

105TH CONGRESS  
2D SESSION

# H. R. 3736

To amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1998

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants.

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 “Workforce Improve-  
5 ment and Protection Act of 1998”.

6 **SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN**  
7 **WORKERS.**

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

1           (1) by amending paragraph (1)(A) to read as  
2 follows:

3           “(A) under section 101(a)(15)(H)(i)(b), subject  
4 to paragraph (5), may not exceed—

5                   “(i) 95,000 in fiscal year 1998;

6                   “(ii) 105,000 in fiscal year 1999; and

7                   “(iii) 115,000 in fiscal year 2000; or”; and

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

9           “(5) In each of fiscal years 1999 and 2000, the total  
10 number of aliens described in section 212(a)(5)(C) who  
11 may be issued visas or otherwise provided nonimmigrant  
12 status under section 101(a)(15)(H)(i)(b) may not exceed  
13 7,500.”.

14 **SEC. 3. PROTECTION AGAINST DISPLACEMENT OF UNITED**  
15 **STATES WORKERS.**

16           (a) IN GENERAL.—Section 212(n)(1) of the Immi-  
17 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is  
18 amended by inserting after subparagraph (D) the follow-  
19 ing:

20                   “(E)(i) The employer has not laid off or other-  
21 wise displaced and will not lay off or otherwise dis-  
22 place, within the period beginning 6 months before  
23 and ending 90 days following the date of filing of  
24 the application or during the 90 days immediately  
25 preceding and following the date of filing of any visa

1 petition supported by the application, any United  
2 States worker (as defined in paragraph (3)) (includ-  
3 ing a worker whose services are obtained by con-  
4 tract, employee leasing, temporary help agreement,  
5 or other similar means) who has substantially equiv-  
6 alent qualifications and experience in the specialty  
7 occupation, and in the area of employment, for  
8 which H-1B nonimmigrants are sought or in which  
9 they are employed.

10 “(ii) Except as provided in clause (iii), in the  
11 case of an employer that employs an H-1B non-  
12 immigrant, the employer shall not place the non-  
13 immigrant with another employer where—

14 “(I) the nonimmigrant performs his or her  
15 duties in whole or in part at one or more work-  
16 sites owned, operated, or controlled by such  
17 other employer; and

18 “(II) there are indicia of an employment  
19 relationship between the nonimmigrant and  
20 such other employer.

21 “(iii) Clause (ii) shall not apply to an employ-  
22 er’s placement of an H-1B nonimmigrant with an-  
23 other employer if the other employer has executed  
24 an attestation that it satisfies and will satisfy the

1 conditions described in clause (i) during the period  
2 described in such clause.”.

3 (b) DEFINITIONS.—

4 (1) IN GENERAL.—Section 212(n) of the Immi-  
5 gration and Nationality Act (8 U.S.C. 1182(n)) is  
6 amended by adding at the end the following:

7 “(3) For purposes of this subsection:

8 “(A) The term ‘H–1B nonimmigrant’ means an  
9 alien admitted or provided status as a nonimmigrant  
10 described in section 101(a)(15)(H)(i)(b).

11 “(B) The term ‘lay off or otherwise displace’,  
12 with respect to an employee—

13 “(i) means to cause the employee’s loss of  
14 employment, other than through a discharge for  
15 cause, a voluntary departure, or a voluntary re-  
16 tirement; and

17 “(ii) does not include any situation in  
18 which employment is relocated to a different ge-  
19 ographic area and the employee is offered a  
20 chance to move to the new location, with wages  
21 and benefits that are not less than those at the  
22 old location, but elects not to move to the new  
23 location.

24 “(C) The term ‘United States worker’ means—

1           “(i) a citizen or national of the United  
2 States;

3           “(ii) an alien lawfully admitted for perma-  
4 nent residence; or

5           “(iii) an alien authorized to be employed  
6 by this Act or by the Attorney General.”.

7           (2) CONFORMING AMENDMENTS.—Section  
8 212(n)(1) of the Immigration and Nationality Act (8  
9 U.S.C. 1182(n)(1)) is amended by striking “a non-  
10 immigrant described in section 101(a)(15)(H)(i)(b)”  
11 each place such term appears and inserting “an H-  
12 1B nonimmigrant”.

13 **SEC. 4. RECRUITMENT OF UNITED STATES WORKERS**  
14 **PRIOR TO SEEKING NONIMMIGRANT WORK-**  
15 **ERS.**

16           Section 212(n)(1) of the Immigration and Nationality  
17 Act (8 U.S.C. 1182(n)(1)), as amended by section 3, is  
18 further amended by inserting after subparagraph (E) the  
19 following:

20           “(F)(i) The employer, prior to filing the appli-  
21 cation, has taken, in good faith, timely and signifi-  
22 cant steps to recruit and retain sufficient United  
23 States workers in the specialty occupation for which  
24 H-1B nonimmigrants are sought. Such steps shall  
25 have included recruitment in the United States,

1 using procedures that meet industry-wide standards  
2 and offering compensation that is at least as great  
3 as that required to be offered to H–1B non-  
4 immigrants under subparagraph (A), and offering  
5 employment to any qualified United States worker  
6 who applies.

7 “(ii) The conditions described in clause (i) shall  
8 not apply to an employer with respect to the employ-  
9 ment of an H–1B nonimmigrant who is described in  
10 subparagraph (A), (B), or (C) of section  
11 203(b)(1).”.

12 **SEC. 5. LIMITATION ON AUTHORITY TO INITIATE COM-**  
13 **PLAINTS AND CONDUCT INVESTIGATIONS**  
14 **FOR NON-H-1B-DEPENDENT EMPLOYERS.**

15 (a) IN GENERAL.—Section 212(n)(2)(A) of the Im-  
16 migration and Nationality Act (8 U.S.C. 1182(n)(2)(A))  
17 is amended—

18 (1) in the second sentence, by striking the pe-  
19 riod at the end and inserting the following: “, except  
20 that the Secretary may only file such a complaint re-  
21 specting an H–1B-dependent employer (as defined  
22 in paragraph (3)), and only if there appears to be  
23 a violation of an attestation or a misrepresentation  
24 of a material fact in an application.”; and

1           (2) by inserting after the second sentence the  
2 following: “Except as provided in subparagraph (F)  
3 (relating to spot investigations during probationary  
4 period), no investigation or hearing shall be con-  
5 ducted with respect to an employer except in re-  
6 sponse to a complaint filed under the previous sen-  
7 tence.”.

8           (b) DEFINITIONS.—Section 212(n)(3) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1182(n)(2)), as  
10 added by section 3, is amended—

11           (1) by redesignating subparagraphs (A), (B),  
12 and (C) as subparagraphs (B), (C), and (E), respec-  
13 tively;

14           (2) by inserting after “purposes of this sub-  
15 section:” the following:

16           “(A) The term ‘H–1B-dependent employer’  
17 means an employer that—

18           “(i)(I) has fewer than 21 full-time equiva-  
19 lent employees who are employed in the United  
20 States; and (II) employs 4 or more H–1B non-  
21 immigrants; or

22           “(ii)(I) has at least 21 but not more than  
23 150 full-time equivalent employees who are em-  
24 ployed in the United States; and (II) employs  
25 H–1B nonimmigrants in a number that is equal

1 to at least 20 percent of the number of such  
2 full-time equivalent employees; or

3 “(iii)(I) has at least 151 full-time equiva-  
4 lent employees who are employed in the United  
5 States; and (II) employs H–1B nonimmigrants  
6 in a number that is equal to at least 15 percent  
7 of the number of such full-time equivalent em-  
8 ployees.

9 In applying this subparagraph, any group treated as  
10 a single employer under subsection (b), (c), (m), or  
11 (o) of section 414 of the Internal Revenue Code of  
12 1986 shall be treated as a single employer. Aliens  
13 employed under a petition for H–1B nonimmigrants  
14 shall be treated as employees, and counted as non-  
15 immigrants under section 101(a)(15)(H)(i)(b) under  
16 this subparagraph.”; and

17 (3) by inserting after subparagraph (C) (as so  
18 redesignated) the following:

19 “(D) The term ‘non-H–1B-dependent employer’  
20 means an employer that is not an H–1B-dependent  
21 employer.”.

22 **SEC. 6. INCREASED ENFORCEMENT AND PENALTIES.**

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



1           “(C)(i) If the Secretary finds, after notice and oppor-  
2 tunity for a hearing, a failure to meet a condition of para-  
3 graph (1)(B) or (1)(E), a substantial failure to meet a  
4 condition of paragraph (1)(C), (1)(D), or (1)(F), or a mis-  
5 representation of material fact in an application—

6           “(I) the Secretary shall notify the Attorney  
7 General of such finding and may, in addition, im-  
8 pose such other administrative remedies (including  
9 civil monetary penalties in an amount not to exceed  
10 \$1,000 per violation) as the Secretary determines to  
11 be appropriate; and

12           “(II) the Attorney General shall not approve  
13 petitions filed with respect to that employer under  
14 section 204 or 214(e) during a period of at least 1  
15 year for aliens to be employed by the employer.

16           “(ii) If the Secretary finds, after notice and oppor-  
17 tunity for a hearing, a willful failure to meet a condition  
18 of paragraph (1) or a willful misrepresentation of material  
19 fact in an application—

20           “(I) the Secretary shall notify the Attorney  
21 General of such finding and may, in addition, im-  
22 pose such other administrative remedies (including  
23 civil monetary penalties in an amount not to exceed  
24 \$5,000 per violation) as the Secretary determines to  
25 be appropriate; and

1           “(II) the Attorney General shall not approve  
2           petitions filed with respect to that employer under  
3           section 204 or 214(c) during a period of at least 1  
4           year for aliens to be employed by the employer.

5           “(iii) If the Secretary finds, after notice and oppor-  
6           tunity for a hearing, a willful failure to meet a condition  
7           of paragraph (1) or a willful misrepresentation of material  
8           fact in an application, in the course of which failure or  
9           misrepresentation the employer also has failed to meet a  
10          condition of paragraph (1)(E)—

11           “(I) the Secretary shall notify the Attorney  
12          General of such finding and may, in addition, im-  
13          pose such other administrative remedies (including  
14          civil monetary penalties in an amount not to exceed  
15          \$25,000 per violation) as the Secretary determines  
16          to be appropriate; and

17           “(II) the Attorney General shall not approve  
18          petitions filed with respect to that employer under  
19          section 204 or 214(c) during a period of at least 2  
20          years for aliens to be employed by the employer.”.

21          (b) PLACEMENT OF H-1B NONIMMIGRANT WITH  
22          OTHER EMPLOYER.—Section 212(n)(2) of the Immigra-  
23          tion and Nationality Act (8 U.S.C. 1182(n)(2)) is amend-  
24          ed by adding at the end the following:

1       “(E) Under regulations of the Secretary, the previous  
2 provisions of this paragraph shall apply to a failure of an  
3 other employer to comply with an attestation described in  
4 paragraph (1)(E)(iii) in the same manner as they apply  
5 to a failure to comply with a condition described in para-  
6 graph (1)(E)(i).”.

7       (c) SPOT INVESTIGATIONS DURING PROBATIONARY  
8 PERIOD.—Section 212(n)(2) of the Immigration and Na-  
9 tionality Act (8 U.S.C. 1182(n)(2)), as amended by sub-  
10 section (b), is further amended by adding at the end the  
11 following:

12       “(F) The Secretary may, on a case-by-case basis,  
13 subject an employer to random investigations for a period  
14 of up to 5 years, beginning on the date that the employer  
15 is found by the Secretary to have committed a willful fail-  
16 ure to meet a condition of paragraph (1) or to have made  
17 a misrepresentation of material fact in an application. The  
18 preceding sentence shall apply to an employer regardless  
19 of whether the employer is an H–1B-dependent employer  
20 or a non-H–1B-dependent employer. The authority of the  
21 Secretary under this subparagraph shall not be construed  
22 to be subject to, or limited by, the requirements of sub-  
23 paragraph (A).”.

1 **SEC. 7. EFFECTIVE DATE.**

2       The amendments made by this Act shall take effect  
3 on the date of the enactment of this Act and shall apply  
4 to applications filed with the Secretary of Labor on or  
5 after 30 days after the date of the enactment of this Act,  
6 except that the amendments made by section 2 shall apply  
7 to applications filed with such Secretary before, on, or  
8 after the date of the enactment of this Act.

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