

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 2027, not fewer than 7,200 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) TREATMENT OF FAMILY MEMBERS.—

14 (i) IN GENERAL.—Family members  
15 described in section 203(d) of the Immi-  
16 gration and Nationality Act (8 U.S.C.  
17 1153(d)) who are accompanying or fol-  
18 lowing to join a principal beneficiary seek-  
19 ing admission under subparagraph (A)  
20 shall be entitled to the same status and in  
21 the same order of consideration as such  
22 principal beneficiary.

23 (ii) NUMERICAL LIMITATION.—Family  
24 members who derive status under clause  
25 (i) shall be counted against the 7,200 im-

1 migrant visas allotted under subparagraph  
2 (A), except that in no event shall the num-  
3 ber of such visas allotted to such derivative  
4 family members exceed 2,800.

5 (C) FISCAL YEARS 2020, 2021, AND 2022.—  
6 The visas allotted under this paragraph for fis-  
7 cal years 2020, 2021, and 2022 shall be allot-  
8 ted in addition to the visas allotted for such fis-  
9 cal years under paragraph (1).

10 **SEC. 3. POSTING AVAILABLE POSITIONS THROUGH THE DE-**  
11 **PARTMENT OF LABOR.**

12 (a) DEPARTMENT OF LABOR WEBSITE.—Section  
13 212(n)(6) of the Immigration and Nationality Act (8  
14 U.S.C. 1182(n)(6)) is amended to read as follows:

15 “(6) For purposes of complying with paragraph  
16 (1)(C)—

17 “(A) Not later than 180 days after the  
18 date of the enactment of the Fairness for High-  
19 Skilled Immigrants Act of 2019, the Secretary  
20 of Labor shall establish a searchable internet  
21 website for posting positions in accordance with  
22 paragraph (1)(C) that is available to the public  
23 without charge, except that the Secretary may  
24 delay the launch of such website for a single pe-

1           riod identified by the Secretary by notice in the  
2           Federal Register that shall not exceed 30 days.

3           “(B) The Secretary may work with private  
4           companies or nonprofit organizations to develop  
5           and operate the Internet website described in  
6           subparagraph (A).

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

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

16          (c) APPLICATION.—The amendment made by sub-  
17 section (a) shall apply to any application filed on or after  
18 the date that is 90 days after the date described in sub-  
19 section (b).

20          (d) INTERNET POSTING REQUIREMENT.—Section  
21 212(n)(1)(C) of such Act is amended—

22           (1) by redesignating clause (ii) as subclause  
23           (II);

24           (2) by striking “(i) has provided” and inserting  
25           the following:

1 “(ii)(I) has provided”; and

2 (3) by inserting before clause (ii), as redesignated by paragraph (2), the following:

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

16 “(I) the occupational classifica-  
17 tion, and if different the employer’s  
18 job title for the position, in which the  
19 nonimmigrant(s) will be employed;

20 “(II) the education, training, or  
21 experience qualifications for the posi-  
22 tion;

23 “(III) the salary or wage range  
24 and employee benefits offered;  
25

1                                   “(IV) the location(s) at which the  
2                                   nonimmigrant(s) will be employed;  
3                                   and

4                                   “(V) the process for applying for  
5                                   a position; and”.

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

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

12           (b) NEW APPLICATION REQUIREMENTS.—Section  
13 212(n)(1) of the Immigration and Nationality Act (8  
14 U.S.C. 1182(n)(1)) is amended by inserting after subpara-  
15 graph (G)(ii) the following:

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

20                                   “(I) such position is only available to an  
21                                   individual who is or will be an H-1B non-  
22                                   immigrant; or

23                                   “(II) an individual who is or will be an H-  
24                                   1B nonimmigrant shall receive priority or a

1 preference in the hiring process for such posi-  
2 tion.

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

6 “(I) If the employer, in a previous period speci-  
7 fied by the Secretary, employed one or more H–1B  
8 nonimmigrants, the employer shall submit to the  
9 Secretary the Internal Revenue Service Form W–2  
10 Wage and Tax Statements filed by the employer  
11 with respect to the H–1B nonimmigrants for such  
12 period.”.

13 (c) LABOR CONDITION APPLICATION FEE.—Section  
14 212(n) of the Immigration and Nationality Act (8 U.S.C.  
15 1182(n)) is amended by adding at the end the following:

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

20 “(B)(i) Fees collected under this paragraph shall be  
21 deposited as offsetting receipts within the general fund of  
22 the Treasury in a separate account, which shall be known  
23 as the ‘H–1B Administration, Oversight, Investigation,  
24 and Enforcement Account’ and shall remain available  
25 until expended.



1       “(iv)(I) An employer that has filed an application  
2 under this subsection violates this clause by taking, failing  
3 to take, or threatening to take or fail to take a personnel  
4 action, or intimidating, threatening, restraining, coercing,  
5 blacklisting, discharging, or discriminating in any other  
6 manner against an employee because the employee—

7               “(aa) disclosed information that the employee  
8 reasonably believes evidences a violation of this sub-  
9 section or any rule or regulation pertaining to this  
10 subsection; or

11               “(bb) cooperated or sought to cooperate with  
12 the requirements under this subsection or any rule  
13 or regulation pertaining to this subsection.

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

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

18               “(aa) a current employee;

19               “(bb) a former employee; and

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

21       (b) INFORMATION SHARING.—Section 212(n)(2)(H)  
22 of the Immigration and Nationality Act (8 U.S.C.  
23 1182(n)(2)(H)) is amended to read as follows:

24       “(H)(i) The Director of U.S. Citizenship and Immi-  
25 gration Services shall provide the Secretary of Labor with

1 any information contained in the materials submitted by  
2 employers of H–1B nonimmigrants as part of the petition  
3 adjudication process that indicates that the employer is  
4 not complying with visa program requirements for H–1B  
5 nonimmigrants.

6 “(ii) The Secretary may initiate and conduct an in-  
7 vestigation and hearing under this paragraph after receiv-  
8 ing information of noncompliance under this subpara-  
9 graph.”.

10 **SEC. 6. LABOR CONDITION APPLICATIONS.**

11 (a) APPLICATION REVIEW REQUIREMENTS.—Section  
12 212(n)(1) of the Immigration and Nationality Act (8  
13 U.S.C. 1182(n)(1)) is amended, in the undesignated mat-  
14 ter following subparagraph (I), as added by section 4(b)—

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

18 (2) in the fifth sentence, by striking “only for  
19 completeness” and inserting “for completeness, clear  
20 indicators of fraud or misrepresentation of material  
21 fact,”;

22 (3) in the sixth sentence, by striking “or obvi-  
23 ously inaccurate” and inserting “, presents clear in-  
24 dicators of fraud or misrepresentation of material  
25 fact, or is obviously inaccurate”; and



1 and other legitimate business factors,  
2 except in a geographical area there  
3 are no such employees, and

4 “(II) the prevailing wages identi-  
5 fied in clause (ii) reflect the best  
6 available information for the geo-  
7 graphical area within normal com-  
8 muting distance of the actual address  
9 of employment at which the H-1B  
10 nonimmigrant is or will be em-  
11 ployed.”.

12 (c) PROCEDURES FOR INVESTIGATION AND DISPOSI-  
13 TION.—Section 212(n)(2)(A) of the Immigration and Na-  
14 tionality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

15 (1) by striking “(2)(A) Subject” and inserting  
16 “(2)(A)(i) Subject”;

17 (2) by striking the fourth sentence; and

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

19 “(ii)(I) Upon receipt of a complaint under  
20 clause (i), the Secretary may initiate an inves-  
21 tigation to determine whether such a failure or  
22 misrepresentation has occurred.

23 “(II) The Secretary may conduct—

1           “(aa) surveys of the degree to which  
2           employers comply with the requirements  
3           under this subsection; and

4           “(bb) subject to subclause (IV), an-  
5           nual compliance audits of any employer  
6           that employs H-1B nonimmigrants during  
7           the applicable calendar year.

8           “(III) Subject to subclause (IV), the Sec-  
9           retary shall—

10           “(aa) conduct annual compliance au-  
11           dits of each employer that employs more  
12           than 100 full-time equivalent employees  
13           who are employed in the United States if  
14           more than 15 percent of such full-time em-  
15           ployees are H-1B nonimmigrants; and

16           “(bb) make available to the public an  
17           executive summary or report describing the  
18           general findings of the audits conducted  
19           under this subclause.

20           “(IV) In the case of an employer subject to  
21           an annual compliance audit in which there was  
22           no finding of a willful failure to meet a condi-  
23           tion under subparagraph (C)(ii), no further an-  
24           nual compliance audit shall be conducted with  
25           respect to such employer for a period of not less

1 than 4 years, absent evidence of misrepresenta-  
2 tion or fraud.”.

3 (d) PENALTIES FOR VIOLATIONS.—Section  
4 212(n)(2)(C) of the Immigration and Nationality Act (8  
5 U.S.C. 1182(n)(2)(C)) is amended –

6 (1) in clause (i)—

7 (A) in the matter preceding subclause (I),  
8 by striking “a condition of paragraph (1)(B),  
9 (1)(E), or (1)(F)” and inserting “a condition of  
10 paragraph (1)(B), (1)(E), (1)(F), (1)(H), or  
11 1(I)”;

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

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

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

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

20 (e) INITIATION OF INVESTIGATIONS.—Section  
21 212(n)(2)(G) of the Immigration and Nationality Act (8  
22 U.S.C. 1182(n)(2)(G)) is amended—

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

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

7           (3) in clause (iii), by striking the second sen-  
8           tence;

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

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

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

13               (A) by striking “clause (viii)” and inserting  
14               “clause (vi)”; and

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

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

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

23               “(II) The notice shall be provided in such  
24               a manner, and shall contain sufficient detail, to

1 permit the employer to respond to the allega-  
2 tions before an investigation is commenced.

3 “(III) The Secretary is not required to  
4 comply with this clause if the Secretary deter-  
5 mines that such compliance would interfere  
6 with an effort by the Secretary to investigate or  
7 secure compliance by the employer with the re-  
8 quirements of this subsection.

9 “(IV) A determination by the Secretary  
10 under this clause shall not be subject to judicial  
11 review.”;

12 (8) in clause (vi), as so redesignated, by strik-  
13 ing “An investigation” in the first sentence and all  
14 that follows through “the determination.” in the sec-  
15 ond sentence and inserting “If the Secretary of  
16 Labor, after an investigation under clause (i) or (ii),  
17 determines that a reasonable basis exists to make a  
18 finding that the employer has failed to comply with  
19 the requirements under this subsection, the Sec-  
20 retary shall provide interested parties with notice of  
21 such determination and an opportunity for a hearing  
22 in accordance with section 556 of title 5, United  
23 States Code, not later than 60 days after the date  
24 of such determination.”; and

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

1                   “(vii) If the Secretary of Labor, after a  
2                   hearing, finds that the employer has violated a  
3                   requirement under this subsection, the Sec-  
4                   retary may impose a penalty pursuant to sub-  
5                   paragraph (C).”.