

111TH CONGRESS
2^D SESSION

H. R. 5397

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 HOUSE OF REPRESENTATIVES

MAY 25, 2010

Mr. PASCRELL (for himself, Ms. DELAURO, and Mr. ROHRABACHER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “H–1B and L–1 Visa Reform Act of 2010”.

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

Sec. 1. Short title.

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.

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. H-1B government authority and requirements.

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 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 nonimmigrant.

Sec. 206. Penalties.

Sec. 207. Prohibition on retaliation against L-1 nonimmigrants.

Sec. 208. Reports on L-1 nonimmigrants.

Sec. 209. Technical amendments.

Sec. 210. Application.

Sec. 211. Report on L-1 blanket petition process.

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

11 “(A) The employer—

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

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

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

1 “(III) the median wage for skill level
2 2 in the occupational classification found
3 in the most recent Occupational Employ-
4 ment Statistics survey; and

5 “(ii) will provide working conditions for
6 such H-1B nonimmigrant that will not ad-
7 versely affect the working conditions of other
8 workers similarly employed.”.

9 (b) INTERNET POSTING REQUIREMENT.—Subpara-
10 graph (C) of such section 212(n)(1) is amended—

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

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

15 “(ii)(I) has provided”; and

16 (3) by inserting before clause (ii), as redesign-
17 ated by paragraph (2) of this subsection, the fol-
18 lowing:

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

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

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

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

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

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

12 (1) NONDISPLACEMENT.—Subparagraph (E) of
13 such section 212(n)(1) is amended—

14 (A) in clause (i)—

15 (i) by striking “90 days” both places
16 it appears and inserting “180 days”; and

17 (ii) by striking “(i) In the case of an
18 application described in clause (ii), the”
19 and inserting “The”; and

20 (B) by striking clause (ii).

21 (2) RECRUITMENT.—Subparagraph (G)(i) of
22 such section 212(n)(1) is amended by striking “In
23 the case of an application described in subparagraph
24 (E)(ii), subject” and inserting “Subject”.

1 (e) REQUIREMENT FOR WAIVER.—Subparagraph (F)
2 of such section 212(n)(1) is amended to read as follows:

3 “(F) The employer shall not place, outsource,
4 lease, or otherwise contract for the services or place-
5 ment of H–1B nonimmigrants with another em-
6 ployer unless the employer of the alien has been
7 granted a waiver under paragraph (2)(E).”.

8 **SEC. 102. NEW APPLICATION REQUIREMENTS.**

9 Section 212(n)(1) of the Immigration and Nationality
10 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after
11 clause (ii) of subparagraph (G) the following:

12 “(H)(i) The employer has not advertised any
13 available position specified in the application in an
14 advertisement that states or indicates that—

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

18 “(II) an individual who is or will be an H–
19 1B nonimmigrant shall receive priority or a
20 preference in the hiring process for such posi-
21 tion.

22 “(ii) The employer has not solely recruited indi-
23 viduals who are or who will be H–1B nonimmigrants
24 to fill such position.

1 “(I) If the employer employs 50 or more em-
2 ployees in the United States, the sum of the number
3 of such employees who are H–1B nonimmigrants
4 plus the number of such employees who are non-
5 immigrants described in section 101(a)(15)(L) may
6 not exceed 50 percent of the total number of em-
7 ployees.

8 “(J) If the employer, in such previous period as
9 the Secretary shall specify, employed 1 or more H–
10 1B nonimmigrants, the employer shall submit to the
11 Secretary the Internal Revenue Service Form W–2
12 Wage and Tax Statement filed by the employer with
13 respect to the H–1B nonimmigrants for such pe-
14 riod.”.

15 **SEC. 103. APPLICATION REVIEW REQUIREMENTS.**

16 (a) **TECHNICAL AMENDMENT.**—Section 212(n)(1) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1182(n)(1)), as amended by section 102, is further
19 amended in the undesignated paragraph at the end, by
20 striking “The employer” and inserting the following:

21 “(K) The employer.”.

22 (b) **APPLICATION REVIEW REQUIREMENTS.**—Sub-
23 paragraph (K) of such section 212(n)(1), as designated
24 by subsection (a), is amended—

1 (1) by inserting “and through the Department
2 of Labor’s Web site, without charge.” after “D.C.”;

3 (2) by striking “only for completeness” and in-
4 serting “for completeness and clear indicators of
5 fraud or misrepresentation of material fact,”;

6 (3) by striking “or obviously inaccurate” and
7 inserting “, presents clear indicators of fraud or
8 misrepresentation of material fact, or is obviously in-
9 accurate”;

10 (4) by striking “within 7 days of” and inserting
11 “not later than 14 days after”; and

12 (5) by adding at the end the following: “If the
13 Secretary’s review of an application identifies clear
14 indicators of fraud or misrepresentation of material
15 fact, the Secretary may conduct an investigation and
16 hearing in accordance with paragraph (2).”.

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

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

22 Subparagraph (A) of section 212(n)(2) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
24 amended—

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

3 (2) by striking “12 months” and inserting “24
4 months”;

5 (3) by striking the last sentence; and

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

7 “(ii)(I) Upon the receipt of such a com-
8 plaint, the Secretary may initiate an investiga-
9 tion to determine if such a failure or misrepre-
10 sentation has occurred.

11 “(II) The Secretary may conduct surveys
12 of the degree to which employers comply with
13 the requirements of this subsection and may
14 conduct annual compliance audits of employers
15 that employ H-1B nonimmigrants.

16 “(III) The Secretary shall—

17 “(aa) conduct annual compliance au-
18 dits of not less than 1 percent of the em-
19 ployers that employ H-1B nonimmigrants
20 during the applicable calendar year;

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

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

5 **SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND**
6 **PENALTIES.**

7 Subparagraph (C) of section 212(n)(2) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
9 amended—

10 (1) in clause (i)—

11 (A) in the matter preceding subclause
12 (I)—

13 (i) by striking “a condition of para-
14 graph (1)(B), (1)(E), or (1)(F)” and in-
15 serting “a condition under subparagraph
16 (A), (B), (C)(i), (E), (F), (G)(i)(I), (H),
17 (I), or (J) of paragraph (1)”; and

18 (ii) by striking “(1)(C)” and inserting
19 “(1)(C)(ii)”; and
20 (B) in subclause (I)—

21 (i) by striking “\$1,000” and inserting
22 “\$2,000”; and

23 (ii) by striking “and” at the end;

1 (C) in subclause (II), by striking the pe-
2 riod at the end and inserting a semicolon and
3 “and”;

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

5 “(III) an employer that violates such subpara-
6 graph (A) shall be liable to the employees harmed by
7 such violations for lost wages and benefits.”; and

8 (2) in clause (ii)—

9 (A) in subclause (I)—

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

12 (ii) by striking “\$5,000” and insert-
13 ing “\$10,000”;

14 (B) in subclause (II), by striking the pe-
15 riod at the end and inserting a semicolon and
16 “and”; and

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

18 “(III) an employer that violates such subpara-
19 graph (A) shall be liable to the employees harmed by
20 such violations for lost wages and benefits.”; and

21 (3) in clause (iii)—

22 (A) in the matter preceding subclause (I),
23 by striking “90 days” both places it appears
24 and inserting “180 days”;

25 (B) in subclause (I)—

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

3 (ii) by striking “and” at the end;

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

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

8 “(III) an employer that violates subparagraph
9 (A) of such paragraph shall be liable to the employ-
10 ees harmed by such violations for lost wages and
11 benefits.”;

12 (4) in clause (iv)—

13 (A) by inserting “to take, fail to take, or
14 threaten to take or fail to take, a personnel ac-
15 tion, or” before “to intimidate”;

16 (B) by inserting “(I)” after “(iv)”; and

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

18 “(II) An employer that violates this clause shall
19 be liable to the employees harmed by such violation
20 for lost wages and benefits.”; and

21 (5) in clause (vi)—

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

1 “(I) It is a violation of this clause for an em-
2 ployer who has filed an application under this sub-
3 section—

4 “(aa) to require an H–1B nonimmigrant to
5 pay a penalty for ceasing employment with the
6 employer prior to a date agreed to by the non-
7 immigrant and the employer (the Secretary
8 shall determine whether a required payment is
9 a penalty, and not liquidated damages, pursu-
10 ant to relevant State law); and

11 “(bb) to fail to offer to an H–1B non-
12 immigrant, during the nonimmigrant’s period of
13 authorized employment, on the same basis, and
14 in accordance with the same criteria, as the em-
15 ployer offers to United States workers, benefits
16 and eligibility for benefits, including—

17 “(AA) the opportunity to participate
18 in health, life, disability, and other insur-
19 ance plans;

20 “(BB) the opportunity to participate
21 in retirement and savings plans; and

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

1 (B) in subclause (III), by striking
2 “\$1,000” and inserting “\$2,000”.

3 **SEC. 113. WAIVER REQUIREMENTS.**

4 (a) IN GENERAL.—Subparagraph (E) of section
5 212(n)(2) of the Immigration and Nationality Act (8
6 U.S.C. 1182(n)(2)) is amended to read as follows:

7 “(E)(i) The Secretary of Labor may waive the prohi-
8 bition in paragraph (1)(F) if the Secretary determines
9 that the employer seeking the waiver has established
10 that—

11 “(I) the employer with whom the H–1B non-
12 immigrant would be placed has not displaced, and
13 does not intend to displace, a United States worker
14 employed by the employer within the period begin-
15 ning 180 days before and ending 180 days after the
16 date of the placement of the nonimmigrant with the
17 employer;

18 “(II) the H–1B nonimmigrant will not be con-
19 trolled and supervised principally by the employer
20 with whom the H–1B nonimmigrant would be
21 placed; and

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

1 “(ii) The Secretary shall grant or deny a waiver
2 under this subparagraph not later than 7 days after the
3 Secretary receives the application for such waiver.”.

4 (b) REQUIREMENT FOR RULES.—

5 (1) RULES FOR WAIVERS.—The Secretary of
6 Labor shall promulgate rules, after notice and a pe-
7 riod for comment, for an employer to apply for a
8 waiver under subparagraph (E) of section 212(n)(2)
9 of such Act, as amended by subsection (a).

10 (2) REQUIREMENT FOR PUBLICATION.—The
11 Secretary of Labor shall submit to Congress and
12 publish in the Federal Register and other appro-
13 priate media a notice of the date that rules required
14 by paragraph (1) are published.

15 **SEC. 114. INITIATION OF INVESTIGATIONS.**

16 Subparagraph (G) of section 212(n)(2) of the Immi-
17 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
18 amended—

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

23 (2) in clause (ii), by striking “and whose iden-
24 tity” and all that follows through “failure or fail-
25 ures.” and inserting “the Secretary of Labor may

1 conduct an investigation into the employer’s compli-
2 ance with the requirements of this subsection.”;

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

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

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

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

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

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

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

22 **SEC. 115. INFORMATION SHARING.**

23 Subparagraph (H) of section 212(n)(2) of the Immi-
24 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
25 amended to read as follows:

1 “(H) The Director of United States Citizenship and
2 Immigration Services shall provide the Secretary of Labor
3 with any information contained in the materials submitted
4 by employers of H–1B nonimmigrants as part of the adju-
5 dication process that indicates that the employer is not
6 complying with visa program requirements for H–1B non-
7 immigrants. The Secretary may initiate and conduct an
8 investigation and hearing under this paragraph after re-
9 ceiving information of noncompliance under this subpara-
10 graph.”.

11 **SEC. 116. CONFORMING AMENDMENT.**

12 Subparagraph (F) of section 212(n)(2) of the Immi-
13 gration and Nationality Act (8 U.S.C. 1182) is amended
14 by striking “The preceding sentence shall apply to an em-
15 ployer regardless of whether or not the employer is an H–
16 1B-dependent employer.”.

17 **Subtitle C—Other Protections**

18 **SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE**

19 **DEPARTMENT OF LABOR.**

20 (a) DEPARTMENT OF LABOR WEB SITE.—Paragraph
21 (3) of section 212(n) of the Immigration and Nationality
22 Act (8 U.S.C. 1182(n)) is amended to read as follows:

23 “(3)(A) Not later than 90 days after the date of the
24 enactment of the H–1B and L–1 Visa Reform Act of
25 2010, the Secretary of Labor shall establish a searchable

1 Internet Web site for posting positions as required by
2 paragraph (1)(C). Such Web site shall be available to the
3 public without charge.

4 “(B) The Secretary may work with private companies
5 or nonprofit organizations to develop and operate the
6 Internet Web site described in subparagraph (A).

7 “(C) The Secretary may promulgate rules, after no-
8 tice and a period for comment, to carry out the require-
9 ments of this paragraph.”.

10 (b) REQUIREMENT FOR PUBLICATION.—The Sec-
11 retary of Labor shall submit to Congress and publish in
12 the Federal Register and other appropriate media a notice
13 of the date that the Internet Web site required by para-
14 graph (3) of section 212(n) of such Act, as amended by
15 subsection (a), will be operational.

16 (c) APPLICATION.—The amendments made by sub-
17 section (a) shall apply to an application filed on or after
18 the date that is 30 days after the date described in sub-
19 section (b).

20 **SEC. 122. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
21 **MENTS.**

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

1 “(1) EMPLOYER TO PROVIDE IMMIGRATION PAPER-
2 WORK EXCHANGED WITH FEDERAL AGENCIES.—Not
3 later than 21 business days after receiving a written re-
4 quest from a former, current, or future employee or bene-
5 ficiary, an employer shall provide such employee or bene-
6 ficiary with the original (or a certified copy of the original)
7 of all petitions, notices, and other written communication
8 exchanged between the employer and the Department of
9 Labor, the Department of Homeland Security, or any
10 other Federal agency or department that is related to an
11 immigrant or nonimmigrant petition filed by the employer
12 for such employee or beneficiary.”.

13 (b) REPORT ON JOB CLASSIFICATION AND WAGE
14 DETERMINATIONS.—Not later than 1 year after the date
15 of the enactment of this Act, the Comptroller General of
16 the United States shall prepare a report analyzing the ac-
17 curacy and effectiveness of the Secretary of Labor’s cur-
18 rent job classification and wage determination system. The
19 report shall—

20 (1) specifically address whether the systems in
21 place accurately reflect the complexity of current job
22 types as well as geographic wage differences; and

23 (2) make recommendations concerning nec-
24 essary updates and modifications.

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

3 Section 214 of the Immigration and Nationality Act
4 (8 U.S.C. 1184) is amended by adding at the end the fol-
5 lowing:

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

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

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

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

22 “(C) a copy of the application submitted
23 for the nonimmigrant under section 212(n) or
24 the petition submitted for the nonimmigrant
25 under subsection (c)(2)(A), as appropriate.

1 “(2) Upon the issuance of a visa to an applicant re-
2 ferred to in paragraph (1) who is inside the United States,
3 the issuing officer of the Department of Homeland Secu-
4 rity shall provide the applicant with the material described
5 in clauses (i), (ii), and (iii) of subparagraph (A).”.

6 **SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
7 **EES.**

8 (a) IN GENERAL.—The Secretary of Labor is author-
9 ized to hire 200 additional employees to administer, over-
10 see, investigate, and enforce programs involving non-
11 immigrant employees described in section
12 101(a)(15)(H)(i)(B).

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated such sums as may be
15 necessary to carry out this section.

16 **SEC. 125. TECHNICAL CORRECTION.**

17 Section 212 of the Immigration and Nationality Act
18 is amended by redesignating the second subsection (t), as
19 added by section 1(b)(2)(B) of the Act entitled “An Act
20 to amend and extend the Irish Peace Process Cultural and
21 Training Program Act of 1998” (Public Law 108–449
22 (118 Stat. 3470)), as subsection (u).

1 **SEC. 126. APPLICATION.**

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

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

7 **SEC. 201. PROHIBITION ON OUTPLACEMENT OF L-1 NON-**
8 **IMMIGRANTS.**

9 (a) IN GENERAL.—Subparagraph (F) of section
10 214(c)(2) of the Immigration and Nationality Act (8
11 U.S.C. 1184(c)(2)) is amended to read as follows:

12 “(F)(i) Unless an employer receives a waiver under
13 clause (ii), an employer may not employ an alien, for a
14 cumulative period of more than 1 year, who—

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

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

23 “(ii) The Secretary of Homeland Security may grant
24 a waiver of the requirements of clause (i) for an employer
25 if the Secretary determines that the employer has estab-
26 lished that—

1 “(I) the employer with whom the alien referred
2 to in clause (i) would be placed has not displaced
3 and does not intend to displace a United States
4 worker employed by the employer within the period
5 beginning 180 days after the date of the placement
6 of such alien with the employer;

7 “(II) such alien will not be controlled and su-
8 pervised principally by the employer with whom the
9 nonimmigrant would be placed; and

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

17 “(iii) The Secretary shall grant or deny a waiver
18 under clause (ii) not later than 7 days after the date that
19 the Secretary receives the application for the waiver.”.

20 (b) REGULATIONS.—The Secretary of Homeland Se-
21 curity shall promulgate rules, after notice and a period
22 for comment, for an employer to apply for a waiver under
23 subparagraph (F)(ii) of section 214(c)(2), as added by
24 subsection (a).

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

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

6 “(G)(i) If the beneficiary of a petition under this
7 paragraph is coming to the United States to open, or be
8 employed in, a new office, the petition may be approved
9 for up to 12 months only if—

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

13 “(II) the employer operating the new office
14 has—

15 “(aa) an adequate business plan;

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

18 “(cc) the financial ability to commence
19 doing business immediately upon the approval
20 of the petition.

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

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

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

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

6 “(IV) evidence that the importing employer has
7 fully complied with the business plan submitted
8 under clause (i)(I);

9 “(V) evidence of the truthfulness of any rep-
10 resentations made in connection with the filing of
11 the original petition;

12 “(VI) evidence that the importing employer, for
13 the entire period beginning on the date on which the
14 petition was approved under clause (i), has been
15 doing business at the new office through regular,
16 systematic, and continuous provision of goods and
17 services;

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

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

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

2 “(X) evidence of the financial status of the new
3 office; and

4 “(XI) any other evidence or data prescribed by
5 the Secretary.

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

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

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

2 Section 214(c)(2) of the Immigration and Nationality
3 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,
4 is further amended by adding at the end the following:

5 “(H) For purposes of approving petitions under this
6 paragraph, the Secretary of Homeland Security shall work
7 cooperatively with the Secretary of State to verify the ex-
8 istence or continued existence of a company or office in
9 the United States or in a foreign country.”.

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

12 Section 214(c)(2) of the Immigration and Nationality
13 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202
14 and 203, is further amended by adding at the end the
15 following:

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

21 “(ii) If the Secretary receives specific credible infor-
22 mation from a source who is likely to have knowledge of
23 an employer’s practices, employment conditions, or com-
24 pliance with the requirements under this subsection, the
25 Secretary may conduct an investigation into the employ-
26 er’s compliance with the requirements of this subsection.

1 The Secretary may withhold the identity of the source
2 from the employer, and the source's identity shall not be
3 subject to disclosure under section 552 of title 5, United
4 States Code.

5 “(iii) The Secretary shall establish a procedure for
6 any person desiring to provide to the Secretary informa-
7 tion described in clause (ii) that may be used, in whole
8 or in part, as the basis for the commencement of an inves-
9 tigation described in such clause, to provide the informa-
10 tion in writing on a form developed and provided by the
11 Secretary and completed by or on behalf of the person.

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

18 “(v) Before commencing an investigation of an em-
19 ployer under clause (i) or (ii), the Secretary shall provide
20 notice to the employer of the intent to conduct such inves-
21 tigation. The notice shall be provided in such a manner,
22 and shall contain sufficient detail, to permit the employer
23 to respond to the allegations before an investigation is
24 commenced. The Secretary is not required to comply with
25 this clause if the Secretary determines that to do so would

1 interfere with an effort by the Secretary to investigate or
2 secure compliance by the employer with the requirements
3 of this subsection. There shall be no judicial review of a
4 determination by the Secretary under this clause.

5 “(vi) If the Secretary, after an investigation under
6 clause (i) or (ii), determines that a reasonable basis exists
7 to make a finding that the employer has failed to comply
8 with the requirements under this subsection, the Secretary
9 shall provide the interested parties with notice of such de-
10 termination and an opportunity for a hearing in accord-
11 ance with section 556 of title 5, United States Code, not
12 later than 120 days after the date of such determination.
13 If such a hearing is requested, the Secretary shall make
14 a finding concerning the matter by not later than 120 days
15 after the date of the hearing.

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

20 “(viii)(I) The Secretary may conduct surveys of the
21 degree to which employers comply with the requirements
22 under this section.

23 “(II) The Secretary shall—

24 “(aa) conduct annual compliance audits of not
25 less than 1 percent of the employers that employ

1 nonimmigrants described in section 101(a)(15)(L)
2 during the applicable fiscal year;

3 “(bb) conduct annual compliance audits of each
4 employer with more than 100 employees who work
5 in the United States if more than 15 percent of such
6 employees are nonimmigrants described in
7 101(a)(15)(L); and

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

11 **SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L-**
12 **1 NONIMMIGRANT.**

13 (a) IN GENERAL.—Section 214(c)(2) of the Immigra-
14 tion and Nationality Act (8 U.S.C. 1184(c)(2)), as amend-
15 ed by section 202, 203, and 204, is further amended by
16 adding at the end the following:

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

20 “(I) offer such nonimmigrant, during the period
21 of authorized employment, wages, based on the best
22 information available at the time the application is
23 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 average wage for all
5 workers in the occupational classification in the
6 area of 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.

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

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

1 “(I) to require such a nonimmigrant to pay a
2 penalty for ceasing employment with the employer
3 before a date mutually agreed to by the non-
4 immigrant and the employer; or

5 “(II) to fail to offer to such a nonimmigrant,
6 during the nonimmigrant’s period of authorized em-
7 ployment, on the same basis, and in accordance with
8 the same criteria, as the employer offers to United
9 States workers, benefits and eligibility for benefits,
10 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 compensa-
17 tion, such as stock options (whether or not
18 based on performance).

19 “(iv) The Secretary of Homeland Security shall de-
20 termine whether a required payment under clause (iii)(I)
21 is a penalty (and not liquidated damages) pursuant to rel-
22 evant State law.”.

23 (b) REGULATIONS.—The Secretary of Homeland Se-
24 curity shall promulgate rules, after notice and a period
25 of comment, to implement the requirements of subpara-

1 graph (J) of section 214(c)(2) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1184(c)(2)), as added by sub-
3 section (a). In promulgating these rules, the Secretary
4 shall take into consideration any special circumstances re-
5 lating to intracompany transfers.

6 **SEC. 206. PENALTIES.**

7 Section 214(c)(2) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202,
9 203, 204, and 205, is further amended by adding at the
10 end the following:

11 “(K)(i) If the Secretary of Homeland Security finds,
12 after notice and an opportunity for a hearing, a failure
13 by an employer to meet a condition under subparagraph
14 (F), (G), (J), or (L) or a misrepresentation of material
15 fact in a petition to employ 1 or more aliens as non-
16 immigrants described in section 101(a)(15)(L)—

17 “(I) the Secretary shall impose such administrative
18 remedies (including civil monetary penalties in an amount
19 not to exceed \$2,000 per violation) as the Secretary deter-
20 mines to be appropriate;

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

1 “(III) in the case of a violation of subparagraph (J)
2 or (L), the employer shall be liable to the employees
3 harmed by such violation for lost wages and benefits.

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

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

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

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

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

24 Section 214(c)(2) of the Immigration and Nationality
25 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,

1 203, 204, 205, and 206, is further amended by adding
2 at the end the following:

3 “(L)(i) It is a violation of this subparagraph for an
4 employer who has filed a petition to import 1 or more
5 aliens as nonimmigrants described in section
6 101(a)(15)(L) to take, fail to take, or threaten to take
7 or fail to take, a personnel action, or to intimidate, threat-
8 en, restrain, coerce, blacklist, discharge, or discriminate
9 in any other manner against an employee because the em-
10 ployee—

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

15 “(II) cooperates or seeks to cooperate with the
16 requirements of this subsection, or any rule or regu-
17 lation pertaining to this subsection.

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

20 “(I) a current employee;

21 “(II) a former employee; and

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

1 **SEC. 208. REPORTS ON L-1 NONIMMIGRANTS.**

2 Section 214(c)(8) of the Immigration and Nationality
3 Act (8 U.S.C. 1184(c)(8)) is amended by inserting “(L),”
4 after “(H),”.

5 **SEC. 209. TECHNICAL AMENDMENTS.**

6 Section 214(c)(2) of the Immigration and Nationality
7 Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attor-
8 ney General” each place it appears and inserting “Sec-
9 retary of Homeland Security”.

10 **SEC. 210. APPLICATION.**

11 The amendments made by sections 201 through 207
12 shall apply to applications filed on or after the date of
13 the enactment of this Act.

14 **SEC. 211. REPORT ON L-1 BLANKET PETITION PROCESS.**

15 (a) REQUIREMENT FOR REPORT.—Not later than 6
16 months after the date of the enactment of this Act, the
17 Inspector General of the Department of Homeland Secu-
18 rity shall submit to the appropriate committees of Con-
19 gress a report regarding the use of blanket petitions under
20 section 214(c)(2)(A) of the Immigration and Nationality
21 Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the
22 efficiency and reliability of the process for reviewing such
23 blanket petitions, including whether the process includes
24 adequate safeguards against fraud and abuse.

1 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
2 this section the term “appropriate committees of Con-
3 gress” means—

4 (1) the Committee on Homeland Security and
5 Governmental Affairs of the Senate;

6 (2) the Committee on the Judiciary of the Sen-
7 ate;

8 (3) the Committee on Homeland Security of the
9 House of Representatives; and

10 (4) the Committee on the Judiciary of the
11 House of Representatives.

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