

110TH CONGRESS
2D SESSION

S. 2839

To provide emergency relief for United States businesses and industries currently employing temporary foreign workers and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2008

Mr. CORNYN (for himself, Mr. GREGG, Mr. LIEBERMAN, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide emergency relief for United States businesses and industries currently employing temporary foreign workers 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 “Global Competitiveness Act of 2008”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Extension of returning worker exemption to H-2B numerical limitation.
- Sec. 3. Recapture of unused visas.
- Sec. 4. H-1B visa availability.

- Sec. 5. Fee for H-1B employers.
- Sec. 6. Prohibitions on recruiting only H-1B workers and on outsourcing.
- Sec. 7. H-1B enforcement.
- Sec. 8. Whistleblower protections.
- Sec. 9. Limitations on approval of L-1 petitions for start-up companies.
- Sec. 10. Filing for early adjustment.
- Sec. 11. Clarification of immigration fee account provisions.
- Sec. 12. National Science Foundation scholarship program.
- Sec. 13. Extension of E-Verify program.
- Sec. 14. Clarification of false claims of United States nationality.

1 **SEC. 2. EXTENSION OF RETURNING WORKER EXEMPTION**
 2 **TO H-2B NUMERICAL LIMITATION.**

3 Subparagraph (A) of section 214(g)(9) of the Immi-
 4 gration and Nationality Act (8 U.S.C. 1184(g)(9)) is
 5 amended by striking “2004, 2005, or 2006 shall not be
 6 counted toward the numerical limitation during fiscal year
 7 2007.” and inserting “2005, 2006, 2007, or 2008 shall
 8 not be counted toward the numerical limitation during the
 9 fiscal years 2008 through 2010.”.

10 **SEC. 3. RECAPTURE OF UNUSED VISAS.**

11 (a) RECAPTURE OF UNUSED H-1B VISA.—

12 (1) IN GENERAL.—Subsection (g) of section
 13 214 of the Immigration and Nationality Act (8
 14 U.S.C. 1184) is amended—

15 (A) by redesignating paragraphs (10) and
 16 (11) as paragraphs (11) and (12), respectively;

17 and

18 (B) by inserting after paragraph (9) the
 19 following:

1 “(10)(A) If the numerical limitation set out in para-
2 graph (1)(A) for fiscal year 2009 or any subsequent fiscal
3 year has been reached, such numerical limitation shall be
4 supplemented in a number equal to the lesser of—

5 “(i) the cumulative total number of visas that
6 were available in all prior fiscal years subsequent to
7 fiscal year 1991, and not issued for each such fiscal
8 year or any subsequent fiscal year; and

9 “(ii) 50,000.

10 “(B) The fee for a visa made available pursuant to
11 subparagraph (A) shall be \$1,500.

12 “(C) Fees collected under this paragraph shall be de-
13 posited in the Treasury in accordance with section
14 286(s).”.

15 (2) EFFECTIVE PERIOD.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), the amendments made by
18 paragraph (1) shall be effective during the 3-
19 year period beginning on the date of the enact-
20 ment of this Act.

21 (B) ENACTMENT AFTER APRIL 1, 2009.—If
22 the date of the enactment of this Act is after
23 April 1, 2009, the amendments made by para-
24 graph (1) shall take effect as if enacted on

1 April 1, 2009 and be effective during the 3-year
2 period beginning on such date.

3 (b) RECAPTURE OF UNUSED EMPLOYMENT-BASED
4 NUMBERS.—Subsection (d) of section 106 of the Amer-
5 ican Competitiveness in the Twenty-first Century Act of
6 2000 (Public Law 106–313; 8 U.S.C. 1153 note) is
7 amended—

8 (1) in paragraph (1)—

9 (A) by inserting “1994, 1996, 1997,
10 1998,” after “available in fiscal year”;

11 (B) by striking “or 2004” and inserting
12 “2004, or 2006”; and

13 (C) by striking “be available” and all that
14 follows and inserting the following: “be avail-
15 able only to—

16 “(A) employment-based immigrants under
17 paragraph (1), (2), (3)(A)(i), or (3)(A)(ii) of
18 section 203(b) of the Immigration and Nation-
19 ality Act (8 U.S.C. 1153(b)) and spouses and
20 children accompanying or following to join such
21 immigrants under section 203(d) of such Act (8
22 U.S.C. 1153(d)); and

23 “(B) immigrant workers who had petitions
24 approved based on Schedule A, Group I under
25 section 656.5 of title 20, Code of Federal Regu-

1 lations, as promulgated by the Secretary of
2 Labor, and spouses and children accompanying
3 or following to join such immigrants under sec-
4 tion 203(d) of such Act (8 U.S.C. 1153(d)).”;
5 (2) in paragraph (2)—

6 (A) in subparagraph (A), by striking
7 “1999 through 2004” and inserting “1994,
8 1996, 1997, 1998, 2001 through 2004, and
9 2006”; and

10 (B) in subparagraph (B), by amending
11 clause (ii) to read as follows:

12 “(ii) DISTRIBUTION OF VISAS.—The
13 total number of visas made available under
14 paragraph (1) from unused visas from the
15 fiscal years 1994, 1996, 1997, 1998, 2001
16 through 2004, and 2006 shall be distrib-
17 uted as follows:

18 “(I) The total number of visas
19 made available for immigrant workers
20 who had petitions approved based on
21 Schedule A, Group I under section
22 656.5 of title 20, Code of Federal
23 Regulations, as promulgated by the
24 Secretary of Labor, and their spouses
25 and children accompanying or fol-

1 lowing to join under section 203(d) of
2 such Act (8 U.S.C. 1153(d)), shall be
3 61,000.

4 “(II) The visas remaining from
5 the total made available under para-
6 graph (1) shall be allocated to employ-
7 ment-based immigrants with approved
8 petitions under paragraph (1), (2),
9 (3)(A)(i) or (3)(A)(ii) of section
10 203(b) of the Immigration and Na-
11 tionality Act (8 U.S.C. 1153(b)) and
12 the spouses and children accom-
13 panying or following to join such im-
14 migrants under section 203(d) of such
15 Act (8 U.S.C. 1153(d)).”; and

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

17 “(4) FEE FOR RECAPTURE OF UNUSED EM-
18 PLOYMENT-BASED IMMIGRANT VISAS.—

19 “(A) IN GENERAL.—In addition to re-
20 quired filing fees, the Secretary shall impose a
21 \$1,500 recapture fee upon each petitioning em-
22 ployer who uses a visa number recaptured
23 under this section.

24 “(B) EXCEPTION.—The fee required under
25 paragraph (A) shall not be imposed for the use

1 of such visas if the employer demonstrates to
2 the Secretary that—

3 “(i) the employer is a health care fa-
4 cility that is located in a county or parish
5 that received individual and public assist-
6 ance pursuant to Major Disaster Declara-
7 tion number 1603 or 1607; or

8 “(ii) the employer is a health care fa-
9 cility that has been designated as a Health
10 Professional Shortage Area facility by the
11 Secretary of Health and Human Services
12 as defined in section 332 of the Public
13 Health Service Act (42 U.S.C. 254e).

14 “(C) FEES.—Fees collected under this
15 paragraph shall be deposited in the Immigra-
16 tion Examinations Fee Account, section 286(m)
17 and shall remain available until expended by
18 the Secretary of Homeland Security.”.

19 **SEC. 4. H-1B VISA AVAILABILITY.**

20 Subsection (g) of section 214 of the Immigration and
21 Nationality Act (8 U.S.C. 1184) is amended—

22 (1) in paragraph (1)(A)—

23 (A) in clause (vi), by striking “and” at the
24 end;

1 (B) by redesignating clause (vii) as clause
2 (ix); and

3 (C) by inserting after clause (vi) the fol-
4 lowing:

5 “(vii) 65,000 in each of fiscal years
6 2004 through 2008;

7 “(viii) 115,000 in each of fiscal years
8 2009 through 2011; and”; and

9 (2) in paragraph (5)(C), by striking “20,000”
10 and inserting “30,000 for fiscal years 2009 through
11 2011 and 20,000 for each fiscal year after fiscal
12 year 2011”.

13 **SEC. 5. FEE FOR H-1B EMPLOYERS.**

14 Subparagraph (B) of section 214(c)(9) of the Immi-
15 gration and Nationality Act (8 U.S.C. 1184(c)(9)) is
16 amended by striking “\$1,500” and inserting “\$2,250”.

17 **SEC. 6. PROHIBITIONS ON RECRUITING ONLY H-1B WORK-**
18 **ERS AND ON OUTSOURCING.**

19 (a) DOCUMENT REQUIREMENT.—Subparagraph (A)
20 of section 212(n)(1) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(n)(1)) is amended—

22 (1) in clause (i), by striking “, and” at the end
23 and inserting a semicolon;

24 (2) in clause (ii), by striking the period at the
25 end and inserting a semicolon and “and”; and

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

2 “(iii) will provide to the H–1B non-
3 immigrant a copy of the approved petition
4 filed on behalf of such nonimmigrant
5 under this section.”.

6 (b) PROHIBITION ON OUTSOURCING.—Paragraph (1)
7 of section 212(n) of the Immigration and Nationality Act
8 (8 U.S.C. 1182(n)) is amended by inserting after subpara-
9 graph (G) the following:

10 “(H) An alien admitted to the United States or
11 provided status as a nonimmigrant under section
12 101(a)(15)(H)(i)(b) may only work at a worksite,
13 that is in the United States, of an employer other
14 than the petitioning employer or its affiliate, sub-
15 sidiary, or parent if the alien, as part of such
16 aliens’s job responsibilities as described and ap-
17 proved in the labor condition application under this
18 subsection and the H–1B petition under section 214,
19 is required to provide a product or service of the pe-
20 titioning employer at the worksite of the nonpeti-
21 tioning employer. Such work is not authorized if the
22 alien is essentially providing labor for hire for the
23 nonpetitioning employer.”.

24 (c) ADVERTISING REQUIREMENTS.—Paragraph (1)
25 of section 212(n) of the Immigration and Nationality Act

1 (8 U.S.C. 1182(n)), as amended by subsection (b), is fur-
2 ther amended by inserting after subparagraph (H), as
3 added by such subsection, the following:

4 “(I) The employer has not advertised the avail-
5 able jobs specified in the application in an advertise-
6 ment that states or indicates that—

7 “(i) the job or jobs are only available to
8 persons who are or who may become H–1B
9 nonimmigrants; or

10 “(ii) persons who are or who may become
11 H–1B nonimmigrants shall receive priority or a
12 preference in the hiring process.”.

13 (d) HIRING REQUIREMENTS.—Subsection (g) of sec-
14 tion 214 of the Immigration and Nationality Act (8 U.S.C.
15 1184), as amended by section 3(a), is further amended
16 by adding at the end the following:

17 “(13)(A)(i) An employer described in clause (ii) may
18 file not more than 1,000 petitions total for the initial ad-
19 mission of an alien as a nonimmigrant under section
20 101(a)(15)(H)(i)(b) who are counted under subsection
21 (g)(1)(A) in any fiscal year.

22 “(ii) An employer described in this subparagraph is
23 an employer that employs aliens admitted as, or provided
24 status under, section 101(a)(15)(H)(i)(b) in a number

1 that is equal to or greater than 50 percent of the number
2 of the total number of full-time employees.

3 “(B) An employer that employs more than 50 em-
4 ployees may not employ aliens provided status as non-
5 immigrants under section 101(a)(15)(H)(i)(b) in a num-
6 ber that is equal to or greater than 75 percent of the num-
7 ber of such full-time employees.”.

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall be effective during the period beginning
10 on the date of the enactment of this Act and ending on
11 September 31, 2011.

12 **SEC. 7. H-1B ENFORCEMENT.**

13 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
14 SENTATION.—Paragraph (1) section 212(n) of the Immi-
15 gration and Nationality Act (8 U.S.C. 1182(n)), as
16 amended by subsections (b) and (c) of section 6, is further
17 amended—

18 (1) in the undesignated paragraph at the end,
19 by striking “The employer” and inserting the fol-
20 lowing:

21 “(J) The employer.”; and

22 (2) in subparagraph (J), as designated by para-
23 graph (1)—

1 (A) by inserting “and through the Depart-
2 ment of Labor’s website, without charge.” after
3 “D.C.”;

4 (B) by inserting “, clear indicators of
5 fraud, misrepresentation of material fact,” after
6 “completeness”;

7 (C) by striking “or obviously inaccurate”
8 and inserting “, presents clear indicators of
9 fraud or misrepresentation of material fact, or
10 is obviously inaccurate”;

11 (D) by striking “within 7 days of” and in-
12 serting “not later than 14 days after”; and

13 (E) by adding at the end the following: “If
14 the Secretary’s review of an application identi-
15 fies clear indicators of fraud or misrepresenta-
16 tion of material fact, the Secretary may conduct
17 an investigation and hearing under paragraph
18 (2).”.

19 (b) INVESTIGATIONS BY THE SECRETARY OF
20 LABOR.—Paragraph (2) of section 212(n) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1182(n)) is amended—

22 (1) in subparagraph (A)—

23 (A) by striking “12 months” and inserting
24 “24 months”; and

1 (B) by striking “The Secretary shall con-
2 duct” and all that follows and inserting “Upon
3 the receipt of such a complaint, the Secretary
4 may initiate an investigation to determine if
5 such a failure or misrepresentation has oc-
6 curred.”;

7 (2) in clause (i) of subparagraph (C)—

8 (A) by striking “a condition of paragraph
9 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
10 dition under subparagraph (B), (C)(i), (E), (F),
11 (H), (I), or (J) of paragraph (1)”;

12 (B) by striking “(1)(C)” and inserting
13 “(1)(C)(ii)”;

14 (3) in subparagraph (G)—

15 (A) in clause (i), by striking “if the Sec-
16 retary” and all that follows and inserting “with
17 regard to the employer’s compliance with the
18 requirements of this subsection.”;

19 (B) in clause (ii), by striking “and whose
20 identity” and all that follows through “failure
21 or failures.” and inserting “the Secretary of
22 Labor may conduct an investigation into the
23 employer’s compliance with the requirements of
24 this subsection.”;

1 (C) in clause (iii), by striking the last sen-
2 tence;

3 (D) by striking clauses (iv) and (v);

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

6 (F) in clause (iv), as redesignated, by
7 striking “meet a condition described in clause
8 (ii), unless the Secretary of Labor receives the
9 information not later than 12 months” and in-
10 sserting “comply with the requirements under
11 this subsection, unless the Secretary of Labor
12 receives the information not later than 24
13 months”;

14 (G) by amending clause (v), as redesign-
15 ated, to read as follows:

16 “(v) The Secretary of Labor shall provide no-
17 tice to an employer of the intent to conduct an in-
18 vestigation. The notice shall be provided in such a
19 manner, and shall contain sufficient detail, to permit
20 the employer to respond to the allegations before an
21 investigation is commenced. The Secretary is not re-
22 quired to comply with this clause if the Secretary de-
23 termines that such compliance would interfere with
24 an effort by the Secretary to investigate or secure
25 compliance by the employer with the requirements of

1 this subsection. A determination by the Secretary
2 under this clause shall not be subject to judicial re-
3 view.”;

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

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

19 “(vii) If the Secretary of Labor, after a hear-
20 ing, finds a reasonable basis to believe that the em-
21 ployer has violated the requirements under this sub-
22 section, the Secretary may impose a penalty under
23 subparagraph (C).”; and

24 (4) by striking subparagraph (H).

1 (c) INFORMATION SHARING BETWEEN THE SEC-
2 RETARY OF HOMELAND SECURITY AND THE SECRETARY
3 OF LABOR.—Paragraph (2) of section 212(n) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1182(n)), as
5 amended by subsection (b), is further amended by insert-
6 ing after subparagraph (G) the following:

7 “(H) The Director of United States Citizenship and
8 Immigration Services shall provide the Secretary of Labor
9 with any information contained in the materials submitted
10 by H–1B employers as part of the adjudication process
11 that indicates that the employer is not complying with H–
12 1B visa program requirements. The Secretary may initiate
13 and conduct an investigation and hearing under this para-
14 graph after receiving information of noncompliance under
15 this subparagraph.”.

16 (d) AUDITS.—Subparagraph (A) of section 212(n)(2)
17 of the Immigration and Nationality Act (8 U.S.C.
18 1182(n)(2)), as amended by subsection (b), is further
19 amended by adding at the end “The Secretary may con-
20 duct surveys of the degree to which employers comply with
21 the requirements under this subsection and may conduct
22 annual compliance audits of employers that employ H–1B
23 nonimmigrants. The Secretary shall conduct annual com-
24 pliance audits of not less than 1 percent of the employers

1 that employ H–1B nonimmigrants during the applicable
2 calendar year.”

3 (e) PENALTIES.—Subparagraph (C) of section
4 212(n)(2) of the Immigration and Nationality Act (8
5 U.S.C. 1182(n)(2)) is amended—

6 (1) in clause (i)(I), by striking “\$1,000” and
7 inserting “\$2,000”;

8 (2) in clause (ii)(I), by striking “\$5,000” and
9 inserting “\$10,000”; and

10 (3) in clause (vi)(III), by striking “\$1,000” and
11 inserting “\$2,000”.

12 (f) INFORMATION PROVIDED TO H–1B NON-
13 IMMIGRANTS UPON VISA ISSUANCE.—Subsection (n) of
14 section 212 of the Immigration and Nationality Act (8
15 U.S.C. 1182) is amended by adding after paragraph (3)
16 the following:

17 “(4)(A) Upon issuing an H–1B visa to an applicant
18 outside the United States, the Secretary of State shall pro-
19 vide the applicant with—

20 “(i) a brochure outlining the employer’s obliga-
21 tions and the employee’s rights under Federal law,
22 including labor and wage protections; and

23 “(ii) the contact information for Federal agen-
24 cies that can offer more information or assistance in
25 clarifying employer obligations and workers’ rights.

1 “(B) Upon according H–1B nonimmigrant status to
2 an alien inside the United States, the officer of the De-
3 partment of Homeland Security shall provide the applicant
4 with—

5 “(i) a brochure outlining the employer’s obliga-
6 tions and the employee’s rights under Federal law,
7 including labor and wage protections; and

8 “(ii) the contact information for Federal agen-
9 cies that can offer more information or assistance in
10 clarifying employer’s obligations and workers’
11 rights.”.

12 (g) INVESTIGATIONS AND AUDITS BY THE SEC-
13 RETARY OF HOMELAND SECURITY.—

14 (1) INVESTIGATIONS AND AUDITS.—Paragraph
15 (2) of section 214(c) of the Immigration and Nation-
16 ality Act (8 U.S.C. 1184(c)) is amended by adding
17 at the end the following:

18 “(G)(i) The Secretary of Homeland Security may ini-
19 tiate an investigation of any employer that employs non-
20 immigrants described in section 101(a)(15)(L) with re-
21 gard to the employer’s compliance with the requirements
22 of this subsection.

23 “(ii) If the Secretary of Homeland Security receives
24 specific credible information from a source who is likely
25 to have knowledge of an employer’s practices, employment

1 conditions, or compliance with the requirements under this
2 subsection, the Secretary may conduct an investigation
3 into the employer's compliance with the requirements of
4 this subsection. The Secretary may withhold the identity
5 of the source from the employer, and the source's identity
6 shall not be subject to disclosure under section 552 of title
7 5, United States Code.

8 “(iii) The Secretary of Homeland Security shall es-
9 tablish a procedure for any person desiring to provide to
10 the Secretary of Homeland Security information described
11 in clause (ii) that may be used, in whole or in part, as
12 the basis for the commencement of an investigation de-
13 scribed in such clause, to provide the information in writ-
14 ing on a form developed and provided by the Secretary
15 of Homeland Security and completed by or on behalf of
16 the person.

17 “(iv) No investigation described in clause (ii) (or
18 hearing described in clause (vi) based on such investiga-
19 tion) may be conducted with respect to information about
20 a failure to comply with the requirements of this sub-
21 section, unless the Secretary of Homeland Security re-
22 ceives the information not later than 24 months after the
23 date of the alleged failure.

24 “(v) Before commencing an investigation of an em-
25 ployer under clause (i) or (ii), the Secretary of Homeland

1 Security shall provide notice to the employer of the intent
2 to conduct such investigation. The notice shall be provided
3 in such a manner, and shall contain sufficient detail, to
4 permit the employer to respond to the allegations before
5 an investigation is commenced. The Secretary is not re-
6 quired to comply with this clause if the Secretary deter-
7 mines that to do so would interfere with an effort by the
8 Secretary to investigate or secure compliance by the em-
9 ployer with the requirements of this subsection. There
10 shall be no judicial review of a determination by the Sec-
11 retary under this clause.

12 “(vi) If the Secretary of Homeland Security, after an
13 investigation under clause (i) or (ii), determines that a
14 reasonable basis exists to make a finding that the em-
15 ployer has substantially failed to comply with the require-
16 ments of this subsection, the Secretary shall provide inter-
17 ested parties with notice of such determination and an op-
18 portunity for a hearing in accordance with section 556 of
19 title 5, United States Code, not later than 120 days after
20 the date of such determination. If such a hearing is re-
21 quested, the Secretary shall make a finding concerning the
22 matter by not later than 120 days after the date of the
23 hearing.

24 “(vii) If the Secretary of Homeland Security, after
25 a hearing, finds a reasonable basis to believe that the em-

1 ployer has violated the requirements of this subsection, the
2 Secretary may impose a penalty under section
3 214(c)(2)(H).”

4 “(viii) The Secretary of Homeland Security may con-
5 duct surveys of the degree to which employers comply with
6 the requirements under this section and may conduct an-
7 nual compliance audits of employers that employ L non-
8 immigrants. The Secretary shall conduct annual compli-
9 ance audits of not less than 1 percent of the employers
10 that employ nonimmigrants described in section
11 101(a)(15)(L) during the applicable calendar year.”.

12 (2) REPORTING REQUIREMENT.—Paragraph (8)
13 of such section 214(c) is amended—

14 (A) by striking “Attorney General” when-
15 ever the term appears and inserting “Secretary
16 of Homeland Security”; and

17 (B) by inserting “(L),” after “(H),”.

18 (h) PENALTIES.—Paragraph (2) of section 214(c) of
19 the Immigration and Nationality Act (8 U.S.C. 1184(c)),
20 as amended by subsection (g), is further amended by add-
21 ing at the end the following:

22 “(H)(i) If the Secretary of Homeland Security finds,
23 after notice and an opportunity for a hearing, a failure
24 by an employer to meet a condition under subparagraph
25 (F), (G), (H), (I), or (K) or a misrepresentation of mate-

1 rial fact in a petition to employ 1 or more aliens as non-
2 immigrants described in section 101(a)(15)(L)—

3 “(I) the Secretary of Homeland Security may
4 impose such other administrative remedies (includ-
5 ing civil monetary penalties in an amount not to ex-
6 ceed \$2,000 per violation) as the Secretary deter-
7 mines to be appropriate; and

8 “(II) the Secretary of Homeland Security may
9 not, during a period of at least 1 year, approve a pe-
10 tition for that employer to employ 1 or more aliens
11 as such nonimmigrants.

12 “(ii) If the Secretary of Homeland Security finds,
13 after notice and an opportunity for a hearing, a willful
14 failure by an employer to meet a condition under subpara-
15 graph (F), (G), (H), (I), or (K) or a misrepresentation
16 of material fact in a petition to employ 1 or more aliens
17 as nonimmigrants described in section 101(a)(15)(L)—

18 “(I) the Secretary of Homeland Security may
19 impose such other administrative remedies (includ-
20 ing civil monetary penalties in an amount not to ex-
21 ceed \$10,000 per violation) as the Secretary deter-
22 mines to be appropriate; and

23 “(II) the Secretary of Homeland Security may
24 not, during a period of at least 2 years, approve a

1 petition filed for that employer to employ 1 or more
2 aliens as such nonimmigrants.

3 “(iii) If the Secretary of Homeland Security finds,
4 after notice and an opportunity for a hearing, a willful
5 failure by an employer to meet a condition under subpara-
6 graph (L)(i)—

7 “(I) the Secretary of Homeland Security may
8 impose such other administrative remedies (includ-
9 ing civil monetary penalties in an amount not to ex-
10 ceed \$10,000 per violation) as the Secretary deter-
11 mines to be appropriate; and

12 “(II) the employer shall be liable to employees
13 harmed for lost wages and benefits.”.

14 **SEC. 8. WHISTLEBLOWER PROTECTIONS.**

15 Paragraph (2) of section 214(c) of the Immigration
16 and Nationality Act (8 U.S.C. 1184(c)), as amended by
17 subsections (g) and (h) of section 7, is further amended
18 by adding at the end the following:

19 “(I)(i) It is a violation of this subparagraph for an
20 employer who has filed a petition to import 1 or more
21 aliens as nonimmigrants described in section
22 101(a)(15)(L) to take, fail to take, or threaten to take
23 or fail to take, a personnel action, or to intimidate, threat-
24 en, restrain, coerce, blacklist, discharge, or discriminate

1 in any other manner against an employee because the em-
 2 ployee—

3 “(I) has disclosed information that the em-
 4 ployee reasonably believes evidences a violation of
 5 this subsection, or any rule or regulation pertaining
 6 to this subsection; or

7 “(II) cooperates or seeks to cooperate with the
 8 requirements of this subsection, or any rule or regu-
 9 lation pertaining to this subsection.

10 “(ii) An employer that violates this subparagraph
 11 shall be liable to the employees harmed by such violation
 12 for lost wages and benefits.

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

15 “(I) a current employee;

16 “(II) a former employee; and

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

18 **SEC. 9. LIMITATIONS ON APPROVAL OF L-1 PETITIONS FOR**

19 **START-UP COMPANIES.**

20 Paragraph (2) of section 214(c) of the Immigration
 21 and Nationality Act (8 U.S.C. 1184(c)), as amended by
 22 subsections (g) and (h) of section 7 and section 8(b), is
 23 further amended—

1 (1) by striking “Attorney General” each place
2 that term appears and inserting “Secretary of
3 Homeland Security”;

4 (2) in subparagraph (E), by striking “In the
5 case” and inserting “Except as provided in subpara-
6 graph (H), in the case”; and

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

8 “(J)(i) If the beneficiary of a petition under this sub-
9 section is coming to the United States to be employed in
10 a new office, the petition may be approved for a period
11 not to exceed 12 months only if the alien has not been
12 the beneficiary of 2 or more petitions under this subpara-
13 graph within the immediately preceding 2 years and only
14 if the employer operating the new office has—

15 “(I) an adequate business plan;

16 “(II) sufficient physical premises to carry out
17 the proposed business activities; and

18 “(III) the financial ability to commence doing
19 business immediately upon the approval of the peti-
20 tion.

21 “(ii) An extension of the approval period under clause
22 (i) may not be granted until the importing employer sub-
23 mits to the Secretary of Homeland Security—

24 “(I) evidence that the importing employer
25 meets the requirements of this subsection;

1 “(II) evidence that the beneficiary meets the re-
2 requirements of section 101(a)(15)(L);

3 “(III) a statement summarizing the original pe-
4 tition;

5 “(IV) evidence that the importing employer has
6 substantially complied with the business plan sub-
7 mitted under clause (i);

8 “(V) evidence of the truthfulness of any rep-
9 resentations made in connection with the filing of
10 the original petition if requested by the Secretary;

11 “(VI) evidence that the importing employer,
12 from the date of petition approval under clause (i),
13 has been doing business at the new office through
14 regular, systematic, and continuous provision of
15 goods or services;

16 “(VII) a statement of the duties the beneficiary
17 has performed at the new office during the approval
18 period under clause (i) and the duties the beneficiary
19 will perform at the new office during the extension
20 period approved under this clause;

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

1 “(IX) evidence of wages paid to employees if
2 the beneficiary will be employed in a managerial or
3 executive capacity;

4 “(X) evidence of the financial status of the new
5 office; and

6 “(XI) any other evidence or data prescribed by
7 the Secretary.

8 “(iii) A new office employing the beneficiary of an
9 L-1 petition approved under this subparagraph must do
10 business through regular, systematic, and continuous pro-
11 vision of goods or services for the entire period of petition
12 approval.

13 “(iv) Notwithstanding clause (iii) or subclauses (I)
14 through (VI) of clause (ii), and subject to the maximum
15 period of authorized admission set forth in subparagraph
16 (D), the Secretary of Homeland Security may, in the Sec-
17 retary’s discretion, approve a subsequently filed petition
18 on behalf of the beneficiary to continue employment at the
19 office described in this subsection for a period beyond the
20 initially granted 12-month period if the importing em-
21 ployer has been doing business at the new office through
22 regular, systematic, and continuous provision of goods or
23 services for the 6 months immediately preceding the date
24 of extension petition filing and demonstrates that the fail-
25 ure to satisfy any of the requirements described in those

1 subclauses was directly caused by extraordinary cir-
 2 cumstances, as determined by the Secretary, in the Sec-
 3 retary’s discretion.

4 “(K)(i) The Secretary of Homeland Security may not
 5 authorize the spouse of an alien described under section
 6 101(a)(15)(L), who is a dependent of a beneficiary under
 7 subparagraph (J), to engage in employment in the United
 8 States during the initial 12-month period described in sub-
 9 paragraph (J)(i).

10 “(ii) A spouse described in clause (i) may be provided
 11 employment authorization upon the approval of an exten-
 12 sion under subparagraph (J)(ii).

13 “(L) For purposes of determining the eligibility of an
 14 alien for classification under section 101(a)(15)(L) of this
 15 Act, the Secretary of Homeland Security shall establish
 16 procedures with the Department of State to verify a com-
 17 pany or office’s existence in the United States and
 18 abroad.”.

19 **SEC. 10. FILING FOR EARLY ADJUSTMENT.**

20 (a) ADJUSTMENT OF STATUS.—

21 (1) IN GENERAL.—Section 245 of the Immigra-
 22 tion and Nationality Act (8 U.S.C. 1255) is amend-
 23 ed by adding at the end the following:

24 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
 25 BASED IMMIGRANTS.—

1 “(1) ELIGIBILITY.—The Secretary of Homeland
2 Security shall promulgate regulations to provide for
3 the filing of an application for adjustment of status
4 by an alien (and any eligible dependents of such
5 alien), regardless of whether an immigrant visa is
6 immediately available at the time the application is
7 filed, if the alien has an approved petition under
8 paragraph (1), (2), (3)(A)(i), or (3)(A)(ii) of section
9 203(b) and the priority date for processing of an im-
10 migrant visa under such paragraph (1), (2),
11 (3)(A)(i), or 3(A)(ii) as reflected on the Department
12 of State, Visa Bulletin for the month in which the
13 application for adjustment of status is filed, is not
14 more than 24 months from the date of filing.

15 “(2) VISA AVAILABILITY.—An application filed
16 pursuant to paragraph (1) may not be approved
17 until an immigrant visa becomes available, the alien
18 is deemed admissible, and all background checks
19 have been completed and resolved to the satisfaction
20 of the Secretary of Homeland Security.

21 “(3) FEES.—If an application is filed pursuant
22 to paragraph (1), the beneficiary of such application
23 shall pay a supplemental fee of \$500. Such fee may
24 not be charged to any dependent accompanying or
25 following to join such beneficiary.

1 “(4) FEE ADJUSTMENTS.—Application fees
2 under this subsection may be adjusted in accordance
3 with the 3-year period of validity assigned to the em-
4 ployment authorization or advanced parole docu-
5 ments under subparagraph (A).”.

6 (b) USE OF FEES.—

7 (1) IN GENERAL.—Section 286 of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1356) is amend-
9 ed—

10 (A) in subsection (m)—

11 (i) by striking “Notwithstanding any
12 other provisions of law,” and inserting the
13 following:

14 “(m) IMMIGRATION EXAMINATIONS FEE AC-
15 COUNT.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of law, all fees collected under section
18 245(n)(3) and”;

19 (ii) by striking “: *Provided*, however,
20 That all” and inserting the following:

21 “(2) VIRGIN ISLANDS; GUAM.—All”; and

22 (iii) by striking “: *Provided further*,
23 That fees” and inserting the following:

24 “(3) COST RECOVERY.—Fees.”;

1 (B) by redesignating subsection (n) as
2 paragraph (4), indenting such paragraph, as so
3 redesignated, 2 ems from the left margin, and
4 inserting the heading “USE OF FUNDS.—”;

5 (C) in paragraph (4) of subsection (m), as
6 redesignated by subparagraph (B)—

7 (i) by striking “All deposits” and in-
8 serting the following:

9 “(A) IN GENERAL.—Except as provided
10 under subparagraph (B), all deposits”; and

11 (ii) by adding at the end the fol-
12 lowing:

13 “(B) SUPPLEMENTAL FEE FOR ADJUST-
14 MENT OF STATUS OF EMPLOYMENT-BASED IM-
15 MIGRANTS.—Any amounts deposited into the
16 Immigration Examinations Fee Account, sec-
17 tion 286(m), that were collected under section
18 245(n)(3) shall remain available until expended
19 by the Secretary of Homeland Security.”;

20 (D) by redesignating subsection (o) as
21 paragraph (5), indenting such paragraph, as so
22 redesignated, 2 ems from the left margin, and
23 inserting the heading “ANNUAL FINANCIAL RE-
24 PORT TO CONGRESS.—”; and

1 (E) by redesignating subsection (p) as
2 paragraph (6), indenting such paragraph, as so
3 redesignated, 2 ems from the left margin, and
4 inserting the heading “APPLICABILITY.—”;

5 (F) in paragraph (6) of subsection (m), as
6 redesignated by subparagraph (D) by striking
7 “subsections (m), (n), and (o) of this section”
8 and inserting “this subsection shall”;

9 (G) by redesignating sections (q) through
10 (v) as sections (n) through (s), respectively; and

11 (H) in subsection (p), as redesignated by
12 subparagraph (E)—

13 (i) in paragraph (2), by striking “50
14 percent” and inserting “40 percent”;

15 (ii) in paragraph (3)—

16 (I) in the heading, by striking
17 “LOW-INCOME”;

18 (II) by striking “30 percent” and
19 inserting “40 percent”; and

20 (III) by striking “low-income”;

21 (iii) in subparagraph (A) of paragraph
22 (4), by striking “10 percent” and inserting
23 “5 percent”;

24 (iv) in paragraph (6), by striking the
25 first sentence; and

1 (v) by adding at the end the following:

2 “(7) USE OF FEES FOR GIFTED AND TALENTED
3 STUDENTS EDUCATION.—5 percent of the amounts
4 deposited into the H-1B Nonimmigrant Petitioner
5 Account shall remain available to the Secretary of
6 Education until expended to carry out programs and
7 projects authorized under the Jacob K. Javits Gifted
8 and Talented Students Education Act of 2001 (20
9 U.S.C. 7253 et seq.).”

10 (2) CONFORMING AMENDMENTS.—

11 (A) IMMIGRATION AND NATIONALITY.—

12 The Immigration and Nationality Act (8 U.S.C.
13 1101 et seq.) is amended—

14 (i) in section 214(c) (8 U.S.C.
15 1184(c))—

16 (I) in paragraphs (9)(C) and
17 (11)(C), by striking “286(s)” and in-
18 serting “286(p)”; and

19 (II) in paragraph (12)(E), by
20 striking “286(v)” and inserting
21 “286(s)”;

22 (ii) in section 245(i)(3) (8 U.S.C.
23 1255(i)(3))—

1 (I) in subparagraph (A), by strik-
2 ing “subsections (m), (n), and (o)”
3 and inserting “subsection (m)”; and

4 (II) in subparagraph (B), by
5 striking “286(r)” and inserting
6 “286(o)”; and

7 (iii) in section 344(c) (8 U.S.C.
8 1455(c)), by striking “286(q)(2)” and in-
9 serting “286(n)(2)”.

10 (B) L-1 AND H-1B VISA REFORM ACT.—
11 Section 424(c)(2) of the L-1 and H-1B Visa
12 Reform Act (8 U.S.C. 1381(2)) is amended by
13 striking “286(v)(2)(D)” and inserting
14 “286(s)(2)(D)”.

15 (C) AMERICAN COMPETITIVENESS AND
16 WORKFORCE IMPROVEMENT ACT OF 1998.—Sec-
17 tion 414 of the American Competitiveness and
18 Workforce Improvement Act of 1998 is amend-
19 ed—

20 (i) in subsection (e)(1) (29 U.S.C.
21 2916a(1)), by striking “286(s)(2)” and in-
22 serting “286(p)(2)”; and

23 (ii) in subsection (d)(4) (42 U.S.C.
24 1869c(4)), by striking “286(s)(3)” and in-
25 serting “286(p)(3)”.

1 **SEC. 11. CLARIFICATION OF IMMIGRATION FEE ACCOUNT**
2 **PROVISIONS.**

3 Subparagraphs (B) and (C) of paragraph (2) of sub-
4 section (s) of section 286 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1356), as redesignated by section
6 10(b)(1)(G), are amended to read as follows:

7 “(B) SECRETARY OF HOMELAND SECU-
8 RITY.—One-third of the amounts deposited into
9 the Fraud Prevention and Detection Account
10 shall remain available to the Secretary of
11 Homeland Security until expended for programs
12 and activities to prevent and detect immigration
13 benefit fraud, including fraud with respect to
14 petitions under paragraph (1) or (2)(A) of sec-
15 tion 214(e) to grant an alien nonimmigrant sta-
16 tus described in subparagraph (H)(i), (H)(ii),
17 or (L) of section 101(a)(15).

18 “(C) SECRETARY OF LABOR.—One third of
19 the amounts deposited into the Fraud Preven-
20 tion and Detection Account shall remain avail-
21 able to the Secretary of Labor until expended
22 for enforcement programs and activities de-
23 scribed in section 212(n) and for enforcement
24 programs and activities otherwise authorized to
25 be conducted by the Secretary of Labor that

1 focus on industries likely to employ non-
2 immigrants.”.

3 **SEC. 12. NATIONAL SCIENCE FOUNDATION SCHOLARSHIP**
4 **PROGRAM.**

5 Section 414(d)(3) of the American Competitiveness
6 and Workforce Improvement Act of 1998 (42 U.S.C.
7 1869c(3)) is amended by striking “\$10,000” and inserting
8 “\$15,000”.

9 **SEC. 13. EXTENSION OF E-VERIFY PROGRAM.**

10 (a) EXTENSION.—Section 401(b) of the Illegal Immi-
11 gration Reform and Immigrant Responsibility Act of 1996
12 (Public Law 104–208; 8 U.S.C. 1324a note) is amended
13 by striking “at the end of the 11-year period beginning
14 on the first day the pilot program is in effect.” and insert-
15 ing “not later than December 31, 2013.”.

16 (b) DESIGNATION OF E-VERIFY PROGRAM.—Title IV
17 of the Illegal Immigration Reform and Immigrant Respon-
18 sibility Act of 1996 (division C of Public Law 104–208;
19 110 Stat. 3009–546) is amended by striking “basic pilot”
20 each place that term appears and inserting “E-Verify”.

1 **SEC. 14. CLARIFICATION OF FALSE CLAIMS OF UNITED**
2 **STATES NATIONALITY.**

3 Section 212(a)(6)(C)(ii)(I) of the Immigration and
4 Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)) is amended
5 by inserting “or national” after “citizen”.

○