

110TH CONGRESS
1ST SESSION

S. 31

To amend the Immigration and Nationality Act to reduce fraud in certain visa programs for aliens working temporarily in the United States.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2007

Ms. COLLINS 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 reduce fraud in certain visa programs for aliens working temporarily in the United States.

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 “H-1B Visa Fraud Pre-
5 vention Act of 2007”.

6 **SEC. 2. H-1B EMPLOYER REQUIREMENTS.**

7 (a) PROHIBITION OF OUTPLACEMENT.—

8 (1) IN GENERAL.—Section 212(n) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1182(n)) is
10 amended—

1 (A) in paragraph (1), by amending sub-
2 paragraph (F) to read as follows:

3 “(F) The employer shall not place, outsource,
4 lease, or otherwise contract for the placement of an
5 alien admitted or provided status as an H-1B non-
6 immigrant with another employer if the worksite of
7 the receiving employer is located in a different
8 State;” and

9 (B) in paragraph (2), by striking subpara-
10 graph (E).

11 (2) EFFECTIVE DATE.—The amendments made
12 by paragraph (1) shall apply to applications filed on
13 or after the date of the enactment of this Act.

14 (b) IMMIGRATION DOCUMENTS.—Section 204 of such
15 Act (8 U.S.C. 1154) is amended by adding at the end the
16 following:

17 “(1) EMPLOYER TO SHARE ALL IMMIGRATION PA-
18 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not
19 later than 10 working days after receiving a written re-
20 quest from a former, current, or future employee or bene-
21 ficiary, an employer shall provide the employee or bene-
22 ficiary with the original (or a certified copy of the original)
23 of all petitions, notices, and other written communication
24 exchanged between the employer and the Department of
25 Labor, the Department of Homeland Security, or any

1 other Federal agency that is related to an immigrant or
2 nonimmigrant petition filed by the employer for the em-
3 ployee or beneficiary.”.

4 **SEC. 3. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
5 **MENTS.**

6 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
7 SENTATION IN APPLICATION REVIEW PROCESS.—Section
8 212(n)(1) of the Immigration and Nationality Act (8
9 U.S.C. 1182(n)) is amended—

10 (1) in the undesignated paragraph at the end,
11 by striking “The employer” and inserting the fol-
12 lowing:

13 “(H) The employer”; and

14 (2) in subparagraph (H), as designated by
15 paragraph (1) of this subsection—

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

19 (B) by inserting “, clear indicators of
20 fraud, misrepresentation of material fact,” after
21 “completeness”;

22 (C) by striking “or obviously inaccurate”
23 and inserting “, presents clear indicators of
24 fraud or misrepresentation of material fact, or
25 is obviously inaccurate”;

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

3 (E) by adding at the end the following: “If
 4 the Secretary’s review of an application identi-
 5 fies clear indicators of fraud or misrepresenta-
 6 tion of material fact, the Secretary may conduct
 7 an investigation and hearing under paragraph
 8 (2).”.

9 (b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—
 10 Section 212(n)(2) of such Act is amended—

11 (1) in subparagraph (A), by striking “The Sec-
 12 retary shall conduct” and all that follows and insert-
 13 ing “Upon the receipt of such a complaint, the Sec-
 14 retary may initiate an investigation to determine if
 15 such a failure or misrepresentation has occurred.”;

16 (2) in subparagraph (C)(i)—

17 (A) by striking “a condition of paragraph
 18 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
 19 dition under subparagraph (B), (C)(i), (E), (F),
 20 (H), (I), or (J) of paragraph (1)”;

21 (B) by striking “(1)(C)” and inserting
 22 “(1)(C)(ii)”;

23 (3) in subparagraph (G)—

24 (A) in clause (i), by striking “if the Sec-
 25 retary” and all that follows and inserting “with

1 regard to the employer’s compliance with the
2 requirements of this subsection.”;

3 (B) in clause (ii), by striking “and whose
4 identity” and all that follows through “failure
5 or failures.” and inserting “the Secretary of
6 Labor may conduct an investigation into the
7 employer’s compliance with the requirements of
8 this subsection.”;

9 (C) in clause (iii), by striking the last sen-
10 tence;

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

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

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

16 “(v) The Secretary of Labor shall provide notice to
17 an employer of the intent to conduct an investigation. The
18 notice shall be provided in such a manner, and shall con-
19 tain sufficient detail, to permit the employer to respond
20 to the allegations before an investigation is commenced.
21 The Secretary is not required to comply with this clause
22 if the Secretary determines that such compliance would
23 interfere with an effort by the Secretary to investigate or
24 secure compliance by the employer with the requirements

1 of this subsection. A determination by the Secretary under
2 this clause shall not be subject to judicial review.”;

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

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

17 “(vii) The Secretary of Labor may impose a penalty
18 under subparagraph (C) if the Secretary, after a hearing,
19 finds a reasonable basis to believe that—

20 “(I) the employer has violated the requirements
21 under this subsection; and

22 “(II) the violation was not made in good
23 faith.”; and

24 (4) by striking subparagraph (H).

1 (c) INFORMATION SHARING BETWEEN DEPARTMENT
2 OF LABOR AND DEPARTMENT OF HOMELAND SECUR-
3 RITY.—Section 212(n)(2) of such Act, as amended by this
4 section, is further amended by inserting after subpara-
5 graph (G) the following:

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

16 (d) AUDITS.—Section 212(n)(2)(A) of such Act, as
17 amended by this section, is further amended by adding
18 at the end the following: “The Secretary may conduct sur-
19 veys of the degree to which employers comply with the re-
20 quirements under this subsection and may conduct annual
21 compliance audits of employers that employ H–1B non-
22 immigrants.”.

23 (e) PENALTIES.—Section 212(n)(2)(C) of such Act,
24 as amended by this section, is further amended—

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

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

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

7 (f) INFORMATION PROVIDED TO H-1B NON-
8 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of
9 such Act, as amended by this section, is further amended
10 by inserting after paragraph (2) the following:

11 “(3)(A) Upon issuing an H-1B visa to an applicant
12 outside the United States, the issuing office shall provide
13 the applicant with—

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

17 “(ii) the contact information for Federal agen-
18 cies that can offer more information or assistance in
19 clarifying employer obligations and workers’ rights;
20 and

21 “(iii) a copy of the employer’s H-1B applica-
22 tion for the position that the H-1B nonimmigrant
23 has been issued the visa to fill.

1 “(B) Upon the issuance of an H–1B visa to an alien
2 inside the United States, the officer of the Department
3 of Homeland Security shall provide the applicant with—

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

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

11 “(iii) a copy of the employer’s H–1B applica-
12 tion for the position that the H–1B nonimmigrant
13 has been issued the visa to fill.”.

14 **SEC. 4. H-1B WHISTLEBLOWER PROTECTIONS.**

15 Section 212(n)(2)(C)(iv) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

17 (1) by inserting “take, fail to take, or threaten
18 to take or fail to take, a personnel action, or” before
19 “to intimidate”; and

20 (2) by adding at the end the following: “An em-
21 ployer that violates this clause shall be liable to the
22 employees harmed by such violation for lost wages
23 and benefits.”.

1 **SEC. 5. FRAUD ASSESSMENT.**

2 Not later than 30 days after the date of the enact-
3 ment of this Act, the Director of United States Citizenship
4 and Immigration Services shall submit to Congress a
5 fraud risk assessment of the H-1B visa program.

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