

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

H. R. 1044

To amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LEE

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for High-
5 Skilled Immigrants Act of 2019”.

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 to read as follows:

1 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
2 SORED IMMIGRANTS.—Subject to paragraphs (3)
3 and (4), the total number of immigrant visas made
4 available to natives of any single foreign state or de-
5 pendent area under section 203(a) in any fiscal year
6 may not exceed 15 percent (in the case of a single
7 foreign state) or 2 percent (in the case of a depend-
8 ent area) of the total number of such visas made
9 available under such section in that fiscal year.”.

10 (b) CONFORMING AMENDMENTS.—Section 202 of
11 such Act (8 U.S.C. 1152) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (3), by striking “both
14 subsections (a) and (b) of section 203” and in-
15 serting “section 203(a)”; and

16 (B) by striking paragraph (5); and

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

19 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—
20 If the total number of immigrant visas made available
21 under section 203(a) to natives of any single foreign state
22 or dependent area will exceed the numerical limitation
23 specified in subsection (a)(2) in any fiscal year, immigrant
24 visas shall be allotted to such natives under section 203(a)
25 (to the extent practicable and otherwise consistent with

1 this section and section 203) in a manner so that, except
2 as provided in subsection (a)(4), the proportion of the
3 visas made available under each of paragraphs (1) through
4 (4) of section 203(a) is equal to the ratio of the total visas
5 made available under the respective paragraph to the total
6 visas made available under section 203(a).”.

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

10 (1) in subsection (a), by striking “(as defined
11 in subsection (e))”;

12 (2) by striking subsection (d); and

13 (3) by redesignating subsection (e) as sub-
14 section (d).

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect as if enacted on September
17 30, 2019, and shall apply to fiscal year 2020 and each
18 subsequent fiscal year.

19 (e) TRANSITION RULES FOR EMPLOYMENT-BASED
20 IMMIGRANTS.—

21 (1) IN GENERAL.—Subject to paragraphs (2)
22 through (5), and notwithstanding title II of the Im-
23 migration and Nationality Act (8 U.S.C. 1151 et
24 seq.), the following rules shall apply:

1 (A) For fiscal year 2020, 15 percent of the
2 immigrant visas made available under each of
3 paragraphs (2) and (3) of section 203(b) of
4 such Act (8 U.S.C. 1153(b)) shall be allotted to
5 immigrants who are natives of a foreign state
6 or dependent area that is not one of the two
7 states with the largest aggregate numbers of
8 natives obtaining immigrant visas under such
9 paragraphs.

10 (B) For fiscal year 2021, 10 percent of the
11 immigrant visas made available under each of
12 such paragraphs shall be allotted to immigrants
13 who are natives of a foreign state or dependent
14 area that is not one of the two states with the
15 largest aggregate numbers of natives obtaining
16 immigrant visas under such paragraphs.

17 (C) For fiscal year 2022, 10 percent of the
18 immigrant visas made available under each of
19 such paragraphs shall be allotted to immigrants
20 who are natives of a foreign state or dependent
21 area that is not one of the two states with the
22 largest aggregate numbers of natives obtaining
23 immigrant visas under such paragraphs.

24 (2) PER-COUNTRY LEVELS.—

1 (A) RESERVED VISAS.—The number of
2 visas reserved under each of subparagraphs (A)
3 through (C) of paragraph (1) made available to
4 natives of any single foreign state or dependent
5 area in the appropriate fiscal year may not ex-
6 ceed 25 percent (in the case of a single foreign
7 state) or 2 percent (in the case of a dependent
8 area) of the total number of such visas.

9 (B) UNRESERVED VISAS.—Not more than
10 85 percent of the immigrant visas made avail-
11 able under each of paragraphs (2) and (3) of
12 section 203(b) of the Immigration and Nation-
13 ality Act (8 U.S.C. 1153(b)) and not reserved
14 under paragraph (1), for each of the fiscal
15 years 2020, 2021, and 2022, may be allotted to
16 immigrants who are natives of any single for-
17 eign state.

18 (3) SPECIAL RULE TO PREVENT UNUSED
19 VISAS.—If, with respect to fiscal year 2020, 2021, or
20 2022, the application of paragraphs (1) and (2)
21 would prevent the total number of immigrant visas
22 made available under paragraph (2) or (3) of section
23 203(b) of the Immigration and Nationality Act (8
24 U.S.C. 1153(b)) from being issued, such visas may

1 be issued during the remainder of such fiscal year
2 without regard to paragraphs (1) and (2).

3 (4) TRANSITION RULE FOR CURRENTLY AP-
4 PROVED BENEFICIARIES.—

5 (A) IN GENERAL.—Notwithstanding sec-
6 tion 202 of the Immigration and Nationality
7 Act, as amended by this Act, immigrant visas
8 under section 203(b) of the Immigration and
9 Nationality Act (8 U.S.C. 1153(b)) shall be al-
10 located such that no alien described in subpara-
11 graph (B) receives a visa later than the alien
12 otherwise would have received said visa had this
13 Act not been enacted.

14 (B) ALIEN DESCRIBED.—An alien is de-
15 scribed in this subparagraph if the alien is the
16 beneficiary of a petition for an immigrant visa
17 under section 203(b) of the Immigration and
18 Nationality Act (8 U.S.C. 1153(b)) that was
19 approved prior to the date of enactment of this
20 Act.

21 (5) RULES FOR CHARGEABILITY.—Section
22 202(b) of such Act (8 U.S.C. 1152(b)) shall apply
23 in determining the foreign state to which an alien is
24 chargeable for purposes of this subsection.

25 (6) SHORTAGE OCCUPATIONS.—

1 (A) IN GENERAL.—For each of fiscal years
2 2020 through 2028, not fewer than 5,000 of
3 the immigrant visas made available under para-
4 graph (3) of section 203(b) of the Immigration
5 and Nationality Act (8 U.S.C. 1153(b)) shall be
6 allotted to immigrants who are—

7 (i) described in section 656.5(a) of
8 title 20, Code of Federal Regulations (or a
9 successor regulation); and

10 (ii) seeking admission to the United
11 States to work in an occupation described
12 in that section.

13 (B) FISCAL YEARS 2020, 2021, AND 2022.—
14 The visas allotted under this paragraph for fis-
15 cal years 2020, 2021, and 2022 shall be allot-
16 ted in addition to the visas allotted for such fis-
17 cal years under paragraph (1).

18 **SEC. 3. POSTING AVAILABLE POSITIONS THROUGH THE DE-**
19 **PARTMENT OF LABOR.**

20 (a) DEPARTMENT OF LABOR WEBSITE.—Section
21 212(n)(6) of the Immigration and Nationality Act (8
22 U.S.C. 1182(n)(6)) is amended to read as follows:

23 “(6) For purposes of complying with paragraph
24 (1)(C)—

1 “(A) Not later than 180 days after the
2 date of the enactment of the Fairness for High-
3 Skilled Immigrants Act of 2019, the Secretary
4 of Labor shall establish a searchable internet
5 website for posting positions in accordance with
6 paragraph (1)(C) that is available to the public
7 without charge, except that the Secretary may
8 delay the launch of such website for a single pe-
9 riod identified by the Secretary by notice in the
10 Federal Register that shall not exceed 30 days.

11 “(B) The Secretary may work with private
12 companies or nonprofit organizations to develop
13 and operate the Internet website described in
14 subparagraph (A).

15 “(C) The Secretary shall promulgate rules,
16 after notice and a period for comment, to carry
17 out this paragraph.”.

18 (b) PUBLICATION REQUIREMENT.—The Secretary of
19 Labor shall submit to Congress, and publish in the Fed-
20 eral Register and in other appropriate media, a notice of
21 the date on which the Internet website required under sec-
22 tion 212(n)(6) of the Immigration and Nationality Act,
23 as established by subsection (a), will be operational.

24 (c) APPLICATION.—The amendment made by sub-
25 section (a) shall apply to any application filed on or after

1 the date that is 90 days after the date described in sub-
2 section (b).

3 (d) INTERNET POSTING REQUIREMENT.—Section
4 212(n)(1)(C) of such Act is amended—

5 (1) by redesignating clause (ii) as subclause
6 (II);

7 (2) by striking “(i) has provided” and inserting
8 the following:

9 “(ii)(I) has provided”; and

10 (3) by inserting before clause (ii), as redesign-
11 nated by paragraph (2), the following:

12 “(i) except in the case of an employer
13 filing a petition on behalf of an H–1B non-
14 immigrant who has already been counted
15 against the numerical limitations and is
16 not eligible for a full 6-year period, as de-
17 scribed in section 214(g)(7), or on behalf
18 of an H–1B nonimmigrant authorized to
19 accept employment under section 214(n),
20 has posted on the internet website de-
21 scribed in paragraph (6), for at least 30
22 calendar days, a description of each posi-
23 tion for which a nonimmigrant is sought,
24 that includes—

1 “(I) the occupational classifica-
2 tion, and if different the employer’s
3 job title for the position, in which the
4 nonimmigrant(s) will be employed;

5 “(II) the education, training, or
6 experience qualifications for the posi-
7 tion;

8 “(III) the salary or wage range
9 and employee benefits offered;

10 “(IV) the location(s) at which the
11 nonimmigrant(s) will be employed;
12 and

13 “(V) the process for applying for
14 a position; and”.

15 **SEC. 4. H-1B EMPLOYER APPLICATION REQUIREMENTS.**

16 (a) WAGE DETERMINATION INFORMATION.—Section
17 212(n)(1)(D) of the Immigration and Nationality Act (8
18 U.S.C. 1182(n)(1)(D)) is amended by inserting “the pre-
19 vailing wage determination methodology used under sub-
20 paragraph (A)(i)(II),” after “shall contain”.

21 (b) NEW APPLICATION REQUIREMENTS.—Section
22 212(n)(1) of the Immigration and Nationality Act (8
23 U.S.C. 1182(n)(1)) is amended by inserting after subpara-
24 graph (G)(ii) the following:

1 “(H)(i) The employer, or a person or entity act-
2 ing on the employer’s behalf, has not advertised any
3 available position specified in the application in an
4 advertisement that states or indicates that—

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

8 “(II) an individual who is or will be an H–
9 1B nonimmigrant shall receive priority or a
10 preference in the hiring process for such posi-
11 tion.

12 “(ii) The employer has not primarily recruited
13 individuals who are or who will be H–1B non-
14 immigrants to fill such position.

15 “(I) If the employer, in a previous period speci-
16 fied by the Secretary, employed one or more H–1B
17 nonimmigrants, the employer shall submit to the
18 Secretary the Internal Revenue Service Form W–2
19 Wage and Tax Statements filed by the employer
20 with respect to the H–1B nonimmigrants for such
21 period.”.

22 (c) LABOR CONDITION APPLICATION FEE.—Section
23 212(n) of the Immigration and Nationality Act (8 U.S.C.
24 1182(n)) is amended by adding at the end the following:

1 “(6)(A) The Secretary of Labor shall promulgate a
2 regulation that requires applicants under this subsection
3 to pay an administrative fee to cover the average paper-
4 work processing costs and other administrative costs.

5 “(B)(i) Fees collected under this paragraph shall be
6 deposited as offsetting receipts within the general fund of
7 the Treasury in a separate account, which shall be known
8 as the ‘H–1B Administration, Oversight, Investigation,
9 and Enforcement Account’ and shall remain available
10 until expended.

11 “(ii) The Secretary of the Treasury shall refund
12 amounts in such account to the Secretary of Labor for
13 salaries and related expenses associated with the adminis-
14 tration, oversight, investigation, and enforcement of the
15 H–1B nonimmigrant visa program.”.

16 (d) ELIMINATION OF B–1 IN LIEU OF H–1.—Section
17 214(g) of the Immigration and Nationality Act (8 U.S.C.
18 1184(g)) is amended by adding at the end the following:

19 “(12)(A) Unless otherwise authorized by law, an alien
20 normally classifiable under section 101(a)(15)(H)(i) who
21 seeks admission to the United States to provide services
22 in a specialty occupation described in paragraph (1) or
23 (3) of subsection (i) may not be issued a visa or admitted
24 under section 101(a)(15)(B) for such purpose.

1 “(B) Nothing in this paragraph may be construed to
2 authorize the admission of an alien under section
3 101(a)(15)(B) who is coming to the United States for the
4 purpose of performing skilled or unskilled labor if such
5 admission is not otherwise authorized by law.”.

6 **SEC. 5. INVESTIGATION AND DISPOSITION OF COMPLAINTS**
7 **AGAINST H-1B EMPLOYERS.**

8 (a) INVESTIGATION, WORKING CONDITIONS, AND
9 PENALTIES.—Section 212(n)(2)(C) of the Immigration
10 and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended
11 by striking clause (iv) and inserting the following:

12 “(iv)(I) An employer that has filed an application
13 under this subsection violates this clause by taking, failing
14 to take, or threatening to take or fail to take a personnel
15 action, or intimidating, threatening, restraining, coercing,
16 blacklisting, discharging, or discriminating in any other
17 manner against an employee because the employee—

18 “(aa) disclosed information that the employee
19 reasonably believes evidences a violation of this sub-
20 section or any rule or regulation pertaining to this
21 subsection; or

22 “(bb) cooperated or sought to cooperate with
23 the requirements under this subsection or any rule
24 or regulation pertaining to this subsection.

1 “(II) An employer that violates this clause shall be
2 liable to the employee harmed by such violation for lost
3 wages and benefits.

4 “(III) In this clause, the term ‘employee’ includes—

5 “(aa) a current employee;

6 “(bb) a former employee; and

7 “(cc) an applicant for employment.”.

8 (b) INFORMATION SHARING.—Section 212(n)(2)(H)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1182(n)(2)(H)) is amended to read as follows:

11 “(H)(i) The Director of U.S. Citizenship and Immi-
12 gration Services shall provide the Secretary of Labor with
13 any information contained in the materials submitted by
14 employers of H–1B nonimmigrants as part of the petition
15 adjudication process that indicates that the employer is
16 not complying with visa program requirements for H–1B
17 nonimmigrants.

18 “(ii) The Secretary may initiate and conduct an in-
19 vestigation and hearing under this paragraph after receiv-
20 ing information of noncompliance under this subpara-
21 graph.”.

22 **SEC. 6. LABOR CONDITION APPLICATIONS.**

23 (a) APPLICATION REVIEW REQUIREMENTS.—Section
24 212(n)(1) of the Immigration and Nationality Act (8

1 U.S.C. 1182(n)(1)) is amended, in the undesignated mat-
2 ter following subparagraph (I), as added by section 4(b)—

3 (1) in the fourth sentence, by inserting “, and
4 through the internet website of the Department of
5 Labor, without charge.” after “Washington, D.C.”;

6 (2) in the fifth sentence, by striking “only for
7 completeness” and inserting “for completeness, clear
8 indicators of fraud or misrepresentation of material
9 fact,”;

10 (3) in the sixth sentence, by striking “or obvi-
11 ously inaccurate” and inserting “, presents clear in-
12 dicators of fraud or misrepresentation of material
13 fact, or is obviously inaccurate”; and

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

19 (b) ENSURING PREVAILING WAGES ARE FOR AREA
20 OF EMPLOYMENT AND ACTUAL WAGES ARE FOR SIMI-
21 LARLY EMPLOYED.—Section 212(n)(1)(A) of the Immi-
22 gration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is
23 amended—

24 (1) in clause (i), in the undesignated matter fol-
25 lowing subclause (II), by striking “and” at the end;

1 (2) in clause (ii), by striking the period at the
2 end and inserting “, and”; and

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

4 “(iii) will ensure that—

5 “(I) the actual wages or range
6 identified in clause (i) relate solely to
7 employees having substantially the
8 same duties and responsibilities as the
9 H-1B nonimmigrant in the geo-
10 graphical area of intended employ-
11 ment, considering experience, quali-
12 fications, education, job responsibility
13 and function, specialized knowledge,
14 and other legitimate business factors,
15 except in a geographical area there
16 are no such employees, and

17 “(II) the prevailing wages identi-
18 fied in clause (ii) reflect the best
19 available information for the geo-
20 graphical area within normal com-
21 muting distance of the actual address
22 of employment at which the H-1B
23 nonimmigrant is or will be em-
24 ployed.”.

1 more than 15 percent of such full-time em-
2 ployees are H-1B nonimmigrants; and

3 “(bb) make available to the public an
4 executive summary or report describing the
5 general findings of the audits conducted
6 under this subclause.

7 “(IV) In the case of an employer subject to
8 an annual compliance audit in which there was
9 no finding of a willful failure to meet a condi-
10 tion under subparagraph (C)(ii), no further an-
11 nual compliance audit shall be conducted with
12 respect to such employer for a period of not less
13 than 4 years, absent evidence of misrepresenta-
14 tion or fraud.”.

15 (d) PENALTIES FOR VIOLATIONS.—Section
16 212(n)(2)(C) of the Immigration and Nationality Act (8
17 U.S.C. 1182(n)(2)(C)) is amended –

18 (1) in clause (i)—

19 (A) in the matter preceding subclause (I),
20 by striking “a condition of paragraph (1)(B),
21 (1)(E), or (1)(F)” and inserting “a condition of
22 paragraph (1)(B), (1)(E), (1)(F), (1)(H), or
23 1(I)”; and

24 (B) in subclause (I), by striking “\$1,000”
25 and inserting “\$3,000”;

1 (2) in clause (ii)(I), by striking “\$5,000” and
2 inserting “\$15,000”;

3 (3) in clause (iii)(I), by striking “\$35,000” and
4 inserting “\$100,000”; and

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

7 (e) INITIATION OF INVESTIGATIONS.—Section
8 212(n)(2)(G) of the Immigration and Nationality Act (8
9 U.S.C. 1182(n)(2)(G)) is amended—

10 (1) in clause (i), by striking “In the case of an
11 investigation” in the second sentence and all that
12 follows through the period at the end of the clause;

13 (2) in clause (ii), in the first sentence, by strik-
14 ing “and whose identity” and all that follows
15 through “failure or failures.” and inserting “the
16 Secretary of Labor may conduct an investigation
17 into the employer’s compliance with the require-
18 ments under this subsection.”;

19 (3) in clause (iii), by striking the second sen-
20 tence;

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

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

24 (6) in clause (iv), as so redesignated—

1 (A) by striking “clause (viii)” and inserting
2 “clause (vi)”; and

3 (B) by striking “meet a condition de-
4 scribed in clause (ii)” and inserting “comply
5 with the requirements under this subsection”;

6 (7) by amending clause (v), as so redesignated,
7 to read as follows:

8 “(v)(I) The Secretary of Labor shall pro-
9 vide notice to an employer of the intent to con-
10 duct an investigation under clause (i) or (ii).

11 “(II) The notice shall be provided in such
12 a manner, and shall contain sufficient detail, to
13 permit the employer to respond to the allega-
14 tions before an investigation is commenced.

15 “(III) The Secretary is not required to
16 comply with this clause if the Secretary deter-
17 mines that such compliance would interfere
18 with an effort by the Secretary to investigate or
19 secure compliance by the employer with the re-
20 quirements of this subsection.

21 “(IV) A determination by the Secretary
22 under this clause shall not be subject to judicial
23 review.”;

24 (8) in clause (vi), as so redesignated, by strik-
25 ing “An investigation” in the first sentence and all

1 that follows through “the determination.” in the sec-
2 ond sentence and inserting “If the Secretary of
3 Labor, after an investigation under clause (i) or (ii),
4 determines that a reasonable basis exists to make a
5 finding that the employer has failed to comply with
6 the requirements under this subsection, the Sec-
7 retary shall provide interested parties with notice of
8 such determination and an opportunity for a hearing
9 in accordance with section 556 of title 5, United
10 States Code, not later than 60 days after the date
11 of such determination.”; and

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

13 “(vii) If the Secretary of Labor, after a
14 hearing, finds that the employer has violated a
15 requirement under this subsection, the Sec-
16 retary may impose a penalty pursuant to sub-
17 paragraph (C).”.