

115TH CONGRESS  
2D SESSION

# S. 2325

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## 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—

“(A) projects the number of asylum claims the Secretary anticipates following the termination of the transition 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

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 redes-  
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

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.

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  
2D 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.