

AMENDMENT TO H.R. 6136
OFFERED BY MR. ISSA OF CALIFORNIA

Add at the end of division B the following:

1 **TITLE VI—PROTECT AND GROW**
2 **AMERICAN JOBS**

3 **SECTION 6101. SHORT TITLE.**

4 This title may be cited as the “Protect and Grow
5 American Jobs Act”.

6 **SEC. 6102. PROHIBITION ON DISPLACEMENT OF UNITED**
7 **STATES WORKERS.**

8 Section 212(n)(1) of the Immigration and Nationality
9 Act (8 U.S.C. 1182(n)(1)) is amended—

10 (1) in subparagraph (E)—

11 (A) in clause (i), by striking “within the
12 period beginning 90 days before and ending 90
13 days after the date of filing of any visa petition
14 supported by the application.” and inserting
15 “during the period beginning 90 days before the
16 date of filing of any visa petition supported by
17 the application and ending on the last day of
18 the employer’s employment of any alien as an
19 H-1B nonimmigrant pursuant to such visa peti-

1 tion or any extension of such visa petition.”;

2 and

3 (B) in clause (ii), by striking the last sen-

4 tence; and

5 (2) by amending subparagraph (F) to read as

6 follows:

7 “(F)(i) Except as provided in clause (ii), in the
8 case of an application described in subparagraph
9 (E)(ii), the employer will not place the non-
10 immigrant with another employer (regardless of
11 whether or not such other employer is an H-1B-de-
12 pendent employer) where—

13 “(I) the nonimmigrant performs duties, in
14 whole or in part, at one or more worksites—

15 “(aa) owned, operated, or controlled
16 by such other employer; or

17 “(bb) physically located within, adja-
18 cent to, or in close proximity to, a worksite
19 described in item (aa) for the purpose of
20 avoiding the requirements of this subpara-
21 graph; and

22 “(II) there are indicia of an employment
23 relationship between the nonimmigrant and
24 such other employer.

1 “(ii) Clause (i) shall not apply if the em-
2 ployer—

3 “(I) has received written assurance from
4 the other employer that, during the period be-
5 ginning 90 days before the date of the place-
6 ment of the nonimmigrant with the other em-
7 ployer and ending at the conclusion of such
8 placement, the other employer—

9 “(aa) has not and does not intend to
10 displace a United States worker employed
11 by the other employer; and

12 “(bb) will inform the employer with-
13 out delay if the other employer displaces a
14 United States worker employed by the
15 other employer during such period;

16 “(II) will, if it learns that the other em-
17 ployer has displaced a United States worker
18 employed by the other employer during the pe-
19 riod specified in subclause (I), without delay—

20 “(aa) inform the Secretary of such
21 displacement;

22 “(bb) cease the placement with the
23 other employer of the nonimmigrant and
24 other H-1B nonimmigrants employed by
25 the employer in jobs that are essentially

1 the equivalent of the job for which the H-
2 1B nonimmigrant was sought (as described
3 in paragraph (4)(B)); and

4 “(cc) cease the performance of any
5 services for the benefit of the other em-
6 ployer by the nonimmigrant and other H-
7 1B nonimmigrants employed by the em-
8 ployer in jobs that are essentially the
9 equivalent of the job for which the H-1B
10 nonimmigrant was sought (as described in
11 paragraph (4)(B)); and

12 “(III) has received written assurance from
13 the other employer that the other employer will
14 provide the Secretary with such reasonable in-
15 formation as the Secretary may request to carry
16 out investigations pursuant to subparagraphs
17 (A) and (F) of paragraph (2) regarding the em-
18 ployer.”.

19 **SEC. 6103. REQUIRED RECRUITMENT OF UNITED STATES**
20 **WORKERS.**

21 Section 212(n)(1)(G) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1182(n)(1)(G)) is amended—

23 (1) in clause (i)—

24 (A) in subclause (I), by striking “and” at
25 the end;

1 (B) in subclause (II), by striking the pe-
2 riod at the end and inserting “; and”; and

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

4 “(III) has submitted with the application a
5 report summarizing recruitment efforts made,
6 including—

7 “(aa) the good faith steps taken to re-
8 cruit United States workers under sub-
9 clause (I);

10 “(bb) the number of United States
11 workers who applied for the job;

12 “(cc) the number of such workers who
13 were offered the job and, if so, whether the
14 workers accepted the offers; and

15 “(dd) for each worker under item (bb)
16 who was not offered the job, the reason
17 why the job was not offered.”; and

18 (2) in clause (ii), by inserting “an exempt H-
19 1B nonimmigrant or is” after “who is”.

20 **SEC. 6104. REQUIRED WAGES.**

21 Section 212(n)(1)(A)(i) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1182(n)(1)(A)(i)) is amended—

23 (1) by striking “, or” at the end of subclause
24 (I) and inserting a semicolon;

1 (2) by striking the comma at the end of sub-
2 clause (II) and inserting “; or”;

3 (3) in the matter following subclause (II)—

4 (A) by striking “greater,” and inserting
5 “greatest,”; and

6 (B) by striking “, and” at the end and in-
7 serting “; and”; and

8 (4) by inserting after subclause (II) the fol-
9 lowing:

10 “(III) the mean wage level for the oc-
11 cupational classification in the area of em-
12 ployment, but only in the case of an H-1B-
13 dependent employer (as defined in para-
14 graph (3)(A)) that places an H-1B non-
15 immigrant with another employer in a situ-
16 ation described in subparagraph
17 (F)(i)(I);”.

18 **SEC. 6105. ENFORCEMENT.**

19 (a) **FAILURE TO MEET CONDITIONS.**—Section
20 212(n)(2) of the Immigration and Nationality Act (8
21 U.S.C. 1182(n)(2)) is amended—

22 (1) in subparagraph (C)(iii), in the matter pre-
23 ceding subclause (I), by striking “within the period
24 beginning 90 days before and ending 90 days after
25 the date of filing of any visa petition supported by

1 the application—” and inserting “during the period
2 beginning 90 days before the date of filing of any
3 visa petition supported by the application and end-
4 ing on the last day of the employer’s employment of
5 any alien as an H-1B nonimmigrant pursuant to
6 such visa petition or any extension of such visa peti-
7 tion, or during the period beginning 90 days before
8 the date of the placement and ending at the conclu-
9 sion of such placement, but only in the case of an
10 H-1B-dependent employer (as defined in paragraph
11 (3)(A)) that places an H-1B nonimmigrant with an-
12 other employer in a situation described in paragraph
13 (1)(F) and the H-1B-dependent employer has not
14 complied with the requirements of paragraph
15 (1)(F)(ii)—”;

16 (2) in subparagraph (E)—

17 (A) by striking “a nonexempt” and insert-
18 ing “an”; and

19 (B) by striking “(1); except that” and all
20 that follows through the period at the end and
21 inserting “(1).”; and

22 (3) in subparagraph (F)—

23 (A) by striking “(F)” and inserting
24 “(F)(i)”;

25 (B) by striking the last sentence; and

1 (C) by adding at the end the following:

2 “(ii) The Secretary may—

3 “(I) on a case-by-case basis, subject an H-1B-
4 dependent employer to random investigations; and

5 “(II) shall conduct investigations of at least 5
6 percent of H-1B-dependent employers annually.

7 “(iii) The authority of the Secretary under this sub-
8 paragraph shall not be construed to be subject to, or lim-
9 ited by, the requirements of subparagraph (A).”.

10 (b) FEE TO ENSURE EFFECTIVE ENFORCEMENT OF
11 THE H-1B PROGRAM.—

12 (1) IMPOSITION OF FEE.—Section 214(c) of the
13 Immigration and Nationality Act (8 U.S.C. 1184(c))
14 is amended by adding at the end the following:

15 “(15)(A) In addition to any other fees authorized by
16 law, the Secretary of Homeland Security shall impose a
17 fee to ensure effective enforcement on an H-1B-dependent
18 employer (as defined in section 212(n)(3)(A)) filing a peti-
19 tion under paragraph (1)—

20 “(i) initially to grant an alien nonimmigrant
21 status described in section 101(a)(15)(H)(i)(b); or

22 “(ii) to obtain authorization for an alien having
23 such status to change employers.

24 “(B) The initial amount of the fee imposed under
25 subparagraph (A) shall be \$495. The Secretary of Labor

1 periodically may recommend to the Secretary of Homeland
2 Security that such fee be adjusted as necessary to ensure
3 recovery of the full costs of carrying out the enforcement
4 programs and activities described in section
5 212(n)(2)(F)(ii), and the Secretary of Homeland Security
6 by rule (under section 553 of title 5, United States Code)
7 may adjust the fee pursuant to such recommendation.

8 “(C) The fee imposed under subparagraph (A) shall
9 only apply to principal aliens and not to the spouses or
10 children who are accompanying or following to join such
11 principal aliens.

12 “(D) Fees collected under this paragraph shall be de-
13 posited in the Treasury in accordance with section
14 286(w).”

15 (2) ESTABLISHMENT OF ACCOUNT; USE OF
16 FEES.—Section 286 of the Immigration and Nation-
17 ality Act (8 U.S.C. 1356) is amended by adding at
18 the end the following:

19 “(w) FEE TO ENSURE EFFECTIVE ENFORCEMENT
20 OF THE H-1B PROGRAM ACCOUNT.—

21 “(1) IN GENERAL.—There is established in the
22 general fund of the Treasury a separate account,
23 which shall be known as the ‘Fee to Ensure Effec-
24 tive Enforcement of the H-1B Program Account’.

25 Notwithstanding any other provision of law, there

1 shall be deposited as offsetting receipts into the ac-
2 count all fees collected under section 214(c)(15).

3 “(2) USE OF FEES.—Amounts deposited into
4 the Fee to Ensure Effective Enforcement of the H-
5 1B Program Account shall be available, to the ex-
6 tent and in such amounts as are provided in advance
7 in appropriations Acts, to the Secretary of Labor for
8 enforcement programs and activities described in
9 section 212(n)(2)(F)(ii).”.

10 **SEC. 6106. H-1B DEPENDENT EMPLOYER DEFINED.**

11 Section 212(n)(3)(A)(iii)(II) of the Immigration and
12 Nationality Act (8 U.S.C. 1182(n)(3)(A)(iii)(II)) is
13 amended by striking “15” and inserting “20”.

14 **SEC. 6107. EXEMPT H-1B NONIMMIGRANT DEFINED.**

15 Section 212(n)(3)(B) of the Immigration and Nation-
16 ality Act (8 U.S.C. 1182(n)(3)(B)) is amended—

17 (1) by amending clause (i) to read as follows:

18 “(i) the term ‘exempt H-1B nonimmigrant’
19 means an H-1B nonimmigrant who receives wages
20 (including cash bonuses and similar compensation)
21 at an annual rate equal to at least—

22 “(I) during the 1-year period beginning on
23 the date of the enactment of the Protect and
24 Grow American Jobs Act, the lesser of \$90,000

1 and the mean wage level for the occupational
2 classification in the area of employment; and

3 “(II) after such 1-year period, the lesser
4 of—

5 “(aa) \$135,000 (or any applicable ad-
6 justed amount under clause (iii)); and

7 “(bb) the greater of \$90,000 (or any
8 applicable adjusted amount under clause
9 (iii)) and the mean wage level for the occu-
10 pational classification in the area of em-
11 ployment;”;

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

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

15 “(iii) the dollar amounts described
16 clause (i)(II) (as of the last increase to
17 such amount) shall be increased, effective
18 for the third fiscal year that begins after
19 the date of the enactment of this clause
20 and for every third fiscal year thereafter,
21 by the percentage (if any) by which the
22 Consumer Price Index for the month of
23 June preceding the date on which such in-
24 crease takes effect exceeds the Consumer

1 Price Index for the same month of the
2 third preceding calendar year.”.

3 **SEC. 6108. REPORT ON H-1B-DEPENDENT EMPLOYERS.**

4 (a) IN GENERAL.—The Secretary of Labor and the
5 Secretary of Homeland Security annually shall publish a
6 joint report on the use of the H-1B program by employers
7 that are H-1B-dependent employers. The report shall in-
8 clude information on the following:

9 (1) Each H-1B-dependent-employer that filed
10 an application under section 212(n)(1) of such Act
11 (8 U.S.C. 1182(n)(1)).

12 (2) The occupational classifications and re-
13 quired wages listed in such applications.

14 (3) The worksites at which the nonimmigrants
15 sought in such applications were to be employed or
16 placed.

17 (4) Each investigation conducted pursuant to
18 section 212(n)(2)(A) of such Act (8 U.S.C.
19 1182(n)(2)(A)) regarding an H-1B-dependent em-
20 ployer and the outcomes of such investigations.

21 (5) Each investigation conducted pursuant to
22 section 212(n)(2)(F)(ii) of such Act, as added by
23 section 6105(a)(3) of this title, and the outcomes of
24 such investigations.

1 (b) DEFINITION.—For purposes of subsection (a),
2 the term “H-1B-dependent employer” has the meaning
3 given such term in section 212(n)(3)(A) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1182(a)(3)(A)).

5 **SEC. 6109. EFFECTIVE DATE.**

6 (a) IN GENERAL.—The amendments made by sec-
7 tions 6102 through 6107 of this title shall take effect on
8 the date of the enactment of this Act and shall apply with
9 respect to applications filed pursuant to section 212(n)(1)
10 of the Immigration and Nationality Act (8 U.S.C.
11 1182(n)(1)) on or after such date.

12 (b) EXCEPTION.—The fee imposed under section
13 214(c)(15) of the Immigration and Nationality Act (8
14 U.S.C. 1184(c)(15)), as added by section 6105(b) of this
15 title, shall apply to petitions filed under section 214(c)(1)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1184(c)(1)) on or after the date that is 90 days after the
18 date of the enactment of this Act.

