

115TH CONGRESS
2^D SESSION

S. 2325

AN ACT

To incentivize the hiring of United States workers in the Commonwealth of the Northern Mariana Islands, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Northern Mariana Is-
3 lands U.S. Workforce Act”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

6 (1) to increase the percentage of United States
7 workers (as defined in section 6(i) of the Joint Reso-
8 lution entitled “A Joint Resolution to approve the
9 ‘Covenant To Establish a Commonwealth of the
10 Northern Mariana Islands in Political Union with
11 the United States of America’, and for other pur-
12 poses” (48 U.S.C. 1806)) in the total workforce of
13 the Commonwealth of the Northern Mariana Is-
14 lands, while maintaining the minimum number of
15 workers who are not United States workers to meet
16 the changing demands of the Northern Mariana Is-
17 lands’ economy;

18 (2) to encourage the hiring of United States
19 workers into such workforce; and

20 (3) to ensure that no United States worker—

21 (A) is at a competitive disadvantage for
22 employment compared to a worker who is not
23 a United States worker; or

24 (B) is displaced by a worker who is not a
25 United States worker.

1 **SEC. 3. TRANSITIONAL PROVISIONS.**

2 (a) IN GENERAL.—Section 6 of the Joint Resolution
3 entitled “A Joint Resolution to approve the ‘Covenant To
4 Establish a Commonwealth of the Northern Mariana Is-
5 lands in Political Union with the United States of Amer-
6 ica’, and for other purposes” (48 U.S.C. 1806) is amend-
7 ed—

8 (1) in subsection (a)—

9 (A) in paragraph (2), by striking “2019”
10 and inserting “2029”; and

11 (B) by amending paragraph (6) to read as
12 follows:

13 “(6) FEES FOR TRAINING UNITED STATES
14 WORKERS.—

15 “(A) SUPPLEMENTAL FEE.—

16 “(i) IN GENERAL.—In addition to fees
17 imposed pursuant to section 286(m) of the
18 Immigration and Nationality Act (8 U.S.C.
19 1356(m)) to recover the full costs of adju-
20 dication services, the Secretary shall im-
21 pose an annual supplemental fee of \$200
22 per nonimmigrant worker on each prospec-
23 tive employer who is issued a permit under
24 subsection (d)(3) during the transition pro-
25 gram. A prospective employer that is
26 issued a permit with a validity period of

1 longer than 1 year shall pay the fee for
2 each year of requested validity at the time
3 the permit is requested.

4 “(ii) INFLATION ADJUSTMENT.—Be-
5 ginning in fiscal year 2020, the Secretary,
6 through notice in the Federal Register,
7 may annually adjust the supplemental fee
8 imposed under clause (i) by a percentage
9 equal to the annual change in the Con-
10 sumer Price Index for All Urban Con-
11 sumers published by the Bureau of Labor
12 Statistics.

13 “(iii) USE OF FUNDS.—Amounts col-
14 lected pursuant to clause (i) shall be de-
15 posited into the Treasury of the Common-
16 wealth Government for the sole and exclu-
17 sive purpose of funding vocational edu-
18 cation, apprenticeships, or other training
19 programs for United States workers.

20 “(iv) FRAUD PREVENTION AND DE-
21 TECTION FEE.—In addition to the fees de-
22 scribed in clause (i), the Secretary—

23 “(I) shall impose, on each pro-
24 spective employer filing a petition
25 under this subsection for 1 or more

1 nonimmigrant workers, a \$50 fraud
2 prevention and detection fee; and

3 “(II) shall deposit and use the
4 fees collected under subclause (I) in
5 accordance with section 286(v)(2)(B)
6 of the Immigration and Nationality
7 Act (8 U.S.C. 1356(v)(2)(B)).

8 “(B) PLAN FOR THE EXPENDITURE OF
9 FUNDS.—Not later than 120 days before the
10 first day of fiscal year 2020, and annually
11 thereafter, the Governor of the Commonwealth
12 Government shall submit to the Secretary of
13 Labor—

14 “(i) a plan for the expenditures of
15 amounts deposited under subparagraph
16 (A)(iii);

17 “(ii) a projection of the effectiveness
18 of such expenditures in the placement of
19 United States workers into jobs held by
20 non-United States workers; and

21 “(iii) a report on the changes in em-
22 ployment of United States workers attrib-
23 utable to expenditures of such amounts
24 during the previous year.

1 “(C) DETERMINATION AND REPORT.—Not
2 later than 120 days after receiving each ex-
3 penditure plan under subparagraph (B)(i), the
4 Secretary of Labor shall—

5 “(i) issue a determination on the plan;
6 and

7 “(ii) submit a report to Congress that
8 describes the effectiveness of the Common-
9 wealth Government at meeting the goals
10 set forth in such plan.

11 “(D) PAYMENT RESTRICTION.—Payments
12 may not be made in a fiscal year from amounts
13 deposited under subparagraph (A)(iii) before
14 the Secretary of Labor has approved the ex-
15 penditure plan submitted under subparagraph
16 (B)(i) for that fiscal year.”;

17 (2) in subsection (b), by adding at the end the
18 following:

19 “(3) REPORT.—Not later than December 1,
20 2027, the Secretary shall submit a report to the
21 Committee on Energy and Natural Resources of the
22 Senate, the Committee on the Judiciary of the Sen-
23 ate, the Committee on Natural Resources of the
24 House of Representatives, and the Committee on the
25 Judiciary of the House of Representatives that—

1 “(A) projects the number of asylum claims
2 the Secretary anticipates following the termi-
3 nation of the transition period; and

4 “(B) describes the efforts of the Secretary
5 to ensure appropriate interdiction efforts, pro-
6 vide for appropriate treatment of asylum seek-
7 ers, and prepare to accept and adjudicate asy-
8 lum claims in the Commonwealth.”;

9 (3) in subsection (d)—

10 (A) by redesignating paragraphs (2)
11 through (5) as paragraphs (3) through (6), re-
12 spectively;

13 (B) by inserting after paragraph (1) the
14 following:

15 “(2) PROTECTION FOR UNITED STATES WORK-
16 ERS.—

17 “(A) TEMPORARY LABOR CERTIFI-
18 CATION.—

19 “(i) IN GENERAL.—Beginning with
20 petitions filed with employment start dates
21 in fiscal year 2020, a petition to import a
22 nonimmigrant worker under this sub-
23 section may not be approved by the Sec-
24 retary unless the petitioner has applied to

1 the Secretary of Labor for a temporary
2 labor certification confirming that—

3 “(I) there are not sufficient
4 United States workers in the Com-
5 monwealth who are able, willing,
6 qualified, and available at the time
7 and place needed to perform the serv-
8 ices or labor involved in the petition;
9 and

10 “(II) employment of the non-
11 immigrant worker will not adversely
12 affect the wages and working condi-
13 tions of similarly employed United
14 States workers.

15 “(ii) PETITION.—After receiving a
16 temporary labor certification under clause
17 (i), a prospective employer may submit a
18 petition to the Secretary for a Common-
19 wealth Only Transitional Worker permit on
20 behalf of the nonimmigrant worker.

21 “(B) PREVAILING WAGE SURVEY.—

22 “(i) IN GENERAL.—In order to effec-
23 tuate the requirement for a temporary
24 labor certification under subparagraph
25 (A)(i), the Secretary of Labor shall use, or

1 make available to employers, an occupa-
2 tional wage survey conducted by the Gov-
3 ernor that the Secretary of Labor has de-
4 termined meets the statistical standards
5 for determining prevailing wages in the
6 Commonwealth on an annual basis.

7 “(ii) ALTERNATIVE METHOD FOR DE-
8 TERMINING THE PREVAILING WAGE.—In
9 the absence of an occupational wage survey
10 approved by the Secretary of Labor under
11 clause (i), the prevailing wage for an occu-
12 pation in the Commonwealth shall be the
13 arithmetic mean of the wages of workers
14 similarly employed in the territory of
15 Guam according to the wage component of
16 the Occupational Employment Statistics
17 Survey conducted by the Bureau of Labor
18 Statistics.

19 “(C) MINIMUM WAGE.—An employer shall
20 pay each Commonwealth Only Transitional
21 Worker a wage that is not less than the greater
22 of—

23 “(i) the statutory minimum wage in
24 the Commonwealth;

25 “(ii) the Federal minimum wage; or

1 “(iii) the prevailing wage in the Com-
2 monwealth for the occupation in which the
3 worker is employed.”;

4 (C) by amending paragraph (3), as redese-
5 ignated, to read as follows:

6 “(3) PERMITS.—

7 “(A) IN GENERAL.—The Secretary shall
8 establish, administer, and enforce a system for
9 allocating and determining terms and condi-
10 tions of permits to be issued to prospective em-
11 ployers for each nonimmigrant worker described
12 in this subsection who would not otherwise be
13 eligible for admission under the Immigration
14 and Nationality Act (8 U.S.C. 1101 et seq.).

15 “(B) NUMERICAL CAP.—The number of
16 permits issued under subparagraph (A) may
17 not exceed—

18 “(i) 13,000 for fiscal year 2019;

19 “(ii) 12,500 for fiscal year 2020;

20 “(iii) 12,000 for fiscal year 2021;

21 “(iv) 11,500 for fiscal year 2022;

22 “(v) 11,000 for fiscal year 2023;

23 “(vi) 10,000 for fiscal year 2024;

24 “(vii) 9,000 for fiscal year 2025;

25 “(viii) 8,000 for fiscal year 2026;

1 “(ix) 7,000 for fiscal year 2027;
2 “(x) 6,000 for fiscal year 2028;
3 “(xi) 5,000 for fiscal year 2029; and
4 “(xii) 1,000 for the first quarter of
5 fiscal year 2030.

6 “(C) REPORTS REGARDING THE PERCENT-
7 AGE OF UNITED STATES WORKERS.—

8 “(i) BY GOVERNOR.—Not later than
9 60 days before the end of each calendar
10 year, the Governor shall submit a report to
11 the Secretary that identifies the ratio be-
12 tween United States workers and other
13 workers in the Commonwealth’s workforce
14 based on income tax filings with the Com-
15 monwealth for the tax year.

16 “(ii) BY GAO.—Not later than Decem-
17 ber 31, 2019, and biennially thereafter, the
18 Comptroller General of the United States
19 shall submit a report to the Chair and
20 Ranking Member of the Committee on En-
21 ergy and Natural Resources of the Senate,
22 the Chair and Ranking Member of the
23 Committee on Natural Resources of the
24 House of Representatives, the Chair and
25 Ranking Member of the Committee on

1 Health, Education, Labor, and Pensions of
2 the Senate and the Chair and Ranking
3 Member of the Committee on Education
4 and the Workforce of the House of Rep-
5 resentatives that identifies the ratio be-
6 tween United States workers and other
7 workers in the Commonwealth’s workforce
8 during each of the previous 5 calendar
9 years.

10 “(D) PETITION; ISSUANCE OF PERMITS.—

11 “(i) SUBMISSION.—A prospective em-
12 ployer may submit a petition for a permit
13 under this paragraph not earlier than—

14 “(I) 120 days before the date on
15 which the prospective employer needs
16 the beneficiary’s services; or

17 “(II) if the petition is for the re-
18 newal of an existing permit, not ear-
19 lier than 180 days before the expira-
20 tion of such permit.

21 “(ii) EMPLOYMENT VERIFICATION.—

22 The Secretary shall establish a system for
23 each employer of a Commonwealth Only
24 Transitional Worker to submit a semi-
25 annual report to the Secretary and the

1 Secretary of Labor that provides evidence
2 to verify the continuing employment and
3 payment of such worker under the terms
4 and conditions set forth in the permit peti-
5 tion that the employer filed on behalf of
6 such worker.

7 “(iii) REVOCATION.—

8 “(I) IN GENERAL.—The Sec-
9 retary, in the Secretary’s discretion,
10 may revoke a permit approved under
11 this paragraph for good cause, includ-
12 ing if—

13 “(aa) the employer fails to
14 maintain the continuous employ-
15 ment of the subject worker, fails
16 to pay the subject worker, fails to
17 timely file a semiannual report
18 required under this paragraph,
19 commits any other violation of
20 the terms and conditions of em-
21 ployment, or otherwise ceases to
22 operate as a legitimate business
23 (as defined in clause (iv)(II));

24 “(bb) the beneficiary of such
25 petition does not apply for admis-

1 sion to the Commonwealth by the
2 date that is 10 days after the pe-
3 riod of petition validity begins, if
4 the employer has requested con-
5 sular processing; or

6 “(cc) the employer fails to
7 provide a former, current, or pro-
8 spective Commonwealth Only
9 Transitional Worker, not later
10 than 21 business days after re-
11 ceiving a written request from
12 such worker, with the original (or
13 a certified copy of the original) of
14 all petitions, notices, and other
15 written communication related to
16 the worker (other than sensitive
17 financial or proprietary informa-
18 tion of the employer, which may
19 be redacted) that has been ex-
20 changed between the employer
21 and the Department of Labor,
22 the Department of Homeland Se-
23 curity, or any other Federal
24 agency or department.

1 “(II) REALLOCATION OF RE-
2 VOKED PETITION.—Notwithstanding
3 subparagraph (C), for each permit re-
4 voked under subclause (I) in a fiscal
5 year, an additional permit shall be
6 made available for use in the subse-
7 quent fiscal year.

8 “(iv) LEGITIMATE BUSINESS.—

9 “(I) IN GENERAL.—A permit
10 may not be approved for a prospective
11 employer that is not a legitimate busi-
12 ness.

13 “(II) DEFINED TERM.—In this
14 clause, the term ‘legitimate business’
15 means a real, active, and operating
16 commercial or entrepreneurial under-
17 taking that the Secretary, in the Sec-
18 retary’s sole discretion, determines—

19 “(aa) produces services or
20 goods for profit, or is a govern-
21 mental, charitable, or other val-
22 idly recognized nonprofit entity;

23 “(bb) meets applicable legal
24 requirements for doing business
25 in the Commonwealth;

1 “(cc) has substantially com-
2 plied with wage and hour laws,
3 occupational safety and health
4 requirements, and all other Fed-
5 eral, Commonwealth, and local
6 requirements related to employ-
7 ment during the preceding 5
8 years;

9 “(dd) does not directly or in-
10 directly engage in, or knowingly
11 benefit from, prostitution, human
12 trafficking, or any other activity
13 that is illegal under Federal,
14 Commonwealth, or local law; and

15 “(ee) is a participant in
16 good standing in the E-Verify
17 program;

18 “(ff) does not have, as an
19 owner, investor, manager, oper-
20 ator, or person meaningfully in-
21 volved with the undertaking, any
22 individual who has been the
23 owner, investor, manager, oper-
24 ator, or otherwise meaningfully
25 involved with an undertaking

1 that does not comply with item
2 (cc) or (dd), or is the agent of
3 such an individual; and

4 “(gg) is not a successor in
5 interest to an undertaking that
6 does not comply with item (cc) or
7 (dd).

8 “(v) CONSTRUCTION OCCUPATIONS.—
9 A permit for Construction and Extraction
10 Occupations (as defined by the Depart-
11 ment of Labor as Standard Occupational
12 Classification Group 47–0000) may not be
13 issued for any worker other than a worker
14 described in paragraph (7)(B).”;

15 (D) in paragraph (4), as redesignated, by
16 inserting “or to Guam for the purpose of tran-
17 sit only” after “except admission to the Com-
18 monwealth”;

19 (E) in paragraph (5), as redesignated, by
20 adding at the end the following: “Approval of a
21 petition filed by the new employer with a start
22 date within the same fiscal year as the current
23 permit shall not count against the numerical
24 limitation for that period.”; and

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

1 “(7) REQUIREMENT TO REMAIN OUTSIDE OF
2 THE UNITED STATES.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B)—

5 “(i) a permit for a Commonwealth
6 Only Transitional Worker—

7 “(I) shall remain valid for a pe-
8 riod that may not exceed 1 year; and

9 “(II) may be renewed for not
10 more than 2 consecutive, 1-year peri-
11 ods; and

12 “(ii) at the expiration of the second
13 renewal period, an alien may not again be
14 eligible for such a permit until after the
15 alien has remained outside of the United
16 States for a continuous period of at least
17 30 days prior to the submission of a re-
18 newal petition on their behalf.

19 “(B) LONG-TERM WORKERS.—An alien
20 who was admitted to the Commonwealth as a
21 Commonwealth Only Transitional Worker dur-
22 ing fiscal year 2015, and during every subse-
23 quent fiscal year beginning before the date of
24 the enactment of the Northern Mariana Islands
25 U.S. Workforce Act, may receive a permit for

1 a Commonwealth Only Transitional Worker
2 that is valid for a period that may not exceed
3 3 years and may be renewed for additional 3-
4 year periods during the transition period. A
5 permit issued under this subparagraph shall be
6 counted toward the numerical cap for each fis-
7 cal year within the period of petition validity.”;
8 and

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

10 “(i) DEFINITIONS.—In this section:

11 “(1) COMMONWEALTH.—The term ‘Common-
12 wealth’ means the Commonwealth of the Northern
13 Mariana Islands.

14 “(2) COMMONWEALTH ONLY TRANSITION
15 WORKER.—The term ‘Commonwealth Only Transi-
16 tion Worker’ means an alien who has been admitted
17 into the Commonwealth under the transition pro-
18 gram and is eligible for a permit under subsection
19 (d)(3).

20 “(3) GOVERNOR.—The term ‘Governor’ means
21 the Governor of the Commonwealth of the Northern
22 Mariana Islands.

23 “(4) SECRETARY.—The term ‘Secretary’ means
24 the Secretary of Homeland Security.

1 “(5) TAX YEAR.—The term ‘tax year’ means
2 the fiscal year immediately preceding the current fis-
3 cal year.

4 “(6) UNITED STATES WORKER.—The term
5 ‘United States worker’ means any worker who is—

6 “(A) a citizen or national of the United
7 States;

8 “(B) an alien who has been lawfully admit-
9 ted for permanent residence; or

10 “(C) a citizen of the Republic of the Mar-
11 shall Islands, the Federated States of Micro-
12 nesia, or the Republic of Palau (known collec-
13 tively as the ‘Freely Associated States’) who
14 has been lawfully admitted to the United States
15 pursuant to—

16 “(i) section 141 of the Compact of
17 Free Association between the Government
18 of the United States and the Governments
19 of the Marshall Islands and the Federated
20 States of Micronesia (48 U.S.C. 1921
21 note); or

22 “(ii) section 141 of the Compact of
23 Free Association between the United
24 States and the Government of Palau (48
25 U.S.C. 1931 note).”.

1 (b) RULEMAKING.—

2 (1) SECRETARY OF HOMELAND SECURITY.—

3 Notwithstanding the requirements under section
4 553(b) of title 5, United States Code, the Secretary
5 of Homeland Security shall publish in the Federal
6 Register, not later than 180 days after the date of
7 the enactment of this Act, an interim final rule that
8 specifies how the Secretary intends to implement the
9 amendments made by subsection (a) that relate to
10 the responsibilities of the Secretary.

11 (2) SECRETARY OF LABOR.—Notwithstanding
12 the requirements under section 553(b) of title 5,
13 United States Code, the Secretary of Labor shall
14 publish in the Federal Register, not later than 180
15 days after the date of the enactment of this Act, an
16 interim final rule that specifies how the Secretary
17 intends to implement the amendments made by sub-
18 section (a) that relate to the responsibilities of the
19 Secretary.

20 (3) RECOMMENDATIONS OF THE GOVERNOR.—

21 In developing the interim final rules under para-
22 graphs (1) and (2), the Secretary of Homeland Se-
23 curity and the Secretary of Labor—

24 (A) shall each consider, in good faith, any
25 written public recommendations regarding the

1 implementation of this Act that are submitted
2 by the Governor of the Commonwealth not later
3 than 60 days after the date of the enactment of
4 this Act; and

5 (B) may include provisions in such rule
6 that are responsive to any recommendation of
7 the Governor that is not inconsistent with this
8 Act, including a recommendation to reserve a
9 number of permits each year for occupational
10 categories necessary to maintain public health
11 or safety in the Commonwealth.

12 (c) DEPARTMENT OF THE INTERIOR TECHNICAL AS-
13 SISTANCE.—Not later than October 1, 2019, and bienni-
14 ally thereafter, the Secretary of the Interior shall submit
15 a report to Congress that describes the fulfillment of the
16 Department of the Interior’s responsibilities to the Com-
17 monwealth of the Northern Mariana Islands—

18 (1) to identify opportunities for economic
19 growth and diversification;

20 (2) to provide assistance in recruiting, training,
21 and hiring United States workers; and

22 (3) to provide such other technical assistance
23 and consultation as outlined in section 702(e) of the
24 Consolidated Natural Resources Act of 2008 (48
25 U.S.C. 1807).

1 (d) OUTREACH AND TRAINING.—Not later than 120
2 days after the date on which the Secretary of Labor pub-
3 lishes an interim final rule in the Federal Register in ac-
4 cordance with subsection (b)(2), the Secretary shall con-
5 duct outreach and training in the Commonwealth of the
6 Northern Mariana Islands for employers and workers on
7 the foreign labor certification process set forth in section
8 6 of the Joint Resolution entitled “A Joint Resolution to
9 approve the ‘Covenant To Establish a Commonwealth of
10 the Northern Mariana Islands in Political Union with the
11 United States of America’, and for other purposes”, as
12 amended by subsection (b), including the minimum wage
13 requirement set forth in subsection (d)(2)(C) of such sec-
14 tion.

15 (e) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as specifically other-
17 wise provided, this Act and the amendments made
18 by this Act—

19 (A) shall take effect on the date of the en-
20 actment of this Act; and

21 (B) shall apply to petitions for Common-
22 wealth Only Transitional Workers filed on or
23 after such date.

24 (2) AUTHORITY OF SECRETARY OF HOMELAND
25 SECURITY.—The Secretary of Homeland Security, in

1 the Secretary's discretion, may delay the effective
2 date of any provision of this Act relating to Com-
3 monwealth Only Transition Workers until the effec-
4 tive date of the interim final rule described in sub-
5 section (b), except for provisions providing annual
6 numerical caps for such workers.

Passed the Senate April 23, 2018.

Attest:

Secretary.

115TH CONGRESS
2^D SESSION

S. 2325

AN ACT

To incentivize the hiring of United States workers in the Commonwealth of the Northern Mariana Islands, and for other purposes.