

115TH CONGRESS
1ST SESSION

S. 1040

To amend the Immigration and Nationality Act to provide for a State-sponsored nonimmigrant pilot program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 2017

Mr. JOHNSON (for himself and Mr. MCCAIN) 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 provide for a State-sponsored nonimmigrant pilot program, 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 This Act may be cited as the “State Sponsored Visa
5 Pilot Program Act of 2017”.

6 **SEC. 2. STATE-SPONSORED NONIMMIGRANT PROGRAM.**

7 Section 101(a)(15) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)) is amended—

9 (1) in subparagraph (U)(iii), by striking the
10 “or” at the end;

1 (2) in subparagraph (V), by striking the period
2 at the end and inserting “; or”; and

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

4 “(W)(i) an alien who is sponsored by a
5 State and who is coming temporarily to the
6 United States to reside in the State to perform
7 services, provide capital investment, direct the
8 operations of an enterprise, or otherwise con-
9 tribute to the economic development agenda of
10 the State in a manner determined by the State;
11 and

12 “(ii) the alien spouse and minor children of
13 any alien described in clause (i).”.

14 **SEC. 3. ADMISSION OF STATE-SPONSORED NON-**
15 **IMMIGRANTS.**

16 (a) REQUIREMENTS FOR STATE-SPONSORED NON-
17 IMMIGRANTS.—Section 214 of the Immigration and Na-
18 tionality Act (8 U.S.C. 1184) is amended—

19 (1) in subsection (h), by striking “(H)(i)(b) or
20 (c), (L), or (V)” and inserting “(H)(i)(b), (H)(i)(c),
21 (L), (V), or (W)”; and

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

23 “(s) REQUIREMENTS APPLICABLE TO STATE-SPON-
24 SORED NONIMMIGRANT VISAS.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) RESIDE.—The term ‘reside’ means to
2 live and establish a residence in a State for a
3 consecutive period of more than 14 days (not
4 including any period after the approval of the
5 resident’s petition for immigrant status).

6 “(B) SECRETARY.—Except as otherwise
7 specifically provided in this subsection, the term
8 ‘Secretary’ means the Secretary of Homeland
9 Security.

10 “(C) STATE.—Notwithstanding section
11 101(a)(36), the term ‘State’ means a State of
12 the United States and the District of Columbia.

13 “(D) STATE-SPONSORED NON-
14 IMMIGRANT.—The term ‘State-sponsored non-
15 immigrant’ means an alien who has been spon-
16 sored by a State for admission under section
17 101(a)(15)(W).

18 “(E) STATE-SPONSORED NONIMMIGRANT
19 PROGRAM.—The term ‘State-sponsored non-
20 immigrant program’ means a nonimmigrant
21 program to regulate the employment, invest-
22 ment, and residence of State-sponsored non-
23 immigrants.

24 “(F) STATE-SPONSORED NONIMMIGRANT
25 STATUS.—The term ‘State-sponsored non-

1 immigrant status’ means status granted to an
2 alien admitted as a nonimmigrant pursuant to
3 section 101(a)(15)(W).

4 “(2) STATE-SPONSORED NONIMMIGRANT PRO-
5 GRAM.—Any State may submit an application to the
6 Secretary to participate in the State-sponsored non-
7 immigrant program by sponsoring aliens for admis-
8 sion to the United States.

9 “(3) STATE-SPONSORED NONIMMIGRANT PRO-
10 GRAM APPROVAL.—The Secretary shall approve any
11 application submitted by a State (or compact of
12 States) under paragraph (2) for a State-sponsored
13 nonimmigrant program that—

14 “(A) was approved by the legislature of the
15 State;

16 “(B) regulates, in a manner determined by
17 the State, the employment and residence of
18 State-sponsored nonimmigrants;

19 “(C) implements procedures, in a manner
20 determined by the Secretary, to inform the Sec-
21 retary of the failure of a nonimmigrant to com-
22 ply with the terms of State-sponsored non-
23 immigrant status when the State is made aware
24 of such failure;

1 “(D) allows, in a manner determined by
2 the State, a State-sponsored nonimmigrant who
3 has been admitted to seek employment with an
4 employer other than the employer with which
5 the nonimmigrant was initially employed; and

6 “(E) implements procedures, in a manner
7 determined by the Secretary, to annually inform
8 the Secretary of the address and employment of
9 all State-sponsored nonimmigrants residing in
10 the State.

11 “(4) STATE PETITION.—

12 “(A) IN GENERAL.—A State that partici-
13 pates in the State-sponsored nonimmigrant pro-
14 gram shall submit a petition in such form and
15 containing such information as the Secretary
16 shall specify to sponsor an alien under this sub-
17 section.

18 “(B) APPROVAL.—A visa may not be
19 granted to an alien described in subparagraph
20 (A) until the Secretary approves a petition sub-
21 mitted pursuant to subparagraph (A). Such ap-
22 proval does not, of itself, establish that the
23 alien is a nonimmigrant.

24 “(C) FEE.—A State that submits a peti-
25 tion under subparagraph (A) shall pay a fee in

1 amount determined by the Secretary to cover
2 the cost of the adjudication of the application.

3 “(5) STATE-SPONSORED NONIMMIGRANTS.—

4 The Secretary of State shall approve a non-
5 immigrant visa for an alien and the Secretary of
6 Homeland Security shall admit the alien to the
7 United States as a State-sponsored nonimmigrant or
8 grant State-sponsored nonimmigrant status to the
9 alien if the alien—

10 “(A) is otherwise admissible under this
11 Act;

12 “(B) has not been convicted of a felony,
13 any crime of violence (as defined in section 16
14 of title 18, United States Code), or any crime
15 of reckless driving or of driving while intoxi-
16 cated or under the influence of alcohol or of
17 prohibited substances;

18 “(C) is petitioned for by a State that par-
19 ticipates in the State-sponsored nonimmigrant
20 program approved by the Secretary under para-
21 graph (3);

22 “(D) has not previously violated any term
23 or condition of State-sponsored nonimmigrant
24 status; and

1 “(E) has paid any bond that the State may
2 require under paragraph (13).

3 “(6) PERIOD OF AUTHORIZED STATUS.—

4 “(A) IN GENERAL.—The period of author-
5 ized status for a State-sponsored nonimmigrant
6 shall be a period determined by the State, but
7 may not exceed 3 years.

8 “(B) RENEWAL.—

9 “(i) LOCATION.—Subject to clause
10 (ii), the period of authorized status under
11 subparagraph (A) shall be renewable inside
12 or outside of the United States.

13 “(ii) CONDITION.—Renewals under
14 clause (i) may be granted only if—

15 “(I) the sponsoring State re-
16 quests such renewal; and

17 “(II) the State-sponsored non-
18 immigrant has resided continuously in
19 such sponsoring State, or States sub-
20 ject to an interstate compact (not in-
21 cluding any period of residence after
22 the approval of a petition for immi-
23 grant status of which the alien is a
24 beneficiary).

1 “(C) TERMINATION.—The Secretary shall
2 terminate the period of authorized status if—

3 “(i) the State-sponsored non-
4 immigrant resides or works outside of the
5 State, or States subject to an interstate
6 compact under paragraph (7), that spon-
7 sored the alien;

8 “(ii) the State-sponsored non-
9 immigrant fails to follow all rules and reg-
10 ulations required by the State, as deter-
11 mined by the State (following any appeals
12 process the State may create); or

13 “(iii) the State that sponsored the
14 nonimmigrant requests that the status of
15 the nonimmigrant be terminated (following
16 any appeals process the State may create)
17 unless another State sponsors the non-
18 immigrant.

19 “(D) EMPLOYMENT AUTHORIZATION.—

20 “(i) IN GENERAL.—All aliens admit-
21 ted as State-sponsored nonimmigrants
22 under section 101(a)(15)(W)—

23 “(I) shall be authorized for em-
24 ployment for purposes of section
25 274A; and

1 “(II) shall be issued appropriate
2 documentation evidencing such au-
3 thorization.

4 “(ii) STATE REGULATION.—Notwith-
5 standing clause (i), the employment of
6 State-sponsored nonimmigrants may be
7 regulated in a manner determined by each
8 State that participates in the State-spon-
9 sored nonimmigrant program.

10 “(7) STATE COMPACTS.—

11 “(A) IN GENERAL.—States may enter into
12 interstate compacts for the joint implementa-
13 tion or administration of the State-sponsored
14 nonimmigrant program in such States.

15 “(B) CONSIDERATION.—A State-sponsored
16 nonimmigrant shall be considered to be spon-
17 sored by a State if the State-sponsored non-
18 immigrant is sponsored by any State subject to
19 an interstate compact under subparagraph (A)
20 and resides in any such State.

21 “(8) APPEALS.—

22 “(A) FEDERAL APPEALS.—The denial of
23 an application by a State to be a State-spon-
24 sored nonimmigrant or the request to terminate
25 the period of authorized status by a State—

1 “(i) is not reviewable by any Federal
2 department, agency, or court; and

3 “(ii) may not be grounds for an ap-
4 peal of a termination of a visa or status
5 for a State-sponsored nonimmigrant.

6 “(B) STATE APPEALS.—At the sole discre-
7 tion of the State and in a manner determined
8 by the State, a State that participates in the
9 State-sponsored nonimmigrant program may
10 create a process for a State-sponsored non-
11 immigrant or an alien that has applied for par-
12 ticipation in the State-sponsored nonimmigrant
13 program in the State to appeal an adjudication
14 of an application by the State or determination
15 by the State that the State-sponsored non-
16 immigrant violated the terms or conditions that
17 were created by the State for the participation
18 of the alien in the State-sponsored non-
19 immigrant program in the State.

20 “(9) WAIVER OF RIGHTS PROHIBITED.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (C), a State-sponsored non-
23 immigrant may not be required to waive any
24 substantive rights or protections under this Act.

1 “(B) CONSTRUCTION.—Nothing under this
2 paragraph may be construed to affect the inter-
3 pretation of any other law.

4 “(C) EXCEPTION.—Notwithstanding sub-
5 paragraph (A) or any other provision of law, an
6 alien may not be provided State-sponsored non-
7 immigrant status unless the alien has waived
8 any right—

9 “(i) to review or appeal under this Act
10 of an immigration officer’s determination
11 as to the admissibility of the alien at the
12 port of entry into the United States; or

13 “(ii) to contest or appeal, other than
14 on the basis of an application for asylum,
15 any action for removal of the alien.

16 “(10) TAX RESPONSIBILITIES.—An employer
17 shall comply with all applicable Federal, State, and
18 local tax laws with respect to each State-sponsored
19 nonimmigrant employed by the employer.

20 “(11) LABOR AND TAX LAWS.—State-sponsored
21 nonimmigrants shall be subject to all Federal, State,
22 and local laws regarding taxation, employment, or
23 hiring of persons in the State.

24 “(12) FEDERAL PUBLIC BENEFITS.—

1 “(A) IN GENERAL.—State-sponsored non-
2 immigrants—

3 “(i) are not entitled to the premium
4 assistance tax credit authorized under sec-
5 tion 36B of the Internal Revenue Code of
6 1986;

7 “(ii) shall be subject to the rules ap-
8 plicable to individuals who are not lawfully
9 present set forth in subsection (e) of such
10 section; and

11 “(iii)(I) shall not be allowed any cred-
12 it under section 24 or 32 of the Internal
13 Revenue Code of 1986; and

14 “(II) in the case of a joint return, no
15 credit shall be allowed under either such
16 section if both spouses are State-sponsored
17 nonimmigrants.

18 “(B) EMPLOYER FEE.—For purposes of
19 subsections (a)(2) and (b)(1)(B) of 4980H of
20 the Internal Revenue Code of 1986, a State-
21 sponsored nonimmigrant shall be treated as a
22 full-time employee certified as having enrolled
23 in a qualified health plan with respect to which
24 an applicable premium tax credit or cost-shar-

1 ing reduction is allowed or paid with respect to
2 the employee.

3 “(C) OTHER BENEFITS.—Notwithstanding
4 any other provision of law, a State-sponsored
5 nonimmigrant shall not be eligible for—

6 “(i) any assistance or benefits pro-
7 vided under a State program funded under
8 the temporary assistance for needy families
9 program under part A of title IV of the
10 Social Security Act (42 U.S.C. 601 et
11 seq.);

12 “(ii) any medical assistance provided
13 under a State Medicaid plan under title
14 XIX of the Social Security Act (42 U.S.C.
15 1396 et seq.) or under a waiver of such
16 plan, other than emergency medical assist-
17 ance provided under paragraphs (2) and
18 (3) of section 1903(v), and any child
19 health assistance provided under a State
20 child health plan under title XXI of the
21 Social Security Act (42 U.S.C. 1397aa et
22 seq.) or under a waiver of such plan;

23 “(iii) any benefits or assistance pro-
24 vided under the supplemental nutrition as-
25 sistance program established under the

1 Food and Nutrition Act of 2008 (7 U.S.C.
2 2011 et seq.);

3 “(iv) supplemental security income
4 benefits provided under title XVI of the
5 Social Security Act (42 U.S.C. 1381);

6 “(v) Federal Pell Grants under sec-
7 tion 401 of the Higher Education Act of
8 1965 (20 U.S.C. 1070a);

9 “(vi) housing vouchers under section
10 8 of the United States Housing Act of
11 1937 (42 U.S.C. 1437f);

12 “(vii) Federal old-age, survivors, and
13 disability insurance benefits under title II
14 of the Social Security Act (42 U.S.C. 401
15 et seq.);

16 “(viii) health insurance benefits for
17 the aged and disabled under the Medicare
18 Program established under title XVIII of
19 the Social Security Act (42 U.S.C. 1395 et
20 seq.); or

21 “(ix) assistance or benefits provided
22 under the program of block grants to
23 States for social services under subtitle A
24 of title XX of the Social Security Act (42
25 U.S.C. 1397 et seq.).

1 “(D) EMPLOYER PAYMENTS.—An em-
2 ployer of a State-sponsored nonimmigrant shall
3 pay into the general fund of the Treasury an
4 amount equivalent to the Federal tax on the
5 wages paid to the nonimmigrants that the em-
6 ployer would be obligated to pay under chapters
7 21 and 23 of the Internal Revenue Code of
8 1986 had the nonimmigrants been subject to
9 such chapters, subject to the same penalties as
10 provided for failure to pay such tax.

11 “(E) INCLUSION OF NONIMMIGRANTS IN
12 SAVE.—Not later than 30 days after the date of
13 the enactment of the State Sponsored Visa
14 Pilot Program Act of 2017, the Secretary shall
15 modify the Systematic Alien Verification for
16 Entitlements Program of the United States
17 Citizenship and Immigration Services to add
18 any status under section 101(a)(15)(W) as an
19 alien category that is ineligible for any benefit
20 program listed in subparagraph (C).

21 “(13) BONDS.—

22 “(A) IN GENERAL.—States may require
23 State-sponsored nonimmigrants to pay a bond
24 in an amount determined by the State to
25 incentivize voluntary compliance with the terms

1 and conditions of the State-sponsored non-
2 immigrant program.

3 “(B) STUDY.—

4 “(i) IN GENERAL.—At the end of each
5 fiscal year, the Inspector General of the
6 Department of Homeland Security and the
7 Comptroller General of the United States
8 shall each independently submit a report to
9 the congressional committees specified in
10 clause (iii) that identifies, for each State
11 that participates in the State-sponsored
12 nonimmigrant program, the percentage of
13 State-sponsored nonimmigrants that have
14 resided or worked illegally in a State other
15 than the State that sponsored them (not
16 including any State-sponsored non-
17 immigrants who are beneficiaries of ap-
18 proved immigration petitions).

19 “(ii) ASSIGNMENT.—A State-spon-
20 sored nonimmigrant who resides or works
21 illegally in a State other than the State
22 that sponsored them shall be assigned to
23 the percentage of the State that initially
24 sponsored the alien if the State partici-
25 pates in an interstate compact.

1 “(iii) CONGRESSIONAL COMMIT-
2 TEES.—The congressional committees
3 specified in this clause are—

4 “(I) the Committee on Homeland
5 Security and Governmental Affairs of
6 the Senate;

7 “(II) the Committee on the Judi-
8 ciary of the Senate;

9 “(III) the Committee on Home-
10 land Security of the House of Rep-
11 resentatives; and

12 “(IV) the Committee on the Ju-
13 diciary of the House of Representa-
14 tives.

15 “(C) MANDATORY BONDS.—

16 “(i) IN GENERAL.—During the first
17 fiscal year following a determination under
18 subparagraph (B) by the Comptroller Gen-
19 eral or the Inspector General of the De-
20 partment of Homeland Security that more
21 than 3 percent of the State-sponsored non-
22 immigrants sponsored by a State violated
23 the terms and conditions of State-spon-
24 sored nonimmigrant status in the most re-
25 cently completed fiscal year, the State shall

1 require each State-sponsored non-
2 immigrant in the State, as a condition of
3 participation in the State-sponsored non-
4 immigrant program, to post a bond equal
5 to not less than \$4,000.

6 “(ii) SUBSEQUENT BONDS.—The bond
7 amount under clause (i) shall be raised by
8 \$1,000 during each fiscal year following a
9 subsequent determination under subpara-
10 graph (B) by the Comptroller General or
11 the Inspector General of the Department
12 of Homeland Security that more than 3
13 percent of the State-sponsored non-
14 immigrants sponsored by the State violated
15 the terms and conditions of State-spon-
16 sored nonimmigrant status in the most re-
17 cently completed fiscal year.

18 “(iii) INFLATION ADJUSTMENT.—Ef-
19 fective for the first fiscal year that begins
20 more than 6 months after the date of the
21 enactment of the State Sponsored Visa
22 Pilot Program Act of 2017, and for each
23 fiscal year thereafter, the amounts de-
24 scribed in this subparagraph shall be in-
25 creased by the percentage (if any) by

1 which the Consumer Price Index for the
2 month of June preceding the date on
3 which such increase takes effect exceeds
4 the Consumer Price Index for all urban
5 consumers published by the Department of
6 Labor for the same month of the preceding
7 calendar year.

8 “(D) REIMBURSEMENT OF BONDS.—

9 “(i) IN GENERAL.—Bonds paid to a
10 State under this paragraph shall be reim-
11 bursed to any State-sponsored non-
12 immigrant that has not worked or resided
13 in a State other than the State that spon-
14 sored the nonimmigrant or otherwise re-
15 sided in the United States without status
16 under the immigration laws in accordance
17 with this subparagraph.

18 “(ii) FULL REIMBURSEMENT.—The
19 full amount of the bond shall be reim-
20 bursed in full immediately after—

21 “(I)(aa) the alien applies to the
22 Secretary of State (or the designee of
23 such Secretary) at a United States
24 embassy, consulate, or, if specified by

1 the Secretary, other locations outside
2 the United States; and

3 “(bb) in connection with the ap-
4 plication, the State-sponsored non-
5 immigrant confirms his or her iden-
6 tity, or verifies his or her departure at
7 such time from the United States pur-
8 suant to a biometric entry and exit
9 data system;

10 “(II) an approved petition for
11 lawful permanent residency is ap-
12 proved on behalf of the State-spon-
13 sored nonimmigrant; or

14 “(III) the State-sponsored non-
15 immigrant dies.

16 “(iii) PAYEE.—

17 “(I) DEATH OF NON-
18 IMMIGRANT.—Upon the death of a
19 State-sponsored nonimmigrant, pay-
20 ment shall be immediately paid to
21 such State-sponsored nonimmigrant’s
22 next of kin, as designated by such
23 State-sponsored nonimmigrant on the
24 application to be a State-sponsored
25 nonimmigrant.

1 “(II) BANK ACCOUNT.—A State-
2 sponsored nonimmigrant may specify
3 on the application to be a State-spon-
4 sored nonimmigrant a bank account
5 to which such amount be sent after
6 the satisfaction of a condition speci-
7 fied in clause (ii).

8 “(iv) DENIAL OF REIMBURSEMENT.—
9 Funds of a State-sponsored nonimmigrant
10 held under this paragraph may not be de-
11 nied by a State to the nonimmigrant un-
12 less the State demonstrates, by clear and
13 convincing evidence, that the non-
14 immigrant knowingly violated a term or
15 condition of State-sponsored nonimmigrant
16 status—

17 “(I) by failing to depart the
18 United States at the end of the period
19 of authorized status; or

20 “(II) working or residing in a
21 State that did not sponsor the non-
22 immigrant.

23 “(v) NOTICE.—The Secretary of
24 State, in conjunction with the Secretary of
25 Homeland Security, shall inform the State

1 that the State-sponsored nonimmigrant
2 has complied with clause (i).

3 “(14) PENALTIES.—If a State-sponsored non-
4 immigrant works or resides outside of the State, or
5 any of the States under an interstate compact that
6 sponsored the nonimmigrant or fails to comply with
7 any term or condition of State-sponsored non-
8 immigrant status, the Secretary shall—

9 “(A) revoke the employment authorization
10 of such nonimmigrant; and

11 “(B) initiate and expedited removal in ac-
12 cordance with section 235.

13 “(15) STATE ENFORCEMENT.—

14 “(A) IN GENERAL.—A State that partici-
15 pates in the State-sponsored nonimmigrant pro-
16 gram may enforce all rules and regulations of
17 the State-sponsored nonimmigrant program in
18 the State against employers to the same extent
19 as any other labor laws under State law.

20 “(B) APPREHENSION.—As a condition of
21 participation in the State-sponsored non-
22 immigrant program, a State shall reimburse
23 any other State and any Federal agency that
24 has apprehended and detained a State-spon-
25 sored nonimmigrant sponsored by the State for

1 the full costs of apprehension, detention, or re-
2 moval of the nonimmigrant upon request of the
3 apprehending State or Federal agency.

4 “(C) PROCESS.—The Secretary shall es-
5 tablish a process through which a State may
6 seek reimbursement under subparagraph (B).

7 “(16) SUSPENSION OF PROGRAM APPROVAL.—
8 The Secretary shall suspend admissions under the
9 State-sponsored nonimmigrant program for any
10 State that fails—

11 “(A) to reimburse another State or a Fed-
12 eral agency under paragraph (15)(B) not later
13 than 1 year after a final judgment against the
14 State; or

15 “(B) to reimburse, in accordance with
16 paragraph (13)(D), a State-sponsored non-
17 immigrant who—

18 “(i) has departed the United States;

19 “(ii) did not seek employment without
20 authorization in a State that did not spon-
21 sor the nonimmigrant; and

22 “(iii) did not otherwise reside in the
23 United States without status under the im-
24 migration laws.

25 “(17) FEES.—

1 “(A) FEDERAL FEES.—A State shall pay a
2 fee to the Secretary for each year in which the
3 State participates in the State-sponsored non-
4 immigrant program in an amount determined
5 by the Secretary to be necessary to cover the
6 Federal costs of overseeing the State-sponsored
7 nonimmigrant program in the State.

8 “(B) STATE FEES.—Nothing in this sub-
9 section may be construed to limit or regulate
10 fees required by the State for State-sponsored
11 nonimmigrants or employers of State-sponsored
12 nonimmigrants.

13 “(18) NUMERICAL LIMITATIONS.—

14 “(A) IN GENERAL.—The total number of
15 aliens who may be issued visas or otherwise
16 provided State-sponsored nonimmigrant status
17 under this subsection during any fiscal year
18 may not exceed the total number of visas com-
19 puted under subparagraph (B).

20 “(B) DISTRIBUTION.—Subject to subpara-
21 graphs (C), (D), and (E), the number of State-
22 sponsored nonimmigrant visas made available in
23 a fiscal year to a State that participates in the
24 State-sponsored nonimmigrant program shall be
25 the sum of—

1 “(i) 5,000;

2 “(ii) the sum of the amounts com-
3 puted under subparagraphs (C) and (D) in
4 the prior year; and

5 “(iii) the percentage of the total popu-
6 lation in all States participating in the
7 State-sponsored nonimmigrant program
8 represented by the population of that State
9 multiplied by the sum of—

10 “(I) 245,000;

11 “(II) the number of nonpartici-
12 pating States multiplied by 5,000; and

13 “(III) the total number of visas
14 available in the previous fiscal year
15 that were revoked or not used.

16 “(C) ECONOMIC GROWTH.—The amounts
17 computed under subparagraphs (A) and (B) for
18 the prior fiscal year shall be adjusted annually
19 in proportion to the percentage increase or de-
20 crease in the Gross Domestic Product of the
21 United States in the prior year, as determined
22 by the Bureau of Economic Analysis of the De-
23 partment of Commerce.

24 “(D) COMPLIANCE.—

1 “(i) INCREASES.—The number of
2 State-sponsored nonimmigrant visas made
3 available to a State under subparagraph
4 (C) shall be increased by 10 percent over
5 the prior fiscal year in each fiscal year im-
6 mediately following a fiscal year in which
7 less than 3 percent of the State-sponsored
8 nonimmigrants sponsored by the State vio-
9 lated the terms and conditions of State-
10 sponsored nonimmigrant status, as deter-
11 mined by the Inspector General of the De-
12 partment of Homeland Security or the
13 Comptroller General of the United States
14 in the reports required under paragraph
15 (13)(B).

16 “(ii) DECREASES.—The number of
17 State-sponsored nonimmigrant visas made
18 available to a State under subparagraph
19 (C) shall be decreased by 50 percent in
20 each fiscal year immediately following a
21 fiscal year in which more than 3 percent of
22 the State-sponsored nonimmigrants spon-
23 sored by the State complied with the terms
24 and conditions of State-sponsored non-
25 immigrant status, as determined by the In-

1 spectator General of the Department of
2 Homeland Security or the Comptroller
3 General of the United States in the reports
4 required under paragraph (13)(B).

5 “(iii) SUSPENSION.—State-sponsored
6 nonimmigrant visas shall not be made
7 available for a State during the 5-year pe-
8 riod following four consecutive fiscal years
9 in which more than 3 percent of the State-
10 sponsored nonimmigrants sponsored by the
11 State violated the terms and conditions of
12 State-sponsored nonimmigrant status, as
13 determined by the Inspector General of the
14 Department of Homeland Security or the
15 Comptroller General of the United States
16 in the reports required under paragraph
17 (13)(B).

18 “(E) PRINCIPAL ALIENS.—

19 “(i) IN GENERAL.—The numerical
20 limitations under this paragraph shall
21 apply only to principal aliens being admit-
22 ted to the United States from abroad and
23 not to aliens accompanying or following to
24 join the principal alien under section

1 101(a)(15)(W)(ii) or aliens previously ad-
2 mitted.

3 “(ii) STATE EXCLUSION.—The Sec-
4 retary may not grant a visa or status to an
5 alien who is not the principal alien spon-
6 sored by a State if the State request that
7 no such aliens be admitted.

8 “(19) ADMISSIBILITY DETERMINATION.—

9 “(A) IN GENERAL.—At the request of a
10 State that participates in the State-based non-
11 immigrant program, the Secretary shall waive
12 the grounds of inadmissibility under subpara-
13 graphs (A), (B), (C), and (G) of section
14 212(a)(6), paragraphs (7) and (9) of section
15 212(a), and sections 240B(d)(1)(B) and
16 241(a)(5) and the grounds of deportability
17 under subparagraphs (A) through (D) of sec-
18 tion 237(a)(1) and section 237(a)(3) on behalf
19 of an alien described in subparagraph (B).

20 “(B) ALIENS DESCRIBED.—An alien de-
21 scribed in this subsection is an alien who—

22 “(i) was physically present in the
23 United States on December 31, 2016;

24 “(ii) is sponsored by a State under
25 the State-based nonimmigrant program;

1 “(iii) otherwise meets the require-
2 ments of State-based nonimmigrant status
3 under paragraph (4); and

4 “(iv) fulfills the requirements under
5 paragraph (20).

6 “(C) SAVINGS PROVISION.—Nothing in
7 this paragraph may be construed to exempt an
8 alien described in subparagraph (B) or the
9 State from the numerical limitation under para-
10 graph (18).

11 “(20) REQUIREMENTS.—

12 “(A) APPLICATION.—An alien may apply
13 to the Secretary for a waiver of inadmissibility
14 or deportability under paragraph (19) concu-
15 rently with an application for a visa or status
16 under section 101(a)(15)(W).

17 “(B) EVIDENCE OF PRESENCE OR EM-
18 PLOYMENT.—

19 “(i) CONCLUSIVE DOCUMENTS.—An
20 alien may conclusively demonstrate pres-
21 ence in the United States in compliance
22 with paragraph (19)(B)(i) by submitting
23 records demonstrating such presence that
24 have been maintained by the Social Secu-
25 rity Administration, the Internal Revenue

1 Service, or any other Federal, State, or
2 local government agency or educational in-
3 stitution.

4 “(ii) OTHER DOCUMENTS.—An alien
5 who is unable to submit a document de-
6 scribed in subparagraph (A) may satisfy
7 the requirements under this section by sub-
8 mitting at least three other types of reli-
9 able documents that provide evidence of
10 presence, employment or study in the
11 United States, including—

12 “(I) bank or remittance records;

13 “(II) business or employer
14 records;

15 “(III) records of any organiza-
16 tion that assists workers in employ-
17 ment;

18 “(IV) education records; and

19 “(V) deeds, mortgages, or con-
20 tracts to which the alien has been a
21 party.

22 “(C) FEES.—

23 “(i) IN GENERAL.—An alien submit-
24 ting an application under subparagraph
25 (A) shall pay a fee in an amount deter-

1 mined by the Secretary to be necessary to
2 cover the cost of adjudicating the applica-
3 tion and reviewing the application for
4 fraud.

5 “(ii) PENALTY.—In addition to the
6 fee under clause (i), an alien seeking a
7 waiver under paragraph (19) shall pay a
8 penalty of not less than \$1,000, which
9 shall be deposited into the Treasury of the
10 United States after the approval of the ap-
11 plication under subparagraph (A).

12 “(D) CRIMINAL PENALTY.—

13 “(i) VIOLATION.—It shall be unlawful
14 for any person to knowingly—

15 “(I) file, or assist in filing, an
16 application under this paragraph if
17 such application—

18 “(aa) falsifies, misrepres-
19 ents, conceals, or covers up a
20 material fact;

21 “(bb) makes any false, ficti-
22 tious, or fraudulent statements or
23 representations; or

24 “(cc) makes or uses any
25 false writing or document know-

1 ing the same to contain any false,
2 fictitious, or fraudulent state-
3 ment or entry; or

4 “(II) create or supply a false
5 writing or document for use in mak-
6 ing such an application.

7 “(ii) PENALTY.—Any person who vio-
8 lates clause (i) shall be fined in accordance
9 with title 18, United States Code, impris-
10 oned not more than 5 years, or both.

11 “(iii) INADMISSIBILITY.—An alien
12 who is convicted of violating clause (i) shall
13 be considered to be inadmissible to the
14 United States on the grounds described in
15 section 212(a)(6)(C)(i) and subject to im-
16 mediate removal from the United States.

17 “(E) FRAUD PREVENTION PROGRAM.—The
18 Secretary and the Attorney General shall jointly
19 develop an administrative program to prevent
20 fraud with respect to applications submitted
21 under this paragraph that provides for—

22 “(i) fraud prevention training for ad-
23 ministrative adjudicators;

1 “(ii) the regular audit of pending and
2 approved applications for examples and
3 patterns of fraud or abuse;

4 “(iii) the receipt and evaluation of re-
5 ports of fraud or abuse;

6 “(iv) the identification of deficiencies
7 in administrative practice or procedure
8 that encourage fraud or abuse;

9 “(v) the remedy of any identified defi-
10 ciencies; and

11 “(vi) the referral of cases of identified
12 or suspected fraud or other misconduct for
13 investigation.

14 “(F) INELIGIBLE ALIENS.—

15 “(i) REMOVAL AUTHORIZED.—Except
16 as provided in clause (ii), if the Secretary
17 makes a final determination to deny an ap-
18 plication under this section, the Secretary
19 shall place the applicant in removal pro-
20 ceedings to which the alien would otherwise
21 be subject.

22 “(ii) ALIENS WITH PRIOR ORDERS.—
23 If the final determination to deny an appli-
24 cation concerns an alien with an existing
25 order of exclusion, deportation, removal, or

1 voluntary departure from the United
2 States, such order shall be enforced to the
3 same extent as if the application had not
4 been made.

5 “(G) EMPLOYMENT RECORDS.—Copies of
6 employment records or other evidence of em-
7 ployment provided by an alien or by an alien’s
8 employer in support of an alien’s application
9 under this subsection may not be used in a civil
10 or criminal prosecution or investigation of that
11 employer under section 247A or the tax laws of
12 the United States for the prior unlawful em-
13 ployment of that alien, regardless of the adju-
14 dication of such application or reconsideration
15 by the Secretary of such alien’s prima facie eli-
16 gibility determination. Employers that provide
17 unauthorized aliens with copies of employment
18 records or other evidence of employment pursu-
19 ant to an application under this title shall not
20 be subject to civil and criminal liability pursu-
21 ant to such section 274A for employing such
22 unauthorized aliens. The protections for em-
23 ployers and aliens shall not apply if the aliens
24 or employers submit employment records that
25 are deemed to be fraudulent.

1 “(H) CONSTRUCTION.—Nothing in this
2 subsection may be construed to limit the au-
3 thority of the State to require additional mone-
4 tary penalties, other evidence of physical pres-
5 ence, or any other requirement for aliens de-
6 scribed in paragraph (19)(B) to participate in
7 the State-based nonimmigrant program in such
8 State.”.

9 (b) JUDICIAL REVIEW.—Section 242(a)(2) of the Im-
10 migration and Nationality Act (8 U.S.C. 1252(a)(2)) is
11 amended by adding at the end the following:

12 “(E) JUDICIAL REVIEW OF CERTAIN ELIGI-
13 BILITY DETERMINATIONS.—If an alien’s appli-
14 cation under section 214(s)(20) is denied or re-
15 voked, judicial review shall be instituted in the
16 United States District Court for the District of
17 Columbia and shall be limited to determinations
18 of the constitutionality of section 214(s), or any
19 regulations implemented pursuant to such sec-
20 tion.”.

21 (c) NONIMMIGRANTS WITH APPROVED IMMIGRANT
22 PETITIONS.—Section 245 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1255) is amended—

24 (1) in subsection (a)—

1 (A) by striking “if (1) the alien” and in-
2 serting the following: “if—

3 “(1) the alien”;

4 (B) by striking “adjustment, (2) the alien”
5 and inserting the following: “adjustment;

6 “(2) the alien”;

7 (C) by striking “residence, and (3) an im-
8 migrant visa” and inserting the following: “resi-
9 dence; and

10 “(3) an immigrant visa”; and

11 (D) in paragraph (3), by striking “him at
12 the time his application is filed” and inserting
13 “the alien at the time the alien’s application is
14 adjudicated”; and

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

16 “(n) ADJUSTMENT OF STATUS APPLICATION AFTER
17 AN APPROVED IMMIGRANT PETITION.—

18 “(1) APPLICATION.—An alien who has an ap-
19 proved immigrant petition may file an adjustment of
20 status application under subsection (a), which shall
21 remain pending until a visa number becomes avail-
22 able.

23 “(2) STATUS.—An alien who has properly filed
24 an adjustment of status application under subsection

1 (a) shall, throughout the pendency of such applica-
2 tion—

3 “(A) have a lawful status and be consid-
4 ered lawfully present for purposes of section
5 212; and

6 “(B) following a biometric background
7 check, be eligible for employment and travel au-
8 thorization incident to such status.”.

9 **SEC. 4. EFFECTIVE DATE.**

10 The amendments made by this Act shall take effect
11 on the first day of the first fiscal year that begins after
12 the date of the enactment of this Act.

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