

115TH CONGRESS
1ST SESSION

H. R. 670

To amend the Immigration and Nationality Act to reform the H–1B visa program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Ms. LOFGREN introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to reform the H–1B visa 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 “High-Skilled Integrity
5 and Fairness Act of 2017”.

6 **SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN**
7 **STATE.**

8 (a) IN GENERAL.—Section 202(a)(2) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is
10 amended—

1 (1) in the paragraph heading, by striking “and
2 employment-based”;

3 (2) by striking “(3), (4), and (5),” and insert-
4 ing “(3) and (4),”;

5 (3) by striking “subsections (a) and (b) of sec-
6 tion 203” and inserting “section 203(a)”;

7 (4) by striking “7” and inserting “15”; and

8 (5) by striking “such subsections” and inserting
9 “such section”.

10 (b) CONFORMING AMENDMENTS.—Section 202 of the
11 Immigration and Nationality Act (8 U.S.C. 1152) is
12 amended—

13 (1) in subsection (a)(3), by striking “both sub-
14 sections (a) and (b) of section 203” and inserting
15 “section 203(a)”;

16 (2) by striking subsection (a)(5); and

17 (3) by amending subsection (e) to read as fol-
18 lows:

19 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—
20 If it is determined that the total number of immigrant
21 visas made available under section 203(a) to natives of
22 any single foreign state or dependent area will exceed the
23 numerical limitation specified in subsection (a)(2) in any
24 fiscal year, in determining the allotment of immigrant visa
25 numbers to natives under section 203(a), visa numbers

1 with respect to natives of that state or area shall be allo-
 2 cated (to the extent practicable and otherwise consistent
 3 with this section and section 203) in a manner so that,
 4 except as provided in subsection (a)(4), the proportion of
 5 the visa numbers made available under each of paragraphs
 6 (1) through (4) of section 203(a) is equal to the ratio of
 7 the total number of visas made available under the respec-
 8 tive paragraph to the total number of visas made available
 9 under section 203(a).”.

10 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
 11 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
 12 note) is amended—

13 (1) in subsection (a), by striking “subsection
 14 (e))” and inserting “subsection (d))”; and

15 (2) by striking subsection (d) and redesignating
 16 subsection (e) as subsection (d).

17 (d) EFFECTIVE DATE.—The amendments made by
 18 this section shall take effect as if enacted on September
 19 30, 2016, and shall apply to fiscal years beginning with
 20 fiscal year 2017.

21 (e) TRANSITION RULES FOR EMPLOYMENT-BASED
 22 IMMIGRANTS.—

23 (1) IN GENERAL.—Subject to the succeeding
 24 paragraphs of this subsection and notwithstanding

1 title II of the Immigration and Nationality Act (8
2 U.S.C. 1151 et seq.), the following rules shall apply:

3 (A) For fiscal year 2017, 15 percent of the
4 immigrant visas made available under each of
5 paragraphs (2) and (3) of section 203(b) of
6 such Act (8 U.S.C. 1153(b)) shall be allotted to
7 immigrants who are natives of a foreign state
8 or dependent area that was not one of the two
9 states with the largest aggregate numbers of
10 natives obtaining immigrant visas during fiscal
11 year 2011 under such paragraphs.

12 (B) For fiscal year 2018, 10 percent of the
13 immigrant visas made available under each of
14 such paragraphs shall be allotted to immigrants
15 who are natives of a foreign state or dependent
16 area that was not one of the two states with the
17 largest aggregate numbers of natives obtaining
18 immigrant visas during fiscal year 2012 under
19 such paragraphs.

20 (C) For fiscal year 2019, 10 percent of the
21 immigrant visas made available under each of
22 such paragraphs shall be allotted to immigrants
23 who are natives of a foreign state or dependent
24 area that was not one of the two states with the
25 largest aggregate numbers of natives obtaining

1 immigrant visas during fiscal year 2015 under
2 such paragraphs.

3 (2) PER-COUNTRY LEVELS.—

4 (A) RESERVED VISAS.—With respect to
5 the visas reserved under each of subparagraphs
6 (A) through (C) of paragraph (1), the number
7 of such visas made available to natives of any
8 single foreign state or dependent area in the ap-
9 propriate fiscal year may not exceed 25 percent
10 (in the case of a single foreign state) or 2 per-
11 cent (in the case of a dependent area) of the
12 total number of such visas.

13 (B) UNRESERVED VISAS.—With respect to
14 the immigrant visas made available under each
15 of paragraphs (2) and (3) of section 203(b) of
16 such Act (8 U.S.C. 1153(b)) and not reserved
17 under paragraph (1), for each of fiscal years
18 2017, 2018, and 2019, not more than 85 per-
19 cent shall be allotted to immigrants who are na-
20 tives of any single foreign state.

21 (3) SPECIAL RULE TO PREVENT UNUSED
22 VISAS.—If, with respect to fiscal year 2017, 2018, or
23 2019, the operation of paragraphs (1) and (2) of
24 this subsection would prevent the total number of
25 immigrant visas made available under paragraph (2)

1 or (3) of section 203(b) of such Act (8 U.S.C.
 2 1153(b)) from being issued, such visas may be
 3 issued during the remainder of such fiscal year with-
 4 out regard to paragraphs (1) and (2) of this sub-
 5 section.

6 (4) RULES FOR CHARGEABILITY.—Section
 7 202(b) of such Act (8 U.S.C. 1152(b)) shall apply
 8 in determining the foreign state to which an alien is
 9 chargeable for purposes of this subsection.

10 **SEC. 3. STRENGTHENING INTEGRITY IN THE H-1B PRO-**
 11 **GRAM.**

12 Section 212(n)(3)(B)(i) of the Immigration and Na-
 13 tionality Act (8 U.S.C. 1182(n)(3)(B)(i)) is amended by
 14 striking all that follows after “means an H-1B non-
 15 immigrant” and inserting the following: “, in any occupa-
 16 tion, who receives wages (calculated such that non-discre-
 17 tionary cash bonuses, incentive payments, non-cash bo-
 18 nuses, and similar compensation may be considered wages
 19 and will be applied based on their fair market value at
 20 the time the employer files the petition, and no wages may
 21 come from any form of discretionary compensation) at an
 22 annual rate equal to at least 35 percentile points more
 23 than the median wage for the most recent national annual
 24 wage estimates for Computer and Mathematical Occupa-
 25 tions (Group 15–0000) (or any successor group, as des-

1 ignated by the Secretary of Labor) as published in the
2 Occupational Employment Statistics by the Secretary of
3 Labor; and”.

4 **SEC. 4. TRANSPARENCY FOR AND PROHIBITING PENALTIES**
5 **AGAINST FOREIGN HIGH-SKILLED WORKERS.**

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

9 “(m) EMPLOYER TO PROVIDE IMMIGRATION DOCU-
10 MENTATION.—

11 “(1) IN GENERAL.—Not later than 30 calendar
12 days after receiving a written request from a bene-
13 ficiary, a petitioner shall provide any current or
14 former employee currently or previously described in
15 section 101(a)(15)(H) or (L) with an accurate, leg-
16 ible copy of the nonimmigrant petition that was filed
17 by the petitioner and that named the requestor as
18 a beneficiary, along with a copy of any receipt no-
19 tice, approval notice, or denial notice related to such
20 petition.

21 “(2) WITHHOLDING OF INFORMATION.—If a
22 document required to be provided under paragraph
23 (1) includes any confidential or sensitive business in-
24 formation, the employer may redact or withhold such
25 information from the requestor.

1 “(3) TIMEFRAME.—Any request under this sub-
 2 section shall be submitted to the petitioner not later
 3 than 3 years after the date on which the non-
 4 immigrant petition for status under section
 5 101(a)(15)(H) or (L) was filed.

6 “(4) PENALTY.—If the Secretary of Labor
 7 finds, after notice and opportunity for a hearing, a
 8 knowing failure to meet a condition of this sub-
 9 section or a knowing misrepresentation of material
 10 fact—

11 “(A) the Secretary of Labor shall notify
 12 the Attorney General of such finding and may,
 13 in addition, impose such administrative rem-
 14 edies (including civil monetary penalties in an
 15 amount not to exceed \$5,000 per violation) as
 16 the Secretary determines to be appropriate; and

17 “(B) the Secretary shall not approve peti-
 18 tions filed with respect to that employer under
 19 section 204 or 214(c) during a period of at
 20 least 2 years for aliens to be employed by the
 21 employer.”.

22 (b) LIQUIDATED DAMAGES PROHIBITED.—Section
 23 212(n)(2)(C)(vi)(I) of the Immigration and Nationality
 24 Act (8 U.S.C. 1182(n)(2)(C)(vi)(I)) is amended by strik-
 25 ing all that follows after “a violation of this clause” and

1 inserting the following: “for an employer who has filed an
 2 application under this subsection to require an H–1B non-
 3 immigrant to pay a penalty or liquidated damages for
 4 ceasing employment with the employer prior to a date
 5 agreed to by the nonimmigrant and the employer.”.

6 **SEC. 5. STRENGTHENING THE PREVAILING WAGE SYSTEM**
 7 **TO PROTECT AMERICAN WORKERS.**

8 Section 212(p) of the Immigration and Nationality
 9 Act (8 U.S.C. 1182(p)) is amended to read as follows:

10 “(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

11 “(1) The Secretary of Labor shall make avail-
 12 able to employers a governmental survey to deter-
 13 mine the prevailing wage for each occupational clas-
 14 sification by metropolitan statistical area in the
 15 United States. Such survey, or other survey ap-
 16 proved by the Secretary of Labor, shall provide 3
 17 levels of wages commensurate with experience, edu-
 18 cation, and level of supervision. Such wage levels
 19 shall be determined as follows:

20 “(A) The first level shall be the mean of
 21 the lowest two-thirds of wages surveyed, but in
 22 no case less than 80 percent of the mean of the
 23 wages surveyed.

24 “(B) The second level shall be the mean of
 25 wages surveyed.

1 “(C) The third level shall be the mean of
2 the highest two-thirds of wages surveyed.

3 “(2) The prevailing wage level required to be
4 paid pursuant to section 203(b)(1)(D) and sub-
5 sections (a)(5)(A), (n)(1)(A)(i)(II), and
6 (t)(1)(A)(i)(II) of this section shall be 100 percent
7 of the wage level determined pursuant to those sec-
8 tions.

9 “(3) In computing the prevailing wage level for
10 an occupational classification in an area of employ-
11 ment for purposes of section 203(b)(1)(D) and sub-
12 sections (a)(5)(A), (n)(1)(A)(i)(II), and
13 (t)(1)(A)(i)(II) of this section in the case of an em-
14 ployee of—

15 “(A) an institution of higher education, or
16 a related or affiliated nonprofit entity, or

17 “(B) a nonprofit research organization or
18 a Governmental research organization,

19 the prevailing wage level shall only take into account
20 employees at such institutions and organizations in
21 the area of employment.

22 “(4) With respect to a professional athlete (as
23 defined in subsection (a)(5)(A)(iii)(II)) when the job
24 opportunity is covered by professional sports league
25 rules or regulations, the wage set forth in those

1 rules or regulations shall be considered as not ad-
2 versely affecting the wages of United States workers
3 similarly employed and be considered the prevailing
4 wage.”.

5 **SEC. 6. MARKET-BASED H-1B VISA AND STATUS ALLOCA-**
6 **TION.**

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

9 (1) by striking the first sentence and inserting
10 the following:

11 “(A) Subject to subparagraph (B), aliens
12 who are subject to the numerical limitations
13 under paragraph (1)(A) shall be issued visas, or
14 otherwise provided nonimmigrant status in a
15 manner and order established by the Secretary
16 by regulation. If for a fiscal year petitions are
17 filed seeking a number of nonimmigrant work-
18 ers under section 101(a)(15)(H)(i)(b) that ex-
19 ceeds the numerical limitation set out in para-
20 graph (1)(A) for such fiscal year, the Secretary
21 of Homeland Security shall allocate the avail-
22 able visas for the petitions seeking such worker
23 in accordance with subparagraph (B).”; and
24 (2) by adding at the end the following:

1 “(B) If for a fiscal year petitions are filed
2 seeking a number of nonimmigrant workers
3 under section 101(a)(15)(H)(i)(b) that exceeds
4 the numerical limitation set out in paragraph
5 (1)(A) for such fiscal year, the Secretary shall
6 consider and approve petitions for a visa or
7 nonimmigrant status under section
8 101(a)(15)(H)(i)(b) in accordance with the fol-
9 lowing:

10 “(i) first, if the petitioner certifies
11 that the prevailing wage level for the posi-
12 tion is level 3 (or successor wage level) and
13 the nonimmigrant will receive wages (cal-
14 culated such that non-discretionary cash
15 bonuses, incentive payments, non-cash bo-
16 nuses, and similar compensation may be
17 considered wages and will be applied based
18 on their fair market value at the time the
19 employer files the petition, and no wages
20 may come from any form of discretionary
21 compensation) greater than or equal to
22 200 percent of the level 3 prevailing wage
23 as published by the Secretary of Labor for
24 an occupational classification in the area of

1 employment at the time of filing the appli-
2 cation, then 150 percent, then 100 percent;

3 “(ii) then, if the petitioner certifies
4 that the prevailing wage level for the posi-
5 tion is level 2 (or successor wage level) and
6 the nonimmigrant will receive wages (cal-
7 culated such that non-discretionary cash
8 bonuses, incentive payments, non-cash bo-
9 nuses, and similar compensation may be
10 considered wages and will be applied based
11 on their fair market value at the time the
12 employer files the petition, and no wages
13 may come from any form of discretionary
14 compensation) greater than or equal to
15 200 percent of the level 2 prevailing wage
16 as published by the Secretary of Labor for
17 an occupational classification in the area of
18 employment at the time of filing the appli-
19 cation, then 150 percent, then 100 percent;
20 and

21 “(iii) then, if the petitioner certifies
22 that the prevailing wage level for the posi-
23 tion is level 1 (or successor wage level) and
24 the nonimmigrant will receive wages (cal-
25 culated such that non-discretionary cash

bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 1 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of employment at the time of filing the application, then 150 percent, then 100 percent.

“(C) The employer may not reduce the H-1B nonimmigrant’s wages, regardless of whether the deduction is in accordance with a voluntary authorization by the H-1B nonimmigrant, except for Federal, State, and local taxes and lawful garnishments. An employer may also reduce an H-1B nonimmigrant’s wages if the deduction is authorized by a collective bargaining agreement or is reasonable and customary in the occupation and/or area of employment, including deductions for health, life, disability and other insurance plans; retirement and savings plans; and union dues.

1 “(D) The employer may no longer employ
2 the H–1B nonimmigrant described in subpara-
3 graph (B) if the H–1B nonimmigrant’s wages
4 (calculated such that non-discretionary cash bo-
5 nuses, incentive payments, non-cash bonuses,
6 and similar compensation may be considered
7 wages and will be applied based on their fair
8 market value at the time the employer files the
9 petition, and no wages may come from any
10 form of discretionary compensation) are re-
11 duced below the level identified in clauses (i),
12 (ii), and (iii) of subparagraph (B).

13 “(E) If the H–1B nonimmigrant described
14 in subparagraph (B) receives wages (calculated
15 such that non-discretionary cash bonuses, in-
16 centive payments, non-cash bonuses, and simi-
17 lar compensation may be considered wages and
18 will be applied based on their fair market value
19 at the time the employer files the petition, and
20 no wages may come from any form of discre-
21 tionary compensation) for services rendered on
22 behalf of the employer for 30 calendar days or
23 more, including partial days, in any area of em-
24 ployment other than area of employment indi-
25 cated at the time of filing the application, the

1 employer shall pay the H-1B nonimmigrant
2 wages at the level identified in clauses (i), (ii),
3 and (iii) based on the prevailing wage of the
4 area of employment with the highest prevailing
5 wage.

6 “(F) If the Secretary of Labor finds, after
7 notice and opportunity for a hearing, a knowing
8 failure to meet a condition of subparagraph (C),
9 (D), or (E) or a knowing misrepresentation of
10 material fact—

11 “(i) the Secretary shall notify the At-
12 torney General of such finding and may, in
13 addition, impose such administrative rem-
14 edies (including civil monetary penalties in
15 an amount not to exceed \$5,000 per viola-
16 tion) as the Secretary determines to be ap-
17 propriate;

18 “(ii) after the first offense, the Sec-
19 retary shall not approve petitions filed with
20 respect to that employer, including parent,
21 subsidiary, and other affiliated entities,
22 under section 204 or 214(c) during a pe-
23 riod of at least 2 years for aliens to be em-
24 ployed by the employer; and

1 “(iii) after the second offense, the
2 Secretary shall not approve any petitions
3 filed with respect to that employer, includ-
4 ing parent, subsidiary, and other affiliated
5 entities, under section 204 or 214(c).”.

6 **SEC. 7. VISAS RESERVED FOR SMALL AND START-UP EM-**
7 **PLOYERS.**

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

11 “(12) The numerical limitations of paragraph
12 (1)(A) shall be allocated for a fiscal year so that 20
13 percent of the number of aliens who may receive
14 visas or nonimmigrant status subject to such numer-
15 ical limitations shall be reserved for employers with
16 50 or fewer full-time employees, including parent,
17 subsidiary, and other affiliated entities. Petitions
18 filed under this subsection must include an attesta-
19 tion from the petitioning employer that the bene-
20 ficiary will not be placed for more than 30 days at
21 a third party worksite. If the Secretary determines,
22 after notice and opportunity for a hearing, a mis-
23 representation of material fact in the attestation or
24 action by the petitioning employer in contravention
25 to this attestation, paragraph (3)(F) applies and the

1 petitioning employer may be punished in the same
2 manner as a violation punishable under such para-
3 graph. In a fiscal year, any visa or nonimmigrant
4 status reserved under this paragraph that is not
5 used by the end of the third quarter of that fiscal
6 year may be issued to an alien who is eligible for
7 such visa or nonimmigrant status. In the case of an
8 alien receiving a visa or nonimmigrant status under
9 this paragraph, paragraph (3)(B) does not apply,
10 unless for a fiscal year the number of petitions seek-
11 ing visas or nonimmigrant status under this para-
12 graph received during the first 10 business days that
13 petitions may be filed exceeds 20 percent of all peti-
14 tions subject to the numerical limitations of para-
15 graph (1)(A).”.

16 **SEC. 8. REMOVING VISA HURDLES FOR STUDENTS.**

17 (a) DUAL INTENT.—Section 101(a)(15)(F)(i) of the
18 Immigration and Nationality Act (8 U.S.C.
19 1101(a)(15)(F)(i)) is amended by striking “an alien hav-
20 ing a residence in a foreign country which he has no inten-
21 tion of abandoning, who is a bona fide student qualified
22 to pursue a full course of study and who” and inserting
23 “an alien who is a bona fide student qualified to pursue
24 a full course of study, who (except for a student qualified
25 to pursue a full course of study at an institution of higher

1 education) has a residence in a foreign country which the
 2 alien has no intention of abandoning, and who”.

3 (b) STUDENTS ALLOWED TO USE EMPLOYMENT FOR
 4 PURPOSES OF LABOR CERTIFICATION.—In making a cer-
 5 tification under section 212(a)(5) of the Immigration and
 6 Nationality Act (8 U.S.C. 1182(a)(5)), the Secretary of
 7 Labor shall consider any experience the alien beneficiary
 8 gained as a nonimmigrant described in section
 9 101(a)(15)(F) as qualifying experience for purposes of
 10 meeting the actual minimum requirements for the job for
 11 which the certification is sought.

12 (c) EMPLOYMENT AUTHORIZATION; EXTENDED VA-
 13 LIDITY OF PETITION.—Section 204 of the Immigration
 14 and Nationality Act (8 U.S.C. 1154) is amended in sub-
 15 section (j)—

16 (1) in the heading for such subsection, by strik-
 17 ing “APPLICANTS FOR” and inserting “APPLICANTS
 18 SEEKING”;

19 (2) by striking “subsection (a)(1)(D)” and in-
 20 serting “subsection (a)(1)(F)”;

21 (3) by redesignating the text of such subsection
 22 as paragraph (1); and

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

24 “(2) CHANGES IN EMPLOYERS; ELIGIBILITY
 25 FOR EMPLOYMENT AUTHORIZATION.—

1 “(A) PETITION TO REMAIN VALID FOR
2 CHANGE IN JOBS.—A petition under subsection
3 (a)(1)(F) that has been approved for 180 days
4 or more shall remain valid with respect to a
5 new job if the individual changes jobs or em-
6 ployers if the new job is in the same or a simi-
7 lar occupational classification as the job for
8 which the petition was filed.

9 “(B) ELIGIBILITY FOR EMPLOYMENT AU-
10 THORIZATION.—An individual who has a peti-
11 tion under subsection (a)(1)(F) that has been
12 approved for 180 days or more shall be eligible
13 to apply for travel authorization and employ-
14 ment authorization in the same or a similar oc-
15 cupational classification as the job for which
16 the petition was filed until such time as the ap-
17 plication under section 245 has been filed.”.

18 (d) CONFORMING AMENDMENTS.—Section 214 of the
19 Immigration and Nationality Act (8 U.S.C. 1184) is
20 amended—

21 (1) in subsection (b), by striking “(other than
22 a nonimmigrant” and inserting “(other than a non-
23 immigrant described in section 101(a)(15)(E)(iii),
24 other than a nonimmigrant described in section
25 101(a)(15)(F) if the alien is qualified to pursue a

1 full course of study at an institution of higher edu-
 2 cation, other than a nonimmigrant described in sec-
 3 tion 101(a)(15)(H)(i)(b1), other than a non-
 4 immigrant described in section 101(a)(15)(O)(i),
 5 other than a nonimmigrant described in section
 6 101(a)(15)(P), other than an alien admitted under
 7 subsection (e) of this section, other than a non-
 8 immigrant”; and

9 (2) in subsection (h)—

10 (A) by inserting “(E)(iii), (F) (if the alien
 11 is qualified to pursue a full course of study at
 12 an institution of higher education), (H)(i)(b1),”
 13 before “H(i)(b)”;

14 (B) by inserting after “(L),” the following
 15 “(O)(i), (P),”; and

16 (C) by inserting after “or (V) of section
 17 101(a)(15)” the following: “, for purposes of
 18 admission under subsection (e) of this section,”.

19 **SEC. 9. REMOVING PAPERWORK BURDENS.**

20 Section 214(c)(10) of the Immigration and Nation-
 21 ality Act (8 U.S.C. 1184(c)(10)) is amended by striking
 22 the period at the end and inserting “, or where the non-
 23 immigrant worker begins working at a place of employ-
 24 ment where the petitioner has secured a valid, certified
 25 Labor Condition Application for the new place of employ-

1 ment and where the terms and conditions of employment
2 remain otherwise the same.”.

3 **SEC. 10. REMOVAL OF LIMITATION ON CONSIDERATION OF**
4 **CERTAIN INFORMATION RECEIVED.**

5 Section 212(n)(2)(G) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1182(n)(2)(G)) is amended by striking
7 clause (v), and redesignating clauses (vi) through (viii) as
8 clauses (v) through (vii), respectively.

○