# One Hundred Fisteenth Congress of the United States of America

## AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and eighteen

# An Act

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

This Act may be cited as the "Northern Mariana Islands U.S. Workforce Act of 2018".

### SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to increase the percentage of United States workers (as defined in section 6(i) of the Joint Resolution entitled "A Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', and for other purposes" (48 U.S.C. 1806)) in the total workforce of the Commonwealth of the Northern Mariana Islands, while maintaining the minimum number of workers who are not United States workers to meet the changing demands of the Northern Mariana Islands' economy;
- (2) to encourage the hiring of United States workers into such workforce; and

(3) to ensure that no United States worker—

- (A) is at a competitive disadvantage for employment compared to a worker who is not a United States worker;
- (B) is displaced by a worker who is not a United States worker.

# SEC. 3. TRANSITIONAL PROVISIONS.

- (a) IN GENERAL.—Section 6 of the Joint Resolution entitled "A Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', and for other purposes" (48 U.S.C. 1806) is amended-
  - (1) in subsection (a)–
  - (A) in paragraph (2), by striking "2019" and inserting "2029"; and
    (B) by amending paragraph (6) to read as follows:

"(A) Supplemental fee.—
"(i) In general.—In addition to fees imposed pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to recover the full costs of adjudication services, the Secretary shall impose an annual supplemental fee of \$200 per nonimmigrant worker on each prospective employer who is issued a permit under subsection (d)(3) during the transition program. A prospective employer that is issued a permit with a validity period of longer than 1 year shall pay the fee for each year of requested validity at the time the permit is requested.

"(ii) Inflation adjustment.—Beginning in fiscal year 2020, the Secretary, through notice in the Federal Register, may annually adjust the supplemental fee imposed under clause (i) by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of

Labor Statistics.

"(iii) USE OF FUNDS.—Amounts collected pursuant to clause (i) shall be deposited into the Treasury of the Commonwealth Government for the sole and exclusive purpose of funding vocational education, apprenticeships, or other training programs for United States workers.

"(iv) Fraud Prevention and Detection Fee.—In addition to the fees described in clause (i), the Sec-

retary-

``(I) shall impose, on each prospective employerfiling a petition under this subsection for one or more nonimmigrant workers, a \$50 fraud preven-

tion and detection fee; and

"(II) shall deposit and use the fees collected under subclause (I) for the sole purpose of preventing and detecting immigration benefit fraud in the Northern Mariana Islands, in accordance with section 286(v)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(B)).

"(B) PLAN FOR THE EXPENDITURE OF FUNDS.—Not later than 120 days before the first day of fiscal year 2020, and annually thereafter, the Governor of the Common-wealth Government shall submit to the Secretary of

Labor

"(i) a plan for the expenditures of amounts depos-

ited under subparagraph (A)(iii);

"(ii) a projection of the effectiveness of such expenditures in the placement of United States workers into jobs held by non-United States workers; and

"(iii) a report on the changes in employment of United States workers attributable to expenditures of such amounts during the previous year.

"(C) DETERMINATION AND REPORT.—Not later than 120 days after receiving each expenditure plan under subparagraph (B)(i), the Secretary of Labor shall—

"(i) issue a determination on the plan; and

"(ii) submit a report to Congress that describes the effectiveness of the Commonwealth Government at meeting the goals set forth in such plan.

"(D) PAYMENT RESTRICTION.—Payments may not be made in a fiscal year from amounts deposited under subparagraph (A)(iii) before the Secretary of Labor has approved the expenditure plan submitted under subparagraph (B)(i) for that fiscal year.";

(2) in subsection (b), by adding at the end the following: "(3) REPORT.—Not later than December 1, 2027, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on the Judiciary of the Senate, the Committee on Natural Resources of the House of Representatives, and the Committee on the Judiciary of the House of Representatives that-

'(A) projects the number of asylum claims the Secretary anticipates following the termination of the transi-

tion period; and

- (B) describes the efforts of the Secretary to ensure appropriate interdiction efforts, provide for appropriate treatment of asylum seekers, and prepare to accept and adjudicate asylum claims in the Commonwealth."; (3) in subsection (d)–
- (A) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively;

(B) by inserting after paragraph (1) the following: "(2) PROTECTION FOR UNITED STATES WORKERS.

"(A) TEMPORARY LABOR CERTIFICATION.—
"(i) IN GENERAL.—Beginning with petitions filed with employment start dates in fiscal year 2020, a petition to import a nonimmigrant worker under this subsection may not be approved by the Secretary unless the petitioner has applied to the Secretary of Labor for a temporary labor certification confirming that-

"(I) there are not sufficient United States workers in the Commonwealth who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition; and

(II) employment of the nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed United States

workers.

"(ii) Petition.—After receiving a temporary labor certification under clause (i), a prospective employer may submit a petition to the Secretary for a Commonwealth Only Transitional Worker permit on behalf of the nonimmigrant worker.

"(B) Prevailing wage survey.-

"(i) IN GENERAL.—In order to effectuate the requirement for a temporary labor certification under subparagraph (A)(i), the Secretary of Labor shall use, or make available to employers, an occupational wage survey conducted by the Governor that the Secretary of Labor has determined meets the statistical standards for determining prevailing wages in the Commonwealth on an annual basis.

"(ii) ALTERNATIVE METHOD FOR DETERMINING THE PREVAILING WAGE.—In the absence of an occupational

wage survey approved by the Secretary of Labor under clause (i), the prevailing wage for an occupation in the Commonwealth shall be the arithmetic mean of the wages of workers similarly employed in the territory of Guam according to the wage component of the Occupational Employment Statistics Survey conducted by the Bureau of Labor Statistics.

"(C) MINIMUM WAGE.—An employer shall pay each Commonwealth Only Transitional Worker a wage that is

not less than the greater of—

"(i) the statutory minimum wage in the Commonwealth:

"(ii) the Federal minimum wage; or

"(iii) the prevailing wage in the Commonwealth for the occupation in which the worker is employed.";

(C) by amending paragraph (3), as redesignated, to read as follows:

"(3) Permits.—

"(A) IN GENERAL.—The Secretary shall establish, administer, and enforce a system for allocating and determining terms and conditions of permits to be issued to prospective employers for each nonimmigrant worker described in this subsection who would not otherwise be eligible for admission under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

ality Act (8 U.S.C. 1101 et seq.).

"(B) NUMERICAL CAP.—The number of permits issued

under subparagraph (A) may not exceed—

"(i) 13,000 for fiscal year 2019;
"(ii) 12,500 for fiscal year 2020;
"(iii) 12,000 for fiscal year 2021;
"(iv) 11,500 for fiscal year 2022;
"(v) 11,000 for fiscal year 2023;
"(vi) 10,000 for fiscal year 2024;
"(vii) 9,000 for fiscal year 2025;
"(viii) 8,000 for fiscal year 2026;
"(ix) 7,000 for fiscal year 2027;
"(x) 6,000 for fiscal year 2028;
"(x) 5,000 for fiscal year 2028;

"(xi) 5,000 for fiscal year 2029; and
"(xii) 1,000 for the first quarter of fiscal year 2030.
"(C) REPORTS REGARDING THE PERCENTAGE OF UNITED STATES WORKERS.—

"(i) BY GOVERNOR.—Not later than 60 days before the end of each calendar year, the Governor shall submit a report to the Secretary that identifies the ratio between United States workers and other workers in the Commonwealth's workforce based on income tax filings with the Commonwealth for the tax year.

tax filings with the Commonwealth for the tax year.

"(ii) By GAO.—Not later than December 31, 2019, and biennially thereafter, the Comptroller General of the United States shall submit a report to the Chair and Ranking Member of the Committee on Energy and Natural Resources of the Senate, the Chair and Ranking Member of the Committee on Natural Resources of the House of Representatives, the Chair and Ranking Member of the Committee on Health, Education, Labor, and Pensions of the Senate and the

Chair and Ranking Member of the Committee on Education and the Workforce of the House of Representatives that identifies the ratio between United States workers and other workers in the Commonwealth's workforce during each of the previous 5 calendar years. "(D) PETITION; ISSUANCE OF PERMITS.-

"(i) Submission.—A prospective employer may submit a petition for a permit under this paragraph

not earlier than-

"(I) 120 days before the date on which the prospective employer needs the beneficiary's serv-

"(II) if the petition is for the renewal of an existing permit, not earlier than 180 days before

the expiration of such permit.

"(ii) Employment verification.—The Secretary shall establish a system for each employer of a Commonwealth Only Transitional Worker to submit a semiannual report to the Secretary and the Secretary of Labor that provides evidence to verify the continuing employment and payment of such worker under the terms and conditions set forth in the permit petition that the employer filed on behalf of such worker.

"(iii) REVOCATION.-

"(I) IN GENERAL.—The Secretary, in the Secretary's discretion, may revoke a permit approved under this paragraph for good cause, including if—

'(aa) the employer fails to maintain the continuous employment of the subject worker, fails to pay the subject worker, fails to timely file a semiannual report required under this paragraph, commits any other violation of the terms and conditions of employment, or otherwise ceases to operate as a legitimate business (as defined in clause (iv)(II));

'(bb) the beneficiary of such petition does not apply for admission to the Commonwealth by the date that is 10 days after the period of petition validity begins, if the employer has

requested consular processing; or

"(cc) the employer fails to provide a former, current, or prospective Commonwealth Only Transitional Worker, not later than 21 business days after receiving a written request from such worker, with the original (or a certified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer, which may be redacted) that has been exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department. "(II) REALLOCATION OF REVOKED PETITION.—

Notwithstanding subparagraph (C), for each

permit revoked under subclause (I) in a fiscal year, an additional permit shall be made available for use in the subsequent fiscal year.

"(iv) LEGITIMATE BUSINESS.

"(I) IN GENERAL.—A permit may not be approved for a prospective employer that is not

a legitimate business.

"(II) DEFINED TERM.—In this clause, the term 'legitimate business' means a real, active, and operating commercial or entrepreneurial undertaking that the Secretary, in the Secretary's sole discretion, determines-

"(aa) produces services or goods for profit, or is a governmental, charitable, or other val-

idly recognized nonprofit entity;

"(bb) meets applicable legal requirements for doing business in the Commonwealth;

"(cc) has substantially complied with wage and hour laws, occupational safety and health requirements, and all other Federal, Commonwealth, and local requirements related to employment during the preceding 5 years;

"(dd) does not directly or indirectly engage in, or knowingly benefit from, prostitution, human trafficking, or any other activity that is illegal under Federal, Commonwealth, or

local law;

"(ee) is a participant in good standing in

the E-Verify program;

"(ff) does not have, as an owner, investor, manager, operator, or person meaningfully involved with the undertaking, any individual who has been the owner, investor, manager, operator, or otherwise meaningfully involved with an undertaking that does not comply with item (cc) or (dd), or is the agent of such an individual; and

'(gg) is not a successor in interest to an undertaking that does not comply with item

(cc) or (dd).

"(v) Construction occupations.—A permit for Construction and Extraction Occupations (as defined by the Department of Labor as Standard Occupational Classification Group 47–0000) may not be issued for any worker other than a worker described in paragraph

(7)(B)."; (D) in paragraph (4), as redesignated, by inserting "or to Guam for the purpose of transit only" after "except

admission to the Commonwealth";

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

(F) by adding at the end the following:
"(7) REQUIREMENT TO REMAIN OUTSIDE OF THE UNITED STATES.-

"(A) IN GENERAL.—Except as provided in subparagraph (B)

"(i) a permit for a Commonwealth Only Transi-

tional Worker—
"(I) shall remain valid for a period that may not exceed 1 year; and

"(II) may be renewed for not more than two

consecutive, 1-year periods; and

"(ii) at the expiration of the second renewal period, an alien may not again be eligible for such a permit until after the alien has remained outside of the United States for a continuous period of at least 30 days prior to the submission of a renewal petition on their behalf.

"(B) Long-term workers.—An alien who was admitted to the Commonwealth as a Commonwealth Only Transitional Worker during fiscal year 2015, and during every subsequent fiscal year beginning before the date of the enactment of the Northern Mariana Islands U.S. Workforce Act of 2018, may receive a permit for a Commonwealth Only Transitional Worker that is valid for a period that may not exceed 3 years and may be renewed for additional 3-year periods during the transition period. A permit issued under this subparagraph shall be counted toward the numerical cap for each fiscal year within the period of petition validity."; and

(4) by adding at the end the following:

"(i) DEFINITIONS.—In this section:

(1) COMMONWEALTH.—The term 'Commonwealth' means

the Commonwealth of the Northern Mariana Islands.

(2) COMMONWEALTH ONLY TRANSITION WORKER.—The term 'Commonwealth Only Transition Worker' means an alien who has been admitted into the Commonwealth under the transition

program and is eligible for a permit under subsection (d)(3). "(3) GOVERNOR.—The term 'Governor' means the Governor

of the Commonwealth of the Northern Mariana Islands.

"(4) Secretary.—The term 'Secretary' means the Secretary

of Homeland Security.

"(5) TAX YEAR.—The term 'tax year' means the fiscal year immediately preceding the current fiscal year.

(6) United States Worker.—The term 'United States worker' means any worker who is-

'(A) a citizen or national of the United States;

"(B) an alien who has been lawfully admitted for

permanent residence; or

(C) a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (known collectively as the 'Freely Associated States') who has been lawfully admitted to the United States pursuant to-

"(i) section 141 of the Compact of Free Association between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia (48 U.S.C. 1921 note); or

"(ii) section 141 of the Compact of Free Association between the United States and the Government of Palau (48 U.S.C. 1931 note).".

(b) Rulemaking.—

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

(2) Secretary of Labor.—Notwithstanding the requirements under section 553(b) of title 5, United States Code, the Secretary of Labor shall publish in the Federal Register, not later than 180 days after the date of the enactment of this Act, an interim final rule that specifies how the Secretary intends to implement the amendments made by subsection

(a) that relate to the responsibilities of the Secretary.

(3) RECOMMENDATIONS OF THE GOVERNOR.—In developing the interim final rules under paragraphs (1) and (2), the Secretary of Homeland Security and the Secretary of Labor—
(A) shall each consider, in good faith, any written

(A) shall each consider, in good faith, any written public recommendations regarding the implementation of this Act that are submitted by the Governor of the Commonwealth not later than 60 days after the date of

the enactment of this Act; and

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

(c) DEPARTMENT OF THE INTERIOR TECHNICAL ASSISTANCE.— Not later than October 1, 2019, and biennially thereafter, the Secretary of the Interior shall submit a report to Congress that describes the fulfillment of the Department of the Interior's responsibilities to the Commonwealth of the Northern Mariana Islands—

(1) to identify opportunities for economic growth and diver-

sification;

(2) to provide assistance in recruiting, training, and hiring

United States workers; and

(3) to provide such other technical assistance and consultation as outlined in section 702(e) of the Consolidated Natural

Resources Act of 2008 (48 U.S.C. 1807).

(d) Outreach and Training.—Not later than 120 days after the date on which the Secretary of Labor publishes an interim final rule in the Federal Register in accordance with subsection (b)(2), the Secretary shall conduct outreach and training in the Commonwealth of the Northern Mariana Islands for employers and workers on the foreign labor certification process set forth in section 6 of the Joint Resolution entitled "A Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', and for other purposes", as amended by subsection (b), including the minimum wage requirement set forth in subsection (d)(2)(C) of such section.

(e) Effective Date.—

(1) IN GENERAL.—Except as specifically otherwise provided, this Act and the amendments made by this Act—

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 $\left(A\right)$  shall take effect on the date of the enactment of this Act; and

(B) shall apply to petitions for Commonwealth Only Transitional Workers filed on or after such date.
(2) AUTHORITY OF SECRETARY OF HOMELAND SECURITY.—

(2) AUTHORITY OF SECRETARY OF HOMELAND SECURITY.— The Secretary of Homeland Security, in the Secretary's discretion, may delay the effective date of any provision of this Act relating to Commonwealth Only Transition Workers until the effective date of the interim final rule described in subsection (b), except for provisions providing annual numerical caps for such workers.

 $Speaker\ of\ the\ House\ of\ Representatives.$ 

Vice President of the United States and President of the Senate.