(a)(15)(H)(i)(b1),
25 204, 214(e), or 214(e)”;

1 (iii) by striking the period at the end
2 and inserting “; and”; and

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

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

7 (4) by striking clause (iv) and inserting the fol-
8 lowing:

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

15 “(aa) disclosed information that the employee
16 reasonably believes evidences a violation of this sub-
17 section or any rule or regulation pertaining to this
18 subsection; or

19 “(bb) cooperated or sought to cooperate with
20 the requirements under this subsection or any rule
21 or regulation pertaining to this subsection.

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

24 “(aa) a current employee;

25 “(bb) a former employee; and

1 “(cc) an applicant for employment.

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

5 (5) in clause (v)—

6 (A) by inserting “(I)” after “(v)”;

7 (B) by adding at the end the following:

8 “(II) Upon the termination of an H-1B non-
9 immigrant’s employment on account of such alien’s dislo-
10 sure of information or cooperation in an investigation de-
11 scribed in clause (iv), the nonimmigrant stay of any bene-
12 ficiary and any dependents listed on the beneficiary’s peti-
13 tion will be authorized and the alien will not accrue any
14 period of unlawful presence under section 212(a)(9) for
15 a 90-day period or until the expiration of the authorized
16 validity period, whichever comes first, following the date
17 of such termination for the purpose of departure or exten-
18 sion of nonimmigrant status based upon a subsequent
19 offer of employment.”; and

20 (6) in clause (vi)—

21 (A) by amending subclause (I) to read as
22 follows:

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

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

5 “(bb) to fail to offer to an H–1B non-
6 immigrant, during the nonimmigrant’s period of au-
7 thorized employment, on the same basis, and in ac-
8 cordance with the same criteria, as the employer of-
9 fers to United States workers, benefits and eligibility
10 for benefits, including—

11 “(AA) the opportunity to participate in
12 health, life, disability, and other insurance
13 plans;

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

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

19 (B) in subclause (III), by striking
20 “\$1,000” and inserting “\$5,000”.

21 **SEC. 113. WAIVER REQUIREMENTS.**

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

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

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

7 “(aa) will not at any time displace a
8 United States worker with 1 or more H–1B
9 nonimmigrants; and

10 “(bb) has not displaced and will not dis-
11 place a United States worker employed by the
12 employer within the period beginning 180 days
13 before the date of the placement of the non-
14 immigrant with the employer and ending 180
15 days after such date (not including any period
16 of on-site or virtual training of H–1B non-
17 immigrants by employees of the employer);

18 “(II) the H–1B nonimmigrant will be prin-
19 cipally controlled and supervised by the petitioning
20 employer; and

21 “(III) the placement of the H–1B non-
22 immigrant is not essentially an arrangement to pro-
23 vide labor for hire for the employer with which the
24 H–1B nonimmigrant will be placed.

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

5 (b) RULEMAKING.—

6 (1) RULES FOR WAIVERS.—The Secretary of
7 Labor, after notice and a period for comment, shall
8 promulgate a final rule for an employer to apply for
9 a waiver under section 212(n)(2)(E) of the Immigra-
10 tion and Nationality Act, as amended by subsection
11 (a).

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

17 **SEC. 114. INITIATION OF INVESTIGATIONS.**

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

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

24 (2) in clause (ii), by striking “and whose iden-
25 tity” and all that follows through “failure or fail-

1 ures.” and inserting “the Secretary may conduct an
2 investigation into the employer’s compliance with the
3 requirements under this subsection.”;

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

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

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

8 (6) in clause (iv), as redesignated, by striking
9 “meet a condition described in clause (ii), unless the
10 Secretary of Labor receives the information not later
11 than 12 months” and inserting “comply with the re-
12 quirements under this subsection unless the Sec-
13 retary of Labor receives the information not later
14 than 2 years”;

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

17 “(v)(I) Except as provided in subclause (II), the Sec-
18 retary of Labor shall provide notice to an employer of the
19 intent to conduct an investigation under this subpara-
20 graph. Such notice shall be provided in such a manner,
21 and shall contain sufficient detail, to permit the employer
22 to respond to the allegations before an investigation is
23 commenced.

24 “(II) The Secretary of Labor is not required to com-
25 ply with subclause (I) if the Secretary determines that

1 such compliance would interfere with an effort by the Sec-
2 retary to investigate or secure compliance by the employer
3 with the requirements under this subsection.

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

6 (8) in clause (vi), as redesignated, by striking
7 “An investigation” and all that follows through “the
8 determination.” and inserting “If the Secretary of
9 Labor, after an investigation under clause (i) or (ii),
10 determines that a reasonable basis exists to make a
11 finding that the employer has failed to comply with
12 the requirements under this subsection, the Sec-
13 retary, not later than 120 days after the date of
14 such determination, shall provide interested parties
15 with notice of such determination and an oppor-
16 tunity for a hearing in accordance with section 556
17 of title 5, United States Code.”; and

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

19 “(vii) If the Secretary of Labor, after a hearing, finds
20 a reasonable basis to believe that the employer has violated
21 the requirements under this subsection, the Secretary
22 shall impose a penalty in accordance with subparagraph
23 (C).”.

1 **SEC. 115. INFORMATION SHARING.**

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

5 “(H) The Director of U.S. Citizenship and Immigra-
6 tion Services shall provide the Secretary of Labor with any
7 information contained in the materials submitted by em-
8 ployers of H–1B nonimmigrants as part of the petition
9 adjudication process that indicates that the employer is
10 not complying with visa program requirements for H–1B
11 nonimmigrants. The Secretary may initiate and conduct
12 an investigation and hearing under this paragraph after
13 receiving information of noncompliance under this sub-
14 paragraph.”.

15 **SEC. 116. CONFORMING AMENDMENT.**

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

21 **Subtitle C—Other Protections**

22 **SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE**
23 **DEPARTMENT OF LABOR.**

24 (a) DEPARTMENT OF LABOR WEBSITE.—Section
25 212(n)(3) of the Immigration and Nationality Act (8
26 U.S.C. 1182(n)(3)) is amended to read as follows:

1 “(3)(A) Not later than 90 days after the date of the
2 enactment of the H–1B and L–1 Visa Reform Act of
3 2023, the Secretary of Labor shall establish a searchable
4 internet website for posting positions in accordance with
5 paragraph (1)(C) that is available to the public without
6 charge.

7 “(B) The Secretary may work with private companies
8 or nonprofit organizations to develop and operate the
9 internet website described in subparagraph (A).

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

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

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

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

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

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

7 “(1) IN GENERAL.—Not later than 21 business
8 days after receiving a written request from a former,
9 current, or prospective employee listed as the bene-
10 ficiary of an employment-based nonimmigrant peti-
11 tion, the employer who filed such petition shall pro-
12 vide such beneficiary with the original (or a certified
13 copy of the original) of all petitions, notices, and
14 other written communication exchanged between the
15 employer and the Department of Labor, the Depart-
16 ment of Homeland Security, or any other Federal
17 agency or department that is related to an immi-
18 grant or nonimmigrant petition filed by the employer
19 for such employee or beneficiary.

20 “(2) WITHHOLDING OF FINANCIAL OR PROPRI-
21 ETARY INFORMATION.—If a document required to be
22 provided to an employee or prospective employee
23 under paragraph (1) includes any sensitive financial
24 or proprietary information of the employer, the em-
25 ployer may redact such information from the copies
26 provided to such person.”.

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

5 (1) analyzes the accuracy and effectiveness of
 6 the Secretary of Labor’s current job classification
 7 and wage determination system;

8 (2) specifically addresses whether the systems
 9 in place accurately reflect the complexity of current
 10 job types and geographic wage differences; and

11 (3) makes recommendations concerning nec-
 12 essary updates and modifications.

13 **SEC. 123. REQUIREMENTS FOR INFORMATION FOR H-1B**
 14 **AND L-1 NONIMMIGRANTS.**

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

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

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

1 “(A) a brochure outlining the obligations
2 of the applicant’s employer and the rights of
3 the applicant with regard to employment under
4 Federal law, including labor and wage protec-
5 tions;

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

10 “(C) a copy of the petition submitted for
11 the nonimmigrant under section 212(n) or the
12 petition submitted for the nonimmigrant under
13 subsection (c)(2)(A), as appropriate.

14 “(2) APPLICANTS INSIDE THE UNITED
15 STATES.—Upon the approval of an initial petition
16 filed for an alien who is in the United States and
17 seeking status under subparagraph (H)(i)(b) or (L)
18 of section 101(a)(15), the Secretary of Homeland
19 Security shall provide the applicant with the mate-
20 rial described in subparagraphs (A), (B), and (C) of
21 paragraph (1).”.

22 **SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
23 **EES.**

24 (a) IN GENERAL.—The Secretary of Labor is author-
25 ized to hire up to 200 additional employees to administer,

1 oversee, investigate, and enforce programs involving non-
2 immigrant employees described in section
3 101(a)(15)(H)(i)(b) of the Immigration and Nationality
4 Act (8 U.S.C. 1101(a)(15)(H)(i)(b)).

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

11 **SEC. 125. TECHNICAL CORRECTION.**

12 Section 212 of the Immigration and Nationality Act
13 (8 U.S.C. 1182) is amended by redesignating the second
14 subsection (t), as added by section 1(b)(2)(B) of the Act
15 entitled “An Act to amend and extend the Irish Peace
16 Process Cultural and Training Program Act of 1998”
17 (Public Law 108–449; 118 Stat. 3470), as subsection (u).

18 **SEC. 126. APPLICATION.**

19 Except as specifically otherwise provided, the amend-
20 ments made by this title shall apply to petitions and appli-
21 cations filed on or after the date of the enactment of this
22 Act.

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

3 **SEC. 201. PROHIBITION ON DISPLACEMENT OF UNITED**
4 **STATES WORKERS AND RESTRICTING OUT-**
5 **PLACEMENT OF L-1 NONIMMIGRANTS.**

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

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

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

16 “(II) will be stationed primarily at the worksite
17 of an employer other than the petitioning employer
18 or its affiliate, subsidiary, or parent, including pur-
19 suant to an outsourcing, leasing, or other con-
20 tracting agreement.

21 “(ii) The Secretary of Labor may grant a waiver of
22 the requirements under clause (i) if the Secretary deter-
23 mines that the employer requesting such waiver has estab-
24 lished that—

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

3 “(aa) will not at any time displace (as de-
4 fined in section 212(n)(4)(B)) a United States
5 worker (as defined in section 212(n)(4)(E))
6 with 1 or more nonimmigrants described in sec-
7 tion 101(a)(15)(L); and

8 “(bb) has not displaced and will not dis-
9 place (as defined in section 212(n)(4)(B)) a
10 United States worker (as defined in section
11 212(n)(4)(E)) employed by the employer within
12 the period beginning 180 days before the date
13 of the placement of such alien with the em-
14 ployer and ending 180 days after such date (not
15 including any period of on-site or virtual train-
16 ing of nonimmigrants described in section
17 101(a)(15)(L) by employees of the employer);

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

20 “(III) the placement of the nonimmigrant is not
21 essentially an arrangement to provide labor for hire
22 for an unaffiliated employer with which the non-
23 immigrant will be placed, rather than a placement in
24 connection with the provision of a product or service

1 for which specialized knowledge specific to the peti-
2 tioning employer is necessary.

3 “(iii) The Secretary shall grant or deny a waiver
4 under clause (ii) not later than seven days after the date
5 on which the Secretary receives the application for the
6 waiver.”.

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

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

13 “(I) may not at any time displace (as defined
14 in section 212(n)(4)(B)) a United States worker (as
15 defined in section 212(n)(4)(E)) with 1 or more
16 such nonimmigrants; and

17 “(II) may not displace (as defined in section
18 212(n)(4)(B)) a United States worker (as defined in
19 section 212(n)(4)(E)) employed by the employer
20 during the period beginning 180 days before and
21 ending 180 days after the date of the placement of
22 such a nonimmigrant with the employer.

23 “(ii) The 180-day periods referenced in clause (i) may
24 not include any period of on-site or virtual training of non-

1 immigrants described in clause (i) by employees of the em-
2 ployer.”.

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

7 **SEC. 202. L-1 EMPLOYER PETITION REQUIREMENTS FOR**
8 **EMPLOYMENT AT NEW OFFICES.**

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

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

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

19 “(II) the employer operating the new office
20 has—

21 “(aa) an adequate business plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 203, is further amended by adding at the end the
2 following:

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

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

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

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

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

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

1 later than 120 days after the date of such determination.
2 If such a hearing is requested, the Secretary shall make
3 a finding concerning the matter by not later than 120 days
4 after the date of the hearing.

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

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

12 “(II) The Secretary shall—

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

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

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

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

12 **SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L-**
 13 **1 NONIMMIGRANTS.**

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

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

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

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

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

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

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

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

24 “(iii) It is a failure to meet a condition under this
25 subparagraph for an employer who has filed a petition to

1 import 1 or more aliens as nonimmigrants described in
2 section 101(a)(15)(L)—

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

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

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

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

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

21 (b) RULEMAKING.—The Secretary of Homeland Se-
22 curity, after notice and a period of comment and taking
23 into consideration any special circumstances relating to
24 intracompany transfers, shall promulgate rules to imple-
25 ment the requirements under section 214(e)(2)(K) of the

1 Immigration and Nationality Act, as added by subsection
2 (a).

3 **SEC. 206. PENALTIES.**

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

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

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

18 “(II) the Secretary of Homeland Security or the
19 Secretary of State, as appropriate, shall not approve
20 petitions or applications filed with respect to that
21 employer during a period of at least 1 year for 1 or
22 more aliens to be employed as such nonimmigrants
23 by the employer; 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 of Homeland Security or the
14 Secretary of State, as appropriate, shall not approve
15 petitions or applications filed with respect to that
16 employer during a period of at least 2 years for 1
17 or more aliens to be employed as such non-
18 immigrants by the employer; and

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

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

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 206, is further amended by adding at the end the
6 following:

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

15 “(I) has disclosed information that the em-
16 ployee reasonably believes evidences a violation of
17 this subsection, or any rule or regulation pertaining
18 to this subsection; or

19 “(II) cooperates or seeks to cooperate with the
20 requirements under this subsection, or any rule or
21 regulation pertaining to this subsection.

22 “(ii) Upon termination of the employment of an alien
23 described in section 101(a)(15)(L) on account of actions
24 by such alien described in subclauses (I) and (II) of clause
25 (i), such alien’s nonimmigrant stay and the stay of any
26 beneficiary and any dependents listed on the beneficiary’s

1 petition or application will be authorized and the aliens
2 will not accrue any period of unlawful presence under sec-
3 tion 212(a)(9) for a 90-day period or upon the expiration
4 of the authorized validity period, whichever comes first,
5 following the date of such termination for the purpose of
6 departure or extension of nonimmigrant status based upon
7 a subsequent offer of employment.

8 “(iii) In this subparagraph, the term ‘employee’ in-
9 cludes—

10 “(I) a current employee;

11 “(II) a former employee; and

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

13 **SEC. 208. ADJUDICATION BY DEPARTMENT OF HOMELAND**
14 **SECURITY OF PETITIONS UNDER BLANKET**
15 **PETITION.**

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

19 “(A) The Secretary of Homeland Security shall es-
20 tablish a procedure under which an importing employer
21 that meets the requirements established by the Secretary
22 may file a blanket petition with the Secretary to authorize
23 aliens to enter the United States as nonimmigrants de-
24 scribed in section 101(a)(15)(L) instead of filing indi-

1 vidual petitions under paragraph (1) on behalf of such
2 aliens. Such procedure shall permit—

3 “(i) the expedited adjudication by the Secretary
4 of Homeland Security of individual petitions covered
5 under such blanket petitions; and

6 “(ii) the expedited processing by the Secretary
7 of State of visas for admission of aliens covered
8 under such blanket petitions.”.

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

12 **SEC. 209. REPORTS ON EMPLOYMENT-BASED NON-**
13 **IMMIGRANTS.**

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

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

24 “(A) the number of such petitions (or applica-
25 tions for admission, in the case of applications by

1 Canadian nationals seeking admission under sub-
2 section (e) or section 101(a)(15)(L)) which have
3 been filed;

4 “(B) the number of such petitions which have
5 been approved and the number of workers (by occu-
6 pation) included in such approved petitions;

7 “(C) the number of such petitions which have
8 been denied and the number of workers (by occupa-
9 tion) requested in such denied petitions;

10 “(D) the number of such petitions which have
11 been withdrawn;

12 “(E) the number of such petitions which are
13 awaiting final action;

14 “(F) the number of aliens in the United States
15 under each subcategory under section
16 101(a)(15)(H); and

17 “(G) the number of aliens in the United States
18 under each subcategory under section
19 101(a)(15)(L).”.

20 (b) NONIMMIGRANT CHARACTERISTICS REPORT.—
21 Section 416(c) of the American Competitiveness and
22 Workforce Improvement Act of 1998 (8 U.S.C. 1184 note)
23 is amended—

24 (1) by amending paragraph (2) to read as fol-
25 lows:

1 “(2) ANNUAL H-1B NONIMMIGRANT CHARAC-
2 TERISTICS REPORT.—The Secretary of Homeland
3 Security shall submit an annual report to the Com-
4 mittee on the Judiciary of the Senate and the Com-
5 mittee on the Judiciary of the House of Representa-
6 tives that contains—

7 “(A) for the previous fiscal year—

8 “(i) information on the countries of
9 origin of, occupations of, educational levels
10 attained by, and compensation paid to,
11 aliens who were issued visas or provided
12 nonimmigrant status under section
13 101(a)(15)(H)(i)(b) of the Immigration
14 and Nationality Act (8 U.S.C.
15 1101(a)(15)(H)(i)(b));

16 “(ii) a list of all employers who peti-
17 tioned for H-1B workers, the number of
18 such petitions filed and approved for each
19 such employer, the occupational classifica-
20 tions for the approved positions, and the
21 number of H-1B nonimmigrants for whom
22 each such employer filed an employment-
23 based immigrant petition pursuant to sec-
24 tion 204(a)(1)(F) of the Immigration and

1 Nationality Act (8 U.S.C. 1154(a)(1)(F));

2 and

3 “(iii) the number of employment-
4 based immigrant petitions filed pursuant
5 to such section 204(a)(1)(F) on behalf of
6 H-1B nonimmigrants;

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

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

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

16 “(E) a list of all employers who have been
17 granted a waiver under section 214(n)(2)(E) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1184(n)(2)(E)); and

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

24 (2) by redesignating paragraph (3) as para-
25 graph (5);

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

3 “(3) ANNUAL L-1 NONIMMIGRANT CHARACTER-
4 ISTICS REPORT.—The Secretary of Homeland Secu-
5 rity shall submit an annual report to the Committee
6 on the Judiciary of the Senate and the Committee
7 on the Judiciary of the House of Representatives
8 that contains—

9 “(A) for the previous fiscal year—

10 “(i) information on the countries of
11 origin of, occupations of, educational levels
12 attained by, and compensation paid to,
13 aliens who were issued visas or provided
14 nonimmigrant status under section
15 101(a)(15)(L) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1101(a)(15)(L));

17 “(ii) a list of all employers who peti-
18 tioned for L-1 workers, the number of
19 such petitions filed and approved for each
20 such employer, the occupational classifica-
21 tions for the approved positions, and the
22 number of L-1 nonimmigrants for whom
23 each such employer filed an employment-
24 based immigrant petition pursuant to sec-
25 tion 204(a)(1)(F) of the Immigration and

1 Nationality Act (8 U.S.C. 1154(a)(1)(F));

2 and

3 “(iii) the number of employment-
4 based immigrant petitions filed pursuant
5 to such section 204(a)(1)(F) on behalf of
6 L-1 nonimmigrants;

7 “(B) a gender breakdown by occupation
8 and by country of L-1 nonimmigrants;

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

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

17 “(E) the number of applications that have
18 been filed for each subcategory of non-
19 immigrant described under section
20 101(a)(15)(L) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1101(a)(15)(L)), based on
22 an approved blanket petition under section
23 214(c)(2)(A) of such Act; and

24 “(F) the number of applications that have
25 been approved for each subcategory of non-

1 immigrant described under such section
2 101(a)(15)(L), based on an approved blanket
3 petition under such section 214(c)(2)(A).

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

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

9 “(B) issue an annual report that—

10 “(i) describes the methods employers
11 are using to meet the requirement under
12 section 212(n)(1)(G)(i) of the Immigration
13 and Nationality Act (8 U.S.C.
14 1182(n)(1)(G)(i)) of taking good faith
15 steps to recruit United States workers for
16 the occupational classification for which
17 the nonimmigrants are sought, using pro-
18 cedures that meet industry-wide standards;

19 “(ii) describes the best practices for
20 recruiting among employers; and

21 “(iii) contains recommendations on
22 which recruiting steps employers can take
23 to maximize the likelihood of hiring Amer-
24 ican workers.”; and

1 (4) in paragraph (5), as redesignated, by strik-
2 ing “paragraph (2)” and inserting “paragraphs (2)
3 and (3)”.

4 **SEC. 210. SPECIALIZED KNOWLEDGE.**

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

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

10 “(I) means knowledge possessed by an indi-
11 vidual whose advanced level of expertise and propri-
12 etary knowledge of the employer’s product, service,
13 research, equipment, techniques, management, or
14 other interests of the employer are not readily avail-
15 able in the United States labor market;

16 “(II) is clearly unique from those held by others
17 employed in the same or similar occupations; and

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

21 “(ii)(I) The ownership of patented products or copy-
22 righted works by a petitioner under section 101(a)(15)(L)
23 does not establish that a particular employee has special-
24 ized knowledge. In order to meet the definition under
25 clause (i), the beneficiary shall be a key person with

1 knowledge that is critical for performance of the job duties
2 and is protected from disclosure through patent, copy-
3 right, or company policy.

4 “(II) Unique procedures are not proprietary knowl-
5 edge within this context unless the entire system and phi-
6 losophy behind the procedures are clearly different from
7 those of other firms, they are relatively complex, and they
8 are protected from disclosure to competition.”.

9 **SEC. 211. TECHNICAL AMENDMENTS.**

10 (a) DELEGATION OF AUTHORITY.—Section
11 212(n)(5)(F) of the Immigration and Nationality Act (8
12 U.S.C. 1182(n)(5)(F)) is amended by striking “Depart-
13 ment of Justice” and inserting “Department of Homeland
14 Security”.

15 (b) PETITIONS FOR CERTAIN NONIMMIGRANT
16 VISAS.—Section 214(c) of such Act (8 U.S.C. 1184(c))
17 is amended by striking “Attorney General” each place
18 such term appears and inserting “Secretary of Homeland
19 Security”.

20 **SEC. 212. APPLICATION.**

21 Except as otherwise specifically provided, the amend-
22 ments made by this title shall apply to petitions and appli-
23 cations filed on or after the date of the enactment of this
24 Act.

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