115TH CONGRESS
1ST SESSION

S._____

To amend the Immigration and Nationality Act to provide for a State-sponsored nonimmigrant pilot program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To amend the Immigration and Nationality Act to provide for a State-sponsored nonimmigrant pilot 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 “State Sponsored Visa
5  Pilot Program Act of 2017”.
6  SEC. 2. STATE-SPONSORED NONIMMIGRANT PROGRAM.
7  Section 101(a)(15) of the Immigration and Nation-
8  ality Act (8 U.S.C. 1101(a)(15)) is amended—
9  (1) in subparagraph (U)(iii), by striking the
10  “or” at the end;
(2) in subparagraph (V), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(W)(i) an alien who is sponsored by a State and who is coming temporarily to the United States to reside in the State to perform services, provide capital investment, direct the operations of an enterprise, or otherwise contribute to the economic development agenda of the State in a manner determined by the State; and

(ii) the alien spouse and minor children of any alien described in clause (i)."

SEC. 3. ADMISSION OF STATE-SPONSORED NON- IMMIGRANTS.

(a) REQUIREMENTS FOR STATE-SPONSORED NON- IMMIGRANTS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(1) in subsection (h), by striking "(H)(i)(b) or (e), (L), or (V)" and inserting "(H)(i)(b), (H)(i)(e), (L), (V), or (W)"; and

(2) by adding at the end the following:

"(s) REQUIREMENTS APPLICABLE TO STATE-SPONSORED NONIMMIGRANT VISAS.—

"(1) DEFINITIONS.—In this subsection:
"(A) RESIDE.—The term 'reside' means to live and establish a residence in a State for a consecutive period of more than 14 days (not including any period after the approval of the resident's petition for immigrant status).

"(B) SECRETARY.—Except as otherwise specifically provided in this subsection, the term 'Secretary' means the Secretary of Homeland Security.

"(C) STATE.—Notwithstanding section 101(a)(36), the term 'State' means a State of the United States and the District of Columbia.

"(D) STATE-SPONSORED NON-IMMIGRANT.—The term 'State-sponsored non-immigrant' means an alien who has been sponsored by a State for admission under section 101(a)(15)(W).

"(E) STATE-SPONSORED NONIMMIGRANT PROGRAM.—The term 'State-sponsored non-immigrant program' means a nonimmigrant program to regulate the employment, investment, and residence of State-sponsored non-immigrants.

"(F) STATE-SPONSORED NONIMMIGRANT STATUS.—The term 'State-sponsored non-
immigrant status' means status granted to an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(W).

"(2) STATE-SPONSORED NONIMMIGRANT PROGRAM.—Any State may submit an application to the Secretary to participate in the State-sponsored nonimmigrant program by sponsoring aliens for admission to the United States.

"(3) STATE-SPONSORED NONIMMIGRANT PROGRAM APPROVAL.—The Secretary shall approve any application submitted by a State (or compact of States) under paragraph (2) for a State-sponsored nonimmigrant program that—

"(A) was approved by the legislature of the State;

"(B) regulates, in a manner determined by the State, the employment and residence of State-sponsored nonimmigrants;

"(C) implements procedures, in a manner determined by the Secretary, to inform the Secretary of the failure of a nonimmigrant to comply with the terms of State-sponsored nonimmigrant status when the State is made aware of such failure;
“(D) allows, in a manner determined by the State, a State-sponsored nonimmigrant who has been admitted to seek employment with an employer other than the employer with which the nonimmigrant was initially employed; and

“(E) implements procedures, in a manner determined by the Secretary, to annually inform the Secretary of the address and employment of all State-sponsored nonimmigrants residing in the State.

“(4) STATE PETITION.—

“(A) IN GENERAL.—A State that participates in the State-sponsored nonimmigrant program shall submit a petition in such form and containing such information as the Secretary shall specify to sponsor an alien under this subsection.

“(B) APPROVAL.—A visa may not be granted to an alien described in subparagraph (A) until the Secretary approves a petition submitted pursuant to subparagraph (A). Such approval does not, of itself, establish that the alien is a nonimmigrant.

“(C) FEE.—A State that submits a petition under subparagraph (A) shall pay a fee in
amount determined by the Secretary to cover
the cost of the adjudication of the application.

"(5) STATE-SPONSORED NONIMMIGRANTS.—
The Secretary of State shall approve a non-
immigrant visa for an alien and the Secretary of
Homeland Security shall admit the alien to the
United States as a State-sponsored nonimmigrant or
grant State-sponsored nonimmigrant status to the
alien if the alien—

"(A) is otherwise admissible under this
Act;

"(B) has not been convicted of a felony,
any crime of violence (as defined in section 16
of title 18, United States Code), or any crime
of reckless driving or of driving while intoxi-
cated or under the influence of alcohol or of
prohibited substances;

"(C) is petitioned for by a State that par-
ticipates in the State-sponsored nonimmigrant
program approved by the Secretary under para-
graph (3);

"(D) has not previously violated any term
or condition of State-sponsored nonimmigrant
status; and
“(E) has paid any bond that the State may require under paragraph (13).

“(6) PERIOD OF AUTHORIZED STATUS.—

“(A) IN GENERAL.—The period of authorized status for a State-sponsored nonimmigrant shall be a period determined by the State, but may not exceed 3 years.

“(B) RENEWAL.—

“(i) LOCATION.—Subject to clause (ii), the period of authorized status under subparagraph (A) shall be renewable inside or outside of the United States.

“(ii) CONDITION.—Renewals under clause (i) may be granted only if—

“(I) the sponsoring State requests such renewal; and

“(II) the State-sponsored non-immigrant has resided continuously in such sponsoring State, or States subject to an interstate compact (not including any period of residence after the approval of a petition for immigrant status of which the alien is a beneficiary).
“(C) TERMINATION.—The Secretary shall terminate the period of authorized status if—

“(i) the State-sponsored non-immigrant resides or works outside of the State, or States subject to an interstate compact under paragraph (7), that sponsored the alien;

“(ii) the State-sponsored non-immigrant fails to follow all rules and regulations required by the State, as determined by the State (following any appeals process the State may create); or

“(iii) the State that sponsored the nonimmigrant requests that the status of the nonimmigrant be terminated (following any appeals process the State may create) unless another State sponsors the non-immigrant.

“(D) EMPLOYMENT AUTHORIZATION.—

“(i) IN GENERAL.—All aliens admitted as State-sponsored nonimmigrants under section 101(a)(15)(W)—

“(I) shall be authorized for employment for purposes of section 274A; and
“(II) shall be issued appropriate
documentation evidencing such au-
thorization.

“(ii) STATE REGULATION.—Notwith-
standing clause (i), the employment of
State-sponsored nonimmigrants may be
regulated in a manner determined by each
State that participates in the State-spon-
sored nonimmigrant program.

“(7) STATE COMPACTS.—

“(A) IN GENERAL.—States may enter into
interstate compacts for the joint implementa-
tion or administration of the State-sponsored
nonimmigrant program in such States.

“(B) CONSIDERATION.—A State-sponsored
nonimmigrant shall be considered to be spon-
sored by a State if the State-sponsored non-
immigrant is sponsored by any State subject to
an interstate compact under subparagraph (A)
and resides in any such State.

“(8) APPEALS.—

“(A) FEDERAL APPEALS.—The denial of
an application by a State to be a State-spon-
sored nonimmigrant or the request to terminate
the period of authorized status by a State—
“(i) is not reviewable by any Federal department, agency, or court; and

“(ii) may not be grounds for an appeal of a termination of a visa or status for a State-sponsored nonimmigrant.

“(B) STATE APPEALS.—At the sole discretion of the State and in a manner determined by the State, a State that participates in the State-sponsored nonimmigrant program may create a process for a State-sponsored nonimmigrant or an alien that has applied for participation in the State-sponsored nonimmigrant program in the State to appeal an adjudication of an application by the State or determination by the State that the State-sponsored nonimmigrant violated the terms or conditions that were created by the State for the participation of the alien in the State-sponsored nonimmigrant program in the State.

“(9) WAIVER OF RIGHTS PROHIBITED.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), a State-sponsored nonimmigrant may not be required to waive any substantive rights or protections under this Act.
"(B) CONSTRUCTION.—Nothing under this paragraph may be construed to affect the interpretation of any other law.

"(C) EXCEPTION.—Notwithstanding subparagraph (A) or any other provision of law, an alien may not be provided State-sponsored non-immigrant status unless the alien has waived any right—

"(i) to review or appeal under this Act of an immigration officer’s determination as to the admissibility of the alien at the port of entry into the United States; or

"(ii) to contest or appeal, other than on the basis of an application for asylum, any action for removal of the alien.

"(10) TAX RESPONSIBILITIES.—An employer shall comply with all applicable Federal, State, and local tax laws with respect to each State-sponsored nonimmigrant employed by the employer.

"(11) LABOR AND TAX LAWS.—State-sponsored nonimmigrants shall be subject to all Federal, State, and local laws regarding taxation, employment, or hiring of persons in the State.

"(12) FEDERAL PUBLIC BENEFITS.—
“(A) IN GENERAL.—State-sponsored non-immigrants—

“(i) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986;

“(ii) shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section; and

“(iii)(I) shall not be allowed any credit under section 24 or 32 of the Internal Revenue Code of 1986; and

“(II) in the case of a joint return, no credit shall be allowed under either such section if both spouses are State-sponsored nonimmigrants.

“(B) EMPLOYER FEE.—For purposes of subsections (a)(2) and (b)(1)(B) of 4980H of the Internal Revenue Code of 1986, a State-sponsored nonimmigrant shall be treated as a full-time employee certified as having enrolled in a qualified health plan with respect to which an applicable premium tax credit or cost-shar-
ing reduction is allowed or paid with respect to
the employee.

"(C) OTHER BENEFITS.—Notwithstanding
any other provision of law, a State-sponsored
nonimmigrant shall not be eligible for—

"(i) any assistance or benefits pro-
vided under a State program funded under
the temporary assistance for needy families
program under part A of title IV of the
Social Security Act (42 U.S.C. 601 et
seq.);

"(ii) any medical assistance provided
under a State Medicaid plan under title
XIX of the Social Security Act (42 U.S.C.
1396 et seq.) or under a waiver of such
plan, other than emergency medical assist-
ance provided under paragraphs (2) and
(3) of section 1903(v), and any child
health assistance provided under a State
child health plan under title XXI of the
Social Security Act (42 U.S.C. 1397aa et
seq.) or under a waiver of such plan;

"(iii) any benefits or assistance pro-
vided under the supplemental nutrition as-
sistance program established under the
Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

"(iv) supplemental security income benefits provided under title XVI of the Social Security Act (42 U.S.C. 1381);

"(v) Federal Pell Grants under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a);

"(vi) housing vouchers under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

"(vii) Federal old-age, survivors, and disability insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.);

"(viii) health insurance benefits for the aged and disabled under the Medicare Program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

"(ix) assistance or benefits provided under the program of block grants to States for social services under subtitle A of title XX of the Social Security Act (42 U.S.C. 1397 et seq.).
“(D) Employer payments.—An employer of a State-sponsored nonimmigrant shall pay into the general fund of the Treasury an amount equivalent to the Federal tax on the wages paid to the nonimmigrants that the employer would be obligated to pay under chapters 21 and 23 of the Internal Revenue Code of 1986 had the nonimmigrants been subject to such chapters, subject to the same penalties as provided for failure to pay such tax.

“(E) Inclusion of nonimmigrants in save.—Not later than 30 days after the date of the enactment of the State Sponsored Visa Pilot Program Act of 2017, the Secretary shall modify the Systematic Alien Verification for Entitlements Program of the United States Citizenship and Immigration Services to add any status under section 101(a)(15)(W) as an alien category that is ineligible for any benefit program listed in subparagraph (C).

“(13) Bonds.—

“(A) In general.—States may require State-sponsored nonimmigrants to pay a bond in an amount determined by the State to incentivize voluntary compliance with the terms
and conditions of the State-sponsored non-immigrant program.

"(B) Study.—

"(i) In General.—At the end of each fiscal year, the Inspector General of the Department of Homeland Security and the Comptroller General of the United States shall each independently submit a report to the congressional committees specified in clause (iii) that identifies, for each State that participates in the State-sponsored nonimmigrant program, the percentage of State-sponsored nonimmigrants that have resided or worked illegally in a State other than the State that sponsored them (not including any State-sponsored nonimmigrants who are beneficiaries of approved immigration petitions).

"(ii) Assignment.—A State-sponsored nonimmigrant who resides or works illegally in a State other than the State that sponsored them shall be assigned to the percentage of the State that initially sponsored the alien if the State participates in an interstate compact.
“(iii) Congressional Committees.—The congressional committees specified in this clause are—

“(I) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(II) the Committee on the Judiciary of the Senate;

“(III) the Committee on Homeland Security of the House of Representatives; and

“(IV) the Committee on the Judiciary of the House of Representatives.

“(C) Mandatory Bonds.—

“(i) In General.—During the first fiscal year following a determination under subparagraph (B) by the Comptroller General or the Inspector General of the Department of Homeland Security that more than 3 percent of the State-sponsored non-immigrants sponsored by a State violated the terms and conditions of State-sponsored nonimmigrant status in the most recently completed fiscal year, the State shall
require each State-sponsored non-immigrant in the State, as a condition of participation in the State-sponsored non-immigrant program, to post a bond equal to not less than $4,000.

"(ii) Subsequent bonds.—The bond amount under clause (i) shall be raised by $1,000 during each fiscal year following a subsequent determination under subparagraph (B) by the Comptroller General or the Inspector General of the Department of Homeland Security that more than 3 percent of the State-sponsored non-immigrants sponsored by the State violated the terms and conditions of State-sponsored nonimmigrant status in the most recently completed fiscal year.

"(iii) Inflation adjustment.—Effective for the first fiscal year that begins more than 6 months after the date of the enactment of the State Sponsored Visa Pilot Program Act of 2017, and for each fiscal year thereafter, the amounts described in this subparagraph shall be increased by the percentage (if any) by
which the Consumer Price Index for the month of June preceding the date on which such increase takes effect exceeds the Consumer Price Index for all urban consumers published by the Department of Labor for the same month of the preceding calendar year.

"(D) REIMBURSEMENT OF BONDS.—

"(i) IN GENERAL.—Bonds paid to a State under this paragraph shall be reimbursed to any State-sponsored non-immigrant that has not worked or resided in a State other than the State that sponsored the nonimmigrant or otherwise resided in the United States without status under the immigration laws in accordance with this subparagraph.

"(ii) FULL REIMBURSEMENT.—The full amount of the bond shall be reimbursed in full immediately after—

"(I)(aa) the alien applies to the Secretary of State (or the designee of such Secretary) at a United States embassy, consulate, or, if specified by
the Secretary, other locations outside the United States; and

“(bb) in connection with the application, the State-sponsored nonimmigrant confirms his or her identity, or verifies his or her departure at such time from the United States pursuant to a biometric entry and exit data system;

“(II) an approved petition for lawful permanent residency is approved on behalf of the State-sponsored nonimmigrant; or

“(III) the State-sponsored nonimmigrant dies.

“(iii) PAYEE.—

“(I) DEATH OF NONIMMIGRANT.—Upon the death of a State-sponsored nonimmigrant, payment shall be immediately paid to such State-sponsored nonimmigrant’s next of kin, as designated by such State-sponsored nonimmigrant on the application to be a State-sponsored nonimmigrant.
"(II) Bank account.—A State-sponsored nonimmigrant may specify on the application to be a State-sponsored nonimmigrant a bank account to which such amount be sent after the satisfaction of a condition specified in clause (ii).

"(iv) Denial of reimbursement.—Funds of a State-sponsored nonimmigrant held under this paragraph may not be denied by a State to the nonimmigrant unless the State demonstrates, by clear and convincing evidence, that the nonimmigrant knowingly violated a term or condition of State-sponsored nonimmigrant status—

"(I) by failing to depart the United States at the end of the period of authorized status; or

"(II) working or residing in a State that did not sponsor the nonimmigrant.

"(v) Notice.—The Secretary of State, in conjunction with the Secretary of Homeland Security, shall inform the State
that the State-sponsored nonimmigrant
has complied with clause (i).

“(14) PENALTIES.—If a State-sponsored non-
immigrant works or resides outside of the State, or
any of the States under an interstate compact that
sponsored the nonimmigrant or fails to comply with
any term or condition of State-sponsored non-
immigrant status, the Secretary shall—

“(A) revoke the employment authorization
of such nonimmigrant; and

“(B) initiate and expedited removal in ac-
cordance with section 235.

“(15) STATE ENFORCEMENT.—

“(A) IN GENERAL.—A State that partici-
pates in the State-sponsored nonimmigrant pro-
gram may enforce all rules and regulations of
the State-sponsored nonimmigrant program in
the State against employers to the same extent
as any other labor laws under State law.

“(B) APPREHENSION.—As a condition of
participation in the State-sponsored non-
immigrant program, a State shall reimburse
any other State and any Federal agency that
has apprehended and detained a State-spon-
sored nonimmigrant sponsored by the State for
the full costs of apprehension, detention, or removal of the nonimmigrant upon request of the apprehending State or Federal agency.

"(C) PROCESS.—The Secretary shall establish a process through which a State may seek reimbursement under subparagraph (B).

"(16) SUSPENSION OF PROGRAM APPROVAL.—The Secretary shall suspend admissions under the State-sponsored nonimmigrant program for any State that fails—

"(A) to reimburse another State or a Federal agency under paragraph (15)(B) not later than 1 year after a final judgment against the State; or

"(B) to reimburse, in accordance with paragraph (13)(D), a State-sponsored nonimmigrant who—

"(i) has departed the United States;

"(ii) did not seek employment without authorization in a State that did not sponsor the nonimmigrant; and

"(iii) did not otherwise reside in the United States without status under the immigration laws.

"(17) FEES.—
“(A) FEDERAL FEES.—A State shall pay a fee to the Secretary for each year in which the State participates in the State-sponsored non-immigrant program in an amount determined by the Secretary to be necessary to cover the Federal costs of overseeing the State-sponsored nonimmigrant program in the State.

“(B) STATE FEES.—Nothing in this subsection may be construed to limit or regulate fees required by the State for State-sponsored nonimmigrants or employers of State-sponsored nonimmigrants.

“(18) NUMERICAL LIMITATIONS.—

“(A) IN GENERAL.—The total number of aliens who may be issued visas or otherwise provided State-sponsored nonimmigrant status under this subsection during any fiscal year may not exceed the total number of visas computed under subparagraph (B).

“(B) DISTRIBUTION.—Subject to subparagraphs (C), (D), and (E), the number of State-sponsored nonimmigrant visas made available in a fiscal year to a State that participates in the State-sponsored nonimmigrant program shall be the sum of—
"(i) 5,000;

"(ii) the sum of the amounts computed under subparagraphs (C) and (D) in the prior year; and

"(iii) the percentage of the total population in all States participating in the State-sponsored nonimmigrant program represented by the population of that State multiplied by the sum of—

"(I) 245,000;

"(II) the number of nonparticipating States multiplied by 5,000; and

"(III) the total number of visas available in the previous fiscal year that were revoked or not used.

"(C) Economic Growth.—The amounts computed under subparagraphs (A) and (B) for the prior fiscal year shall be adjusted annually in proportion to the percentage increase or decrease in the Gross Domestic Product of the United States in the prior year, as determined by the Bureau of Economic Analysis of the Department of Commerce.

"(D) Compliance.—
“(i) INCREASES.—The number of State-sponsored nonimmigrant visas made available to a State under subparagraph (C) shall be increased by 10 percent over the prior fiscal year in each fiscal year immediately following a fiscal year in which less than 3 percent of the State-sponsored nonimmigrants sponsored by the State violated the terms and conditions of State-sponsored nonimmigrant status, as determined by the Inspector General of the Department of Homeland Security or the Comptroller General of the United States in the reports required under paragraph (13)(B).

“(ii) DECREASES.—The number of State-sponsored nonimmigrant visas made available to a State under subparagraph (C) shall be decreased by 50 percent in each fiscal year immediately following a fiscal year in which more than 3 percent of the State-sponsored nonimmigrants sponsored by the State complied with the terms and conditions of State-sponsored nonimmigrant status, as determined by the In-
spectator General of the Department of Homeland Security or the Comptroller General of the United States in the reports required under paragraph (13)(B).

"(iii) SUSPENSION.—State-sponsored nonimmigrant visas shall not be made available for a State during the 5-year period following four consecutive fiscal years in which more than 3 percent of the State-sponsored nonimmigrants sponsored by the State violated the terms and conditions of State-sponsored nonimmigrant status, as determined by the Inspector General of the Department of Homeland Security or the Comptroller General of the United States in the reports required under paragraph (13)(B).

"(E) PRINCIPAL ALIENS.—

"(i) IN GENERAL.—The numerical limitations under this paragraph shall apply only to principal aliens being admitted to the United States from abroad and not to aliens accompanying or following to join the principal alien under section
101(a)(15)(W)(ii) or aliens previously admitted.

(ii) STATE EXCLUSION.—The Secretary may not grant a visa or status to an alien who is not the principal alien sponsored by a State if the State request that no such aliens be admitted.

(19) ADMISSIBILITY DETERMINATION.—

(A) IN GENERAL.—At the request of a State that participates in the State-based nonimmigrant program, the Secretary shall waive the grounds of inadmissibility under subparagraphs (A), (B), (C), and (G) of section 212(a)(6), paragraphs (7) and (9) of section 212(a), and sections 240B(d)(1)(B) and 241(a)(5) and the grounds of deportability under subparagraphs (A) through (D) of section 237(a)(1) and section 237(a)(3) on behalf of an alien described in subparagraph (B).

(B) ALIENS DESCRIBED.—An alien described in this subsection is an alien who—

(i) was physically present in the United States on December 31, 2016;

(ii) is sponsored by a State under the State-based nonimmigrant program;
"(iii) otherwise meets the requirements of State-based nonimmigrant status under paragraph (4); and

"(iv) fulfills the requirements under paragraph (20).

"(C) SAVINGS PROVISION.—Nothing in this paragraph may be construed to exempt an alien described in subparagraph (B) or the State from the numerical limitation under paragraph (18).

"(20) REQUIREMENTS.—

"(A) APPLICATION.—An alien may apply to the Secretary for a waiver of inadmissibility or deportability under paragraph (19) concurrently with an application for a visa or status under section 101(a)(15)(W).

"(B) EVIDENCE OF PRESENCE OR EMPLOYMENT.—

"(i) CONCLUSIVE DOCUMENTS.—An alien may conclusively demonstrate presence in the United States in compliance with paragraph (19)(B)(i) by submitting records demonstrating such presence that have been maintained by the Social Security Administration, the Internal Revenue
Service, or any other Federal, State, or local government agency or educational institution.

"(ii) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subparagraph (A) may satisfy the requirements under this section by submitting at least three other types of reliable documents that provide evidence of presence, employment or study in the United States, including—

"(I) bank or remittance records;

"(II) business or employer records;

"(III) records of any organization that assists workers in employment;

"(IV) education records; and

"(V) deeds, mortgages, or contracts to which the alien has been a party.

"(C) FEES.—

"(i) IN GENERAL.—An alien submitting an application under subparagraph (A) shall pay a fee in an amount deter-
mined by the Secretary to be necessary to
cover the cost of adjudicating the applica-
tion and reviewing the application for
fraud.

"(ii) PENALTY.—In addition to the
fee under clause (i), an alien seeking a
waiver under paragraph (19) shall pay a
penalty of not less than $1,000, which
shall be deposited into the Treasury of the
United States after the approval of the ap-
application under subparagraph (A).

"(D) CRIMINAL PENALTY.—

"(i) VIOLATION.—It shall be unlawful
for any person to knowingly—

"(I) file, or assist in filing, an
application under this paragraph if
such application—

"(aa) falsifies, misrepre-
sents, conceals, or covers up a
material fact;

"(bb) makes any false, ficti-
tious, or fraudulent statements or
representations; or

"(cc) makes or uses any
false writing or document know-
ing the same to contain any false,
fictitious, or fraudulent state-
ment or entry; or

"(II) create or supply a false
writing or document for use in mak-
ing such an application.

"(ii) PENALTY.—Any person who viol-
ates clause (i) shall be fined in accordance
with title 18, United States Code, impris-
oned not more than 5 years, or both.

"(iii) INADMISSIBILITY.—An alien
who is convicted of violating clause (i) shall
be considered to be inadmissible to the
United States on the ground described in
section 212(a)(6)(C)(i) and subject to im-
mediate removal from the United States.

"(E) FRAUD PREVENTION PROGRAM.—The
Secretary and the Attorney General shall jointly
develop an administrative program to prevent
fraud with respect to applications submitted
under this paragraph that provides for—

"(i) fraud prevention training for ad-
ministrative adjudicators;
“(ii) the regular audit of pending and approved applications for examples and patterns of fraud or abuse;

“(iii) the receipt and evaluation of reports of fraud or abuse;

“(iv) the identification of deficiencies in administrative practice or procedure that encourage fraud or abuse;

“(v) the remedy of any identified deficiencies, and

“(vi) the referral of cases of identified or suspected fraud or other misconduct for investigation.

“(F) INELIGIBLE ALIENS.—

“(i) REMOVAL AUTHORIZED.—Except as provided in clause (ii), if the Secretary makes a final determination to deny an application under this section, the Secretary shall place the applicant in removal proceedings to which the alien would otherwise be subject.

“(ii) ALIENS WITH PRIOR ORDERS.—If the final determination to deny an application concerns an alien with an existing order of exclusion, deportation, removal, or
voluntary departure from the United States, such order shall be enforced to the same extent as if the application had not been made.

“(G) Employment records.—Copies of employment records or other evidence of employment provided by an alien or by an alien’s employer in support of an alien’s application under this subsection may not be used in a civil or criminal prosecution or investigation of that employer under section 247A or the tax laws of the United States for the prior unlawful employment of that alien, regardless of the adjudication of such application or reconsideration by the Secretary of such alien’s prima facie eligibility determination. Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application under this title shall not be subject to civil and criminal liability pursuant to such section 274A for employing such unauthorized aliens. The protections for employers and aliens shall not apply if the aliens or employers submit employment records that are deemed to be fraudulent.
"(H) CONSTRUCTION.—Nothing in this subsection may be construed to limit the authority of the State to require additional monetary penalties, other evidence of physical presence, or any other requirement for aliens described in paragraph (19)(B) to participate in the State-based nonimmigrant program in such State."

(b) JUDICIAL REVIEW.—Section 242(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)) is amended by adding at the end the following:

"(E) JUDICIAL REVIEW OF CERTAIN ELIGIBILITY DETERMINATIONS.—If an alien’s application under section 214(s)(20) is denied or revoked, judicial review shall be instituted in the United States District Court for the District of Columbia and shall be limited to determinations of the constitutionality of section 214(s), or any regulations implemented pursuant to such section."

(c) NONIMMIGRANTS WITH APPROVED IMMIGRANT PETITIONS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(1) in subsection (a)—
(A) by striking "if (1) the alien" and inserting the following: "if—

"(1) the alien";

(B) by striking "adjustment, (2) the alien"

and inserting the following: "adjustment;

"(2) the alien";

(C) by striking "residence, and (3) an immigrant visa" and inserting the following: "residence; and

"(3) an immigrant visa"; and

(D) in paragraph (3), by striking "him at the time his application is filed" and inserting "the alien at the time the alien's application is adjudicated"; and

(2) by adding at the end the following:

"(n) ADJUSTMENT OF STATUS APPLICATION AFTER AN APPROVED IMMIGRANT PETITION.—

"(1) APPLICATION.—An alien who has an approved immigrant petition may file an adjustment of status application under subsection (a), which shall remain pending until a visa number becomes available.

"(2) STATUS.—An alien who has properly filed an adjustment of status application under subsection
(a) shall, throughout the pendency of such applica-

tion—

“(A) have a lawful status and be consid-

ered lawfully present for purposes of section

212; and

“(B) following a biometric background

check, be eligible for employment and travel au-

thorization incident to such status.”.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect

on the first day of the first fiscal year that begins after

the date of the enactment of this Act.