



The Senate

NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

P.O. BOX 500129
SAIPAN, MP 96950

Sen. Comm. 17-16
(House)

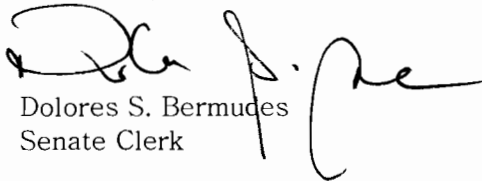
March 19, 2010

The Honorable Froilan C. Tenorio
Speaker
House of Representatives
Seventeenth Northern Marianas Commonwealth
Legislature
Saipan, MP 96950

Dear Speaker Tenorio:

I have the honor of returning without amendments House Bill No. 17-25, HS1, entitled, " To repeal certain sections of the Commonwealth Code dealing with Immigration Functions; and for other purposes." The Senate passed the Bill on First and Final Reading, by the unanimous vote of the members present, in its 5th Day, First Regular Session on March 19, 2010.

Sincerely,



Dolores S. Bermudes
Senate Clerk

Attachment

Transmitted to HOUSE:

Received by: Clifford G. Dore Date: 3/19/2010 Time: 3:45pm



Hse. Comm. No. 17-08

House of Representatives

NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

P.O. BOX 500586
SAIPAN, MP 96950

S- Passed 3/19/10

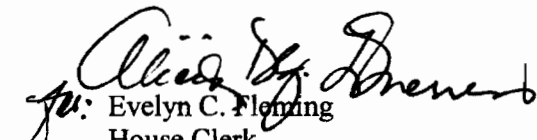
March 19, 2010

The Honorable Paul A. Manglona
President of the Senate
Seventeenth Northern Marianas
Commonwealth Legislature
P. O. Box 500129
Saipan, MP 96950


Dear President Manglona:

I have the honor of transmitting herewith for Senate action *House Bill No. 17-25, HS1*, entitled, "*To repeal and amend certain sections of the Commonwealth Code dealing with immigration functions; and for other purposes.*", which was passed by the House of Representatives on First and Final Reading, by the majority vote of the members present, a quorum being present, during its 7th Day, First Regular Session on March 19, 2010.

Sincerely yours,


Evelyn C. Fleming
House Clerk

Enclosure

Received by:  Date: 3/19/10 Time: 3:45pm



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**Chairman,
Judiciary & Governmental Operations**

STANDING COMMITTEE REPORT NO. 17-3

Date: March 16, 2010

RE: House Bill 17-25

The Honorable Froilan C. Tenorio
Speaker of the House of Representatives
Seventeenth Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on the Judiciary and Governmental Operations, to which House Bill No. 17-25 was referred, entitled:

TO REPEAL AND AMEND CERTAIN SECTIONS OF THE COMMONWEALTH CODE
DEALING WITH IMMIGRATION FUNCTIONS; AND FOR OTHER PURPOSES..

begs leave to report as follows:

I. RECOMMENDATION

After discussions on House Bill No. 17-25, the Committee hereby recommends that this bill be PASSED by the House, in the form of House Substitute 1.

II. ANALYSIS

A. Purpose

House Bill No. 17-25. The intended purpose of H.B. 17-25 is to amend the Commonwealth Code to reflect the assumption of immigration responsibilities by the federal government pursuant to P.L. 110-229, Title VII, which was passed by the United States Congress in 2008, and which became effective in November 2009.

House Bill No. 17-25, HS1. House Bill No. 17-25, in the form of House Substitute 1, does not change the primary purpose of House Bill No. 17-25 as originally introduced. House Bill No. 17-25, as originally introduced was in the form of a repealer and reenactment of certain parts of Title 3 of the Commonwealth Code. Your Committee finds that an amendment rather than a repealer and reenactment of the labor laws is more appropriate because no major changes are being made to the labor laws.

B. Findings

Your Committee makes the following findings regarding the assumption by the United States of immigration powers formerly exercised by the Commonwealth.

(1) Section 503 of the Covenant provided that the immigration and naturalization laws of the United States, except as provided in Section 502(b), would not apply to the Northern Mariana Islands “except in the manner and to the extent made applicable to them by Congress by law after termination of the Trusteeship Agreement.”

Under the Covenant and the Commonwealth Constitution, the Commonwealth of the Northern Mariana Islands since 1978 has enacted immigration laws governing the admission and regulation of aliens entering the Commonwealth. It established a Division of Immigration to administer and enforce these laws.

The Trusteeship Agreement was terminated with respect to the Northern Mariana Islands in 1986. Twenty-two years later, in 2008, the United States Congress enacted Public Law 110-229, Title VII, which applied the federal immigration laws to the Commonwealth of the Northern Mariana Islands. This law was signed by the President on May 8, 2008, and became effective on

November 28, 2009. Public Law 110-229, Title VII, expressly provided that the Commonwealth's immigration laws would be preempted by the new application of the federal immigration laws to the Commonwealth. The authority of the federal government to apply the federal immigration laws to the Commonwealth as provided by Public Law 110-229 was upheld by the decision of the U.S. District Court for the District of Columbia on November 25, 2009, in *Commonwealth of the Northern Mariana Islands v. United States of America, et al.*

(2) Public Law 110-229 does not *ipso jure* preempt the Commonwealth's labor laws. In the United States federal system, there are areas in which the States share responsibilities with the federal government. Labor (including the terms and conditions under which workers are employed) is such an area. The federal government can regulate labor through its control of interstate commerce and immigration. But the States remain free to regulate labor under the power to control *intrastate* commerce and under the general police power. The Commonwealth has all of the powers of a State in this area, as well as the powers of local self-government under the Covenant. Employers and workers in the Commonwealth must comply with both federal and CNMI law.

(3) Your Committee finds that the Commonwealth should continue to exercise its authority to regulate labor conditions and practices within the Commonwealth to the full extent that this area could be regulated by a State and can be regulated under the Covenant. The Commonwealth should continue to regulate the terms and conditions under which permits previously issued by the Commonwealth were granted so long as those permits remain in force and should protect the status of foreign national workers as lawfully present in the Commonwealth.

Your Committee finds that the Commonwealth should amend the Code to adjust its provisions where necessary to carry out this objective.

(4) Your Committee finds that it is necessary to delineate the limited preemption of Commonwealth law under P.L. 110-229. It provides:

The provisions of this section and of the immigration laws, as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)), shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.

Thus, any Commonwealth law governing the “admission of aliens” from foreign countries into the Commonwealth or the forcible “removal of aliens” from the Commonwealth back to a foreign country has been preempted, or made unenforceable, by PL 110-229 as passed by Congress.

Because the Commonwealth had immigration and deportation authority for 30 years, provisions for admission to the Commonwealth and deportation from the Commonwealth are scattered widely throughout our laws. In addition, some of these admission and deportation provisions are integral parts of substantive labor laws and other laws on subjects that fall within our jurisdiction to legislate. As long as the immigration and deportation provisions are in these laws, they are subject to federal preemption, taking all their substantive provisions with them.

Sections 3 through 8 of the omnibus bill fixes this by taking out the immigration and deportation provisions and leaving intact the remaining substantive provisions of our Commonwealth laws.

- ✓ Section 3 of the omnibus bill repairs our laws on the Executive Branch.
- ✓ Section 4 of the omnibus bill repairs one provision of our marine laws.
- ✓ Section 5 of the omnibus bill does two things: (1) it deletes the provisions of our laws that are specifically directed to immigration and deportation functions; and (2) it repairs our labor laws which currently contain a lot of immigration and deportation language.
- ✓ Section 6 of the omnibus bill repairs our tax and business regulation laws.
- ✓ Section 7 of the omnibus bill repairs our criminal laws where they specify crimes related to immigration (which are now governed by federal law) or specify deportation by Commonwealth authorities. We must now refer criminals to the U.S. authorities for deportation.
- ✓ Section 8 of the omnibus bill repairs our domestic relations laws.

Sections 3, 4, 6, 7, and 8 do not change the substance of our Commonwealth laws except to take out references to immigration and deportation. With the passage of the omnibus bill, those laws remain in force, but we will no longer apply the benefits of entry or the punishment of deportation.

Your Committee finds that we need to make these changes in order to prevent any disruption by federal preemption. When we take out the immigration and deportation language, then these laws are intended to be beyond the reach of federal preemption.

(5) Your Committee finds that in the new environment of federal control of immigration, a few changes need to be made in existing sections of the Commonwealth Code to assist the Department of Labor to achieve two important objectives: first, dealing more effectively with U.S. citizen unemployment; and second, protecting our U.S. citizen hiring preference.

With respect to these objectives, it is important to point out that the Department of Labor is governed more closely by the Legislature than other departments and agencies. Any regulations that the Department wishes to implement must, by law, be submitted to the Legislature for its consideration before coming into effect. This provision was put into the law in recognition of the fact that the Department is faced with changing economic circumstances that may require it to react quickly. Acting by regulation takes less time than changing the law. The Department regularly submits its proposed regulatory changes to both houses of the Legislature.

Section 5(L) of the omnibus bill allows the Secretary of Labor to reorganize the Department. The Secretary requests this authority in order to rearrange the current workforce into different organizational units so it can be more efficient and effective. The Secretary reports that the Department needs a flatter management structure; it does not need the hierarchy that it currently has (and is required by statute to keep). The Department's automation system is much improved. Its managers can keep operations flowing effectively without the expensive structure that was geared to the situation the Department faced a decade ago.

Section 2(M) of the omnibus bill protects the Commonwealth's hiring preference in the context of U.S. law, which allows hiring preferences but circumscribes them in certain respects. We need to ensure that our hiring preference is protected from legal challenge because lawsuits are a drain on our budgetary resources and court decisions may impose choices that the Legislature would have rejected.

The omnibus bill changes our hiring preference from a flat percentage (20% rising to 30%) to a floating benchmark governed by the percentage of the population that is U.S. citizens, U.S. permanent residents, and CNMI permanent residents. As foreign workers depart the Commonwealth, the percentage of "U.S. qualified" persons in the Commonwealth's working population has been rising. The Department estimates that it is now about 40% of the total workforce and is still rising. A floating benchmark serves us better as a practical matter and is similar to the "hiring goals" that have been used in the U.S. for many years. It also declares a legislative intent with respect to the Immigration Reform and Control Act of 1986 in order that our focus on "U.S. qualified" persons not be enlarged by operation of U.S. law.

Finally, it is more efficient and effective for enforcement of the hiring preference by the Department of Labor if the Legislature specifies the persons within the hiring preference. The omnibus bill includes U.S. citizens, U.S. permanent residents (as defined under U.S. law and with U.S.-issued credentials), and CNMI permanent residents (as defined under prior CNMI law).

(6) Your Committee finds that it will be helpful to confirm the Department's umbrella permit program. All umbrella permits and the bases on which they were granted are ratified and approved, *nunc pro tunc*, any other provision of current or former law or regulation notwithstanding.

(7) Your Committee finds that the Department of Labor has been saddled with an expensive extra administrative hearing program by decisions issued by the Commonwealth Superior Court. The Department was not a party to either of the cases that produced these decisions, so we had no opportunity to present the Department's position or to appeal. The omnibus bill makes clear that these court decisions are overturned. Under Section 5(Q)(4)(d) of the omnibus bill, foreign workers may bring actions directly against bonding companies in Superior Court if the employer fails to pay wages, medical expenses, or other items covered by the bond. The Department believes this is a better way to deal with enforcement because the court has powers (such as attaching bank accounts or jailing recalcitrant persons) that the Department does not have.

(8) Your Committee makes the following findings with respect to the SECTION-BY-SECTION ANALYSIS.

H.B. 17-25, HS1 has 12 sections.

Section 1: Short title

Section 2: Legislative intent

Section 3: Amendments to Title 1 (Government)

Section 4: Amendments to Title 2 (Natural Resources)

Section 5: Amendments to Title 3 (Human Resources)

Section 6: Amendments to Title 4 (Economic Resources)

Section 7: Amendments to Title 6 (Crimes and Criminal Procedure)

Section 8: Amendments to Title 8 (Family Law and Probate)

Section 9: Global amendments

Section 10: Severability clause

Section 11: Savings clause

Section 12: Effective date

Section 1: This section names the title of the Act as the “Immigration Conformity Act of 2010.” This title reflects the fact that the Act covers, and should cover, more than just a repealer of portions of the CNMI Code that refer to the CNMI’s immigration functions. Some other functions are amended so that the CNMI labor system can work more efficiently in parallel with the federal system.

Section 2: This section lays out the findings and purpose of the Legislature in enacting HB 17-25, HS1. The Commonwealth Law Revision Commission will adjust the statutory codification as necessary to accommodate changes in the numbering of sections and subsections.

Section 3: This section amends Title 1 of the Commonwealth Code.

- A. Division 2 (Executive Branch), Part 1 (Organization of the Executive Branch), Chapter 1 (Office of the Governor), Article 8 (Office of Homeland Security), §20141(c), is amended to delete the reference to “CNMI Immigration.” Section 20141(c) provides:

(c) In the Office of Homeland Security, there will also be a Terrorism Task Force. The task force shall consist of one representative from the CNMI EMO, DPS Police Division, DPS Fire Division, Division of Environmental Quality, Commonwealth Ports Authority Police and Airport Fire Rescue, Department of Public Health, Division of Customs, ~~CNMI Immigration~~, CNMI Labor and an Assistant Attorney General from the Attorney General’s Office. Each representative shall be assigned to the Office Homeland Security by their respective Department and shall be under the direct supervision of the Special Assistant for Homeland Security or designee.

- B. Division 2 (Executive Branch), Part 1 (Organization of the Executive Branch), Chapter 2 (Attorney General), is amended to delete Article 2 (Immigration), is repealed. Article 2 provides:

§2171. Office of Attorney General: Division of Immigration.

The Division of Immigration, Department of Labor and Immigration is transferred to the Office of the Attorney General to be headed by a Director of Immigration who shall be appointed by and serve at the pleasure of the Attorney General. The position shall be exempted from the civil service system pursuant to PL 13-1.

§2172. Director of Immigration: Duties.

The Director of Immigration shall:

- 1) have powers and duties set forth in 3 CMC 4311;
- 2) enforce, under the supervision of the Attorney General, 3 CMC 4121 et seq., the Commonwealth Entry and Deportation Act, as amended, and
- 3) perform any function regarding immigration and naturalization matters including passport matters transferred pursuant to Executive Order 94-3, 201 to the Special Assistant for Administration.

§2173. Attorney General: Duties.

The Attorney General shall:

- 1) supervise the Director of Immigration and overall functions of the Division;
- 2) enforce the provisions of the Commonwealth Entry and Deportation Act, as amended and may prosecute all violations thereof;
- 3) promulgate rules and regulations as may from time to time be useful or required in enforcing the Commonwealth Entry and Deportation Act, as amended;
- 4) obtain warrants for the arrest of, or order continued detention of, aliens pending exclusion or deportation proceedings;
- 5) review the detention of persons arrested pursuant to 3 CMC 4434 and, if deemed appropriate, order the continued detention or release of such persons; and
- 6) prepare the annual report required pursuant to 3 CMC 4348.

- C. Division 2 (Executive Branch), Part 2 (Employee Compensation and Benefits), Chapter 6 (Law Enforcement Officers' Death Benefits), is amended to delete §8282(j). Subsection 8282(j) provides (in context with §8281):

§8281. Purpose.

The purpose of this chapter is to provide for a payment of \$50,000 to specified survivors of a law enforcement officer who has died as the direct and proximate result of a personal injury sustained in the line of duty regardless of employment status.

§8282. Law Enforcement Officers.

For purposes of this chapter, law enforcement officers shall include the following:

- (a) The Attorney General and assistant attorneys general;
- (b) Judicial officers;
- (c) Police officers;
- (d) Correction officers;
- (e) Firefighters;
- (f) Customs officers;
- (g) Alcoholic beverage control officers;
- (h) Quarantine officers;

-
- (i) Conservation officers;
 - (j) ~~Immigration officers;~~
 - (k) Labor officers;
 - (l) Sanitation inspectors;
 - (m) Parole officers; and
 - (n) Commonwealth Ports Authority Police officers and firefighters

Section 4: This section amends Title 2 of the Commonwealth Code.

- A. Division 1 (Maritime and Coastal Resources), Chapter 1 (Marine Sovereignty Act of 1980), Article 1 (General), §1114(c)(1), is amended to delete the word “immigration.”

§1114. Declarations.

(a) The legislature declares, on behalf of the people of the Northern Mariana Islands, that the sovereignty of the Commonwealth extends beyond its land area to its internal waters, archipelagic waters, and territorial sea, regardless of their depth or distance from the coast, as well as to their air space, seabed, and subsoil, and the resources contained therein.

(b) The legislature declares, on behalf of the people of the Northern Mariana Islands, that the Commonwealth has sovereign rights in the exclusive economic zone for the purpose of exploring, exploiting, conserving, and managing the natural resources, whether living or nonliving, of the seabed, subsoil, and superadjacent waters of such zone, and with regard to other activities for the economic exploitation of the zone, such as the production of energy from the water, currents, and winds. The jurisdiction of the Commonwealth in the exclusive economic zone also extends to:

- (1) The establishment and use of artificial islands, installations, and structures, and of reasonable safety zones related thereto;
- (2) Marine scientific research;
- (3) Protection and preservation of the marine environment, including prevention of pollution from outside the zone which poses a threat or risk of harm to resources within the zone; and
- (4) All other rights which may appertain to the Commonwealth in such zone pursuant to the ICNT and other customary international law.

(c) The legislature declares, on behalf of the people of the Northern Mariana Islands, that the Commonwealth will exercise in the contiguous zone the control necessary to:

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- (1) Prevent infringement of Commonwealth customs, fiscal, ~~immigration~~, or sanitary regulations within the territorial sea or the territory of the Commonwealth; and
 - (2) Punish infringement of such regulations committed within the territorial sea or the territory of the Commonwealth.

Section 5: This section amends Title 3 (Human Resources) of the Commonwealth Code.

Title 3 has five divisions:

- ✓ Division 1: Education
- ✓ Division 2: Health
- ✓ Division 3: Social Security Act
- ✓ Division 4: Immigration
- ✓ Division 5: Public Safety

Division 4 (Immigration) is the part of the Commonwealth Code most affected by federalization of the immigration function. Division 4 has three parts:

- ✓ Part 1 of Division 4 deals with citizenship.
- ✓ Part 2 of Division 4 deals with entry and deportation.
- ✓ Part 3 of Division 4 deals with employment of foreign national workers.

Division 4 is renamed “Employment and Registration” from its former title of “Immigration.” Parts 1 and 2 of Division 4 are repealed. A new part 1 entitled “Employment” contains an amended version of the former Part 3 (Employment) that deletes entry and exit provisions. A new Part 2 entitled “Registration” contains an amended version of the former alien registration provisions of the current Division 4, Part 2. These changes are described in detail below.

Title 3 (Human Resources, Division 4 (Immigration)) is amended to change the title of Division 4 to “Employment and Registration” from “Immigration.”

A. **Division 4 (Immigration), Part 1 (Citizenship), Chapter 1 (Interim Citizenship Status)** is repealed. This chapter pertained to the period after the Covenant was approved but prior to the grant of U.S. citizenship. It is no longer relevant. This chapter contained:

- 1) Article 1: Interim Citizenship
- 2) Article 2: Certificate of Identity Act

[NOTE: Division 4, Part 1, Chapter 1 has two articles. There is no Chapter 2.]

B. **Division 4 (immigration), Part 1 (Citizenship), Chapter 2 (Permanent Residency Status)** is repealed. This chapter repealed prior law that allowed aliens to qualify as CNMI permanent residents. These provisions are no longer needed. The status of CNMI permanent residents is defined and protected in the omnibus bill (see below). This chapter contained:

- 1) §4201: Permanent Residency, Repeal of Authorizing Act
- 2) §4202: Permanent Residency, Reservation of Right and Status
- 3) §4203: Relationship to Other Law

C. **Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 1 (General)** is repealed. All of these requirements are now federal functions. The function of registering aliens who are workers, investors, students et al. has been modified and moved to a new Part. This Article includes the following sections:

- 1) §4301. Short title
- 2) §4302. Legislative Intent and Policy
- 3) §4303. Definitions

D. **Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 2 (Organization)** is repealed. All of these requirements are now federal functions. This Article includes the following sections:

- 1) §4311. The Immigration Officer
- 2) §4312. Powers and Duties of the Attorney General

E. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 3 (Persons Entering the Commonwealth) is repealed.

All of these requirements are now federal functions. Article 3 includes the following sections:

- 1) §4321. Entry into the Commonwealth
- 2) §4322. Excludable Aliens
- 3) §4323. Members of the Armed Forces

F. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 4 (Entry requirements and procedures) is repealed.

All of these requirements are now federal functions. Article 4 includes the following sections;

- 1) §4331. Entry Permits, Application and Issue
- 2) §4332. Denial, Duration, Extension, and Modification of Entry Permit.
- 3) §4333. Entry Inspections
- 4) §4334. Investigations
- 5) §4335. Review of Arrest
- 6) §4336. Examinations, Exclusions and Procedures
- 7) §4337. Temporary Admission Pending Examination
- 8) §4338. Appeal of Exclusion to Attorney General

G. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 5 (Deportation and departure) is repealed. All of these requirements are now federal functions. Article 5 includes the following sections.

- 1) §4340. Deportable Aliens
- 2) §4341. Deportation
- 3) §4342. Appeal of Deportation Order
- 4) §4343. Voluntary Departure
- 5) §4344. Excluded and Deported Persons: Country of Return Supervision

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- 6) §4345. Carrier Responsibility: Excluded Aliens
 - 7) §4346. Health Requirements: Health Examinations
 - 8) §4347. Deportation Fund
 - 9) §4348. Annual Report

H. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 6 (Registration of aliens) is repealed. (The registration process has been retained, as amended, in a new Part 2 of Division 4 entitled Registration as described above.) This Article includes the following single section:

- 1) §4351. Registration of Aliens

I. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 7 (Criminal penalties and miscellaneous provisions) is repealed. This section deals with crimes related to entry and deportation, which are now the province of the federal government. This article contained the following sections 4365 through 4371, which set out immigration-related criminal offenses, and sections 4373 through 4377, which cover the consequences of those offenses and related matters.

J. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth Entry and Deportation Act), Article 8 (Detection and apprehension of illegal aliens) is repealed. These functions have been taken over by the United States. This article contained the following sections:

- 1) §4381. Detection of Illegal Aliens
- 2) §4382. Apprehension of Illegal Aliens

[NOTE: Division 4, Part 2, Chapter 1 has eight articles. There is no Chapter 2.]

K. **Division 4 (Immigration), Part 3 (Employment)** is re-titled to become Division 4 (Employment and Registration, Part 1 (Employment)).

L. The current Division 4 (Immigration), Part 3 (Employment), **Chapter 1** (Department of Labor) is amended by deleting §4401 (Director of Labor) and §4402 (Director of Employment Services) because these two positions do not fit the needs of the Department at the present time, especially with the requirement to maximize citizen employment and at the same time to adapt to running a system in parallel with the federal system. §4403 is amended to delete the reference to the Commonwealth immigration authority. A new §4404 is added to allow the Secretary flexibility in reorganizing the Department to meet current needs. Any reorganization would be published in the Commonwealth Register and put before the Legislature (per §4961) for review and approval.

M. Division 4 (Immigration), Part 3 (Employment), **Chapter 2** (Employment Preference for Citizens and Permanent Residents) is amended to accomplish several objectives.

- 1) Article 1 (definitions) is amended by --
 - a) Amending §4511 to delete the references to Employment Services so as to allow the flexible reorganization provided under Chapter 1
 - b) Amending §4511 to distinguish between CNMI permanent residents, U.S. permanent residents, and FAS citizens staying in the Commonwealth. The distinction between the various types of permanent residents applies only to Article 2, which covers private sector employment. Under Article 2, the hiring preference would apply only to U.S. citizens, U.S. permanent residents, and CNMI permanent residents. (Note that the term CNMI permanent resident is defined to include their immediate relatives for ease of administration. This is a very small class.) Just for purposes of Article 2, FAS citizens and their immediate relatives would not be included in the private-sector hiring preference, although they are free to reside and work in the Commonwealth under the terms of the FAS agreements with the United States. Article 3, which covers government sector employment, includes all types of permanent residents as the CNMI government chooses to employ them.
- 2) Article 2 (private-sector employment) is amended by:

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- a) Narrowing the class entitled to the citizen job preference by changing the definition of permanent resident to include only U.S. permanent residents and CNMI permanent residents.
 - b) Providing additional flexibility in organizing the Labor Department to meet the current challenges of placing all job-seeking citizens in appropriate employment. The statutory limitations with respect to titles have been deleted for this purpose.
 - c) Amending §4523 to bring the job vacancy announcement up to date. This section was drafted before the Department of Labor website came on line.
 - d) Amending §4525 to set a goal rather than a percentage requirement for hiring citizens. The fixed percentage was appropriate when the Commonwealth was admitting foreign workers, but likely would face a legal challenge once the Commonwealth is no longer admitting workers. Discrimination that may adversely affect aliens being admitted to the Commonwealth rests on a different constitutional basis from discrimination that may adversely affect persons (alien or not) who are long-term residents of the Commonwealth. The substitute language will allow the Department of Labor to continue the citizen hiring preference and actually should achieve better performance in the hiring of U.S. citizens. The current fixed percentage is 20%. The definition of “available private-sector workforce” would be set out in regulations to make adjustments so that the requirement is practical in terms of its application to local businesses by, for example, excluding the government workforce and recognizing particular aspects of specialty employment. The current percentage of citizens and permanent residents in the private-sector workforce is about 40% and better statistics will be available after the upcoming decennial census.
 - e) Amending §4526 to make the exceptions apply only to the workforce participation requirement and not to the entire chapter, which includes the

requirement to advertise jobs, and to delete two exceptions to the workforce participation requirement no longer needed.

- f) Amending §4527 to substitute more general terms under which the Department of Labor can conduct investigations of citizen employment.
- g) Amending §4529 to bring the Department of Labor statistics into line with the statistics collected by Rev & Tax and other CNMI government entities, all of which use the newer NAICS system rather than the old SIC system currently used only by Labor. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. Its manual and website include definitions for each industry, background information, tables showing changes between 2002 and 2007, and a comprehensive index.

N. Division 4 (Immigration), Part 3 (Employment), **Chapter 3** (Moratorium on the Hiring of Foreign National Workers) is repealed. This moratorium is no longer necessary as the Commonwealth is not admitting foreign workers.

O. Division 4 (Immigration), Part 3 (Employment), **Chapter 4** (Reserved), is repealed. This contains no operative provisions and is no longer necessary.

P. Division 4 (Immigration), Part 3 (Employment), **Chapter 5** (Certification Pre-Clearance), is repealed. This is no longer necessary as the Commonwealth is not admitting foreign workers.

Q. Division 4 (Immigration), Part 3 (Employment), **Chapter 6** (Employment of Foreign Nationals) is renumbered Chapter 3 and amended to allow the Department of Labor to continue to exercise necessary controls over the terms and conditions under which foreign workers are employed in the Commonwealth and to operate in parallel with the federal system.

The principal changes to Chapter 6 are:

- ✓ To change the system that was based on entry permits to a system that is based on identification cards and umbrella permits;
- ✓ To change the references to deportation but to maintain the system of repatriation at employer expense;
- ✓ To maintain the current employer responsibility for medical expenses and bonding for wages and other employer responsibilities;
- ✓ To maintain the current system with respect to immediate relatives of foreign workers
- ✓ To allow some additional flexibility for employers to cope with the economic depression currently affecting the Commonwealth.

Chapter 6 has six articles. There are two across-the-board changes that affect all articles.

- ✓ The terms “Director of Labor” and “Director” are changed to “Department.” This is the same change as is reflected in Chapter 1 to allow flexibility in the organization of the Department to meet changing conditions. This change does not authorize any new jobs or new funding. It only frees the Department from the existing statutorily-specified positions and allows the Department to propose different configurations without needing additional legislation with respect to these titles. The regulations proposing new positions would be submitted to the Legislature pursuant to §4961. Separate legislative approval would be required for any funding.

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- ✓ The terms “entry permit” and “permit” are changed to “identification card.” This allows the Department to use the same general controls on the employment of foreign workers. The identification card is the verification of current employment.

[NOTE: Because Chapters 3, 4, and 5 are repealed, what is now Chapter 6 would become Chapter 3 of Division 4 (Employment and Registration), Part 1 (Employment).]

The details of the changes to each Article are set out below.

- 1) **Article 1** (General). This article contains the definitions that apply to foreign workers.
 - a) §4911(f) is amended to provide a definition of “Identification Card.” This has been added to take the place of the former entry permit. The identification card will show the status of the worker’s current employment. Every worker must have a currently valid identification card demonstrating that the worker is employed in addition to an umbrella permit which allows the worker to have status to remain in the Commonwealth.
 - b) §4911(h) is amended to be consistent with the definition of immediate relative that was used successfully in the revised immigration regs.
 - c) §4911(g) is amended to delete the reference to former §4965 which has been deleted. Former §4965 dealt with exceptions to the guest worker program which are no longer relevant after federalization of the immigration function.
 - d) §4911(j) is amended to eliminate the reference to deportation, which is no longer a Commonwealth function.
 - e) §4911(l) is amended to eliminate the reference to entry into the Commonwealth, which is no longer a Commonwealth function.

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- ii. Amending §4924(b) to reflect the fact that the bond fund has not yet been established. This has been caused by the related fact that the Secretary of Public Health has not acted on the medical insurance provisions yet. A bond fund of the kind envisioned by P.L. 15-108 cannot be operated successfully without some limitation on medical liability.
- f) §4925 is amended by –
- i. Changing the title so that it does not deal with entry permits, which are now under the control of federal authorities.
 - ii. Changing the term “entry permit” to “identification card” to continue in effect the current card-issuing system.
 - iii. Amending §4925(a) to make the identification card the operative document instead of the entry permit.
 - iv. Amending §4925(b) to make the identification card renewable annually in the same manner as the entry permit was.
 - v. Adding a new §4925(e) to cover the umbrella permits that the Department recently issued. These permits protect the status of foreign workers to remain in the Commonwealth (and not be subject to deportation by federal authorities) until November 27, 2011.
- g) §4926 is amended to make similar changes for immediate relatives of foreign workers as was made in §4925 for foreign workers. There are no entries of immediate relatives under this provision – all of these immediate relatives are already in the Commonwealth.
- h) §4927 is deleted. This applies to the entry of ministers and missionaries. This is now a U.S. immigration function.
- 3) **Article 3** (Standards for Employment)
- a) §4931 is amended by –
- i. Amending subsection 4931(a) to allow some additional flexibility to include “other” employment. It is important during an economic recession

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- ii. to reduce burdens on businesses to the extent possible. The Department will use this flexibility to accommodate employment arrangements other than the standard contracts where that makes sense. Any regulations issued in this regard will be submitted to the Legislature for prior review under §4961.
 - iii. Amending subsection 4931(k) to be consistent with the change in §4525 (see explanation above).
- b) §4932 covers payment by employers for the medical expenses of foreign workers. The Secretary of Public Health has not implemented the legislative plan included in P.L. 15-108 for insurance coverage, so the change in the language keeps the old requirement for direct payment in effect until the Secretary of Public Health acts.
 - c) §4935 covers contract renewal. It has been simplified to allow employers more flexibility in dealing with the difficult current economic conditions. Employers no longer must keep workers in exactly the same employment categories.
 - d) §4936 covers transfers by order of a hearing officer. Extensions of time have been included as circumstances require.
 - e) §4938 is amended to provide the notice to foreign workers at the commencement of employment rather than upon entry to the Commonwealth. This notice is an important part of preventing labor cases or making some cases much shorter.
- 4) **Article 4** (Adjudication of Disputes)
- a) §4947 is amended to add new a subsection to subsection 4947(d) that provides specific power to hearing officers to modify umbrella permits.
 - b) §4947 is amended to add a new subsection to subsection 4947(d) that provides specific power to hearing officers to revoke umbrella permits.

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- c) §4947 is amended to add a new subsection to subsection 4947(d) providing for the forms of relief required to give effect to the sections of the law with respect to employment. New types of arrangements needed to meet difficult economic circumstances require flexibility in fashioning remedy orders.
- d) §4950 is new. This section is added to overturn two court cases, both of which hold that, under the old Nonresident Workers Act, the Department of Labor must seek to enforce its Administrative Hearing Office awards by further internal proceedings even though it lacks the essential powers to force anyone to make payment. This section allows workers direct access to the courts to sue both non-paying employers and bonding companies. The Department has advocated direct access to the courts because only the courts have the power to attach bank accounts and other assets of defaulting employers or bonding companies and ultimately to send responsible officials to jail. The Department of Labor can only bar employers, which often is not sufficient to secure payment of large sums. Only the Department of Commerce can bar bonding companies. In order to give effect to the overturning of the court rule, the statute of limitations would be extended so that those whose actions were time-barred because of the court rulings would not be adversely affected.
- 5) **Article 5** (Exit from the Commonwealth)
- a) §4953 is deleted. This provision covers periodic exits.
- b) §4955 is deleted. This is a section that was held in reserve.
- 6) **Article 6** (Other provisions)
- a) §4963 deals with prohibitions – the acts that are not allowed under the statute. These provisions have been amended to conform to the changes made elsewhere in the Act.

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- b) §4964 deals with sanctions. This has been amended to deal with the fact that the Commonwealth no longer deports anyone.
 - c) §4965 has been deleted. This section defines all of the types of persons who are NOT covered by the foreign worker requirements and was relevant when the Commonwealth was admitting aliens in various categories.
 - d) §4968 has been amended to delete the references to entry permit fees. This section retains the authority of the Secretary to levy fees and the statutory allocation of those fees.
 - e) §4969 deals with statistics. This has been amended to require use of the NAICS categories, which are used by all other CNMI government agencies. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. Its manual and website include definitions for each industry, background information, tables showing changes between 2002 and 2007, and a comprehensive index.
 - f) §4972 deals with transition provisions. These were included to transition from the Nonresident Workers Act to the new Commonwealth Employment Act of 2007. Some of these provisions have expired and are no longer relevant. They have been deleted.
- R. Division 4 (Employment and Registration), Part 2 (Registration) is added. This provides for annual registration of aliens in the Commonwealth. The registration would be done by the Department of Labor because it has the computer system and the personnel for this task. Information from the registration process would be provided to the Department of Commerce for the classes of aliens for whom its umbrella permits apply and to the Attorney General for the classes of aliens for whom that office's umbrella permits apply.

Section 6: This section amends Title 4 of the Commonwealth Code.

- A. Division 1 (Revenue and Taxation), Chapter 4 (Excise Tax and User Fees), Article 2 (3.7 Percent Customs Service Certification), §1426 is deleted. This provision is no longer needed. Section 1426 provides:

§1426. Certificate of Origin Denials.

The Division of Customs may deny a certification for country of origin or other purposes relating to exports from the Commonwealth to any garment factory found in violation of the Non-Resident Workers Act or the Commonwealth Minimum Wage Act or found in violation of the Saipan Garment Manufactures Associations (SGMA) Code of Conduct and referred by the SGMA to the division for such violation or found in violation of Federal Occupational Health and Safety Administration (OHSA) requirements or any Federal law governing labor and conditions of employment. Such denial shall remain in effect until the garment factory is found in compliance by the Department of Labor and Immigration, in the case of violation of law, or the SGMA, in the case of violation of the SGMA code. Any garment factory affected by such denial shall 1 CMC 9112 and 9113.

- B. Division 5 (Business Regulation), Chapter 5 (Resident Workers Fair Compensation Act), §9504 is amended to delete the words “and immigration.” That provision is as follows –

9504. Regulation.

The Secretary of Labor ~~and Immigration~~ shall promulgate regulations to implement the provisions of this chapter within 30 days of November 16, 1995.

- C. Division 5 (Business Regulation), Chapter 7 (Garment Manufacturing), §§5701 through 5711, is repealed. These provisions, which largely involved controls on the garment industry through immigration, are no longer necessary. Chapter 7 provides:

§5701. Definitions.

For purposes of this chapter:

- (a) Business license means that license required to engage in or conduct business under 4 CMC 5611.

(b) Engaged in substantial construction or manufacturing means:

(1) That manufacturing of textiles or textile products has begun or will begin on or before the end of the fourth month following May 28, 1996; and

(2) The applicant provides evidence of the required working capital (cash) in an amount of not less than \$1,000,000 and proof of its deposit in a Commonwealth banking institution; and

(3) One of the following requirements:

(i) The applicant has executed a lease or leasehold agreement or otherwise acquired an interest evidenced in writing in real property within the Commonwealth for the purpose of erecting thereon a facility for the manufacture of textiles or textile products; or

(ii) The applicant has entered into a written contract(s) for the construction (including prefabrication) of a facility to be utilized for the manufacture of textiles or textile products on real property in the Commonwealth acquired for such purpose; or

(iii) The applicant has purchased or executed contract(s) for the purchase of necessary capital equipment designed for and typically employed in the manufacture of textiles or textile products; or

(iv) The applicant has recruited or caused by binding agreement to be recruited on its behalf at least 80 percent of non-immigrant alien workers skilled in the manufacture of textiles or textile products; or

(v) The applicant has made timely application to permitting authorities of the Commonwealth Government (e.g., the Department of Environmental Quality, the Commonwealth Utilities Corporation, or the Coastal Resources Management Office) for any permits required by law to be issued as a condition for the operation of a garment factory evidenced by a Department of Finance receipt of payment of the applicable fees.

(c) Garment manufacturer means any sole proprietorship, partnership, corporation, firm, association, or other group or combination engaged in the creation, production, or assembly of textiles or textile products for purposes of export.

(d) [Repealed by PL 11-76, 9(a).]

(e) Qualified garment manufacturer means a garment manufacturer engaged in manufacturing textiles or textile products.

(f) Quota of a manufacturer means the number of non-immigrant alien workers allowed to be employed by each qualified licensed garment manufacturer pursuant to as established by law.

(g) Textiles or textile products includes all manmade fibers, tops, yarn, piece goods, made-up articles, garments, and other textile manufactured products which is made in whole or in part from any natural or manmade fiber, or blend thereof, that are classified under Part 6 of Schedule 3, Parts 1, 4, 5, 7 or 13 of Schedule 7, Part 1 of Schedule 8, or Part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202).

§5702. Prohibition on Issuance of New Licenses.

Except as otherwise provided by law, the Department of Finance shall not issue or cause to be issued to any applicant any new business license in the Third Senatorial District for the purpose of garment manufacturing. No business license for the purpose of garment manufacturing shall be issued or renewed unless:

(a) The garment manufacturing company's operations in the Commonwealth employs, on a full-time basis, at least 20 % US citizens, who are also residents of the CNMI, in management and/or supervisory positions.

(i) For purposes of this chapter, management positions shall mean full-time employment with the function of planning, organizing, coordinating, directing, controlling, and supervising any project or activity with responsibility for results. This shall include, but not be limited to interviewing selecting and training employees, evaluating employees efficiency, disciplining employees, and providing for the safety of the employees of a factory and who are receiving a minimum base annual salary of \$24,000.

(ii) For purposes of this chapter, supervisory positions shall mean full-time employment with the function to coordinate, direct, and inspect continuously and at first hand the accomplishment of the manufacturing process for ones employer, or management and shall include, but not be limited to the supervision of line production, the preparation of payroll and time records, inspection of production, and keeping production records. factory and who are receiving minimum base annual salary of \$18,000.

(b) Each garment manufacturer shall provide the necessary training to a U.S. citizen in the position for which he or she is employed.

(c) If an employer demonstrates to the Secretary of Labor and Immigration that he is unable to reach or maintain the requisite percentage of resident workers in management and/or supervisory positions, despite a good faith effort to do so, the Secretary may reduce the percentage to one that is reasonably attainable under the circumstances. Provided, however, that in order to receive a reduction under this subsection, the employer must demonstrate that a training program for the development of resident supervisors/managers is in place and that resident workers are in fact being trained for management and supervisory positions. Eighteen months after the effective date of this Act, reduction under this subsection shall no longer be available.

(d) Failure to comply with this section shall be grounds for the Department of Commerce to initiate administrative proceedings to suspend or revoke the garment manufacturer's license, and shall subject the violator to a civil penalty not to exceed \$5,000 per day of noncompliance. This section does not otherwise limit the grounds upon which such license may be suspended or revoked.

§5703. Restriction on Renewal of License.

Notwithstanding any other provision of law, the Department of Finance shall not renew or cause to be renewed to any applicant a business license for the purpose of garment manufacturing unless the applicant is a qualified manufacturer and can show the following:

- (a) That the applicant held a valid business license for the purpose of garment manufacturing and was engaged in the manufacturing of textiles or textile products prior to January 1, 1995 or pursuant to 4 CMC 5611(c); or
- (b) That the applicant was issued a valid business license for the purpose of garment manufacturing between January 1, 1995 and the effective date of this Act or pursuant to 4 CMC 5611(c); and
- (c) That the garment manufacturers operations in the Commonwealth employs, on a full time basis, at least 20% U.S. citizens, who are also residents of the CNMI, in management or supervisory positions, provided further that the garment manufacturer shall provide the necessary training to ensure compliance with this section. Failure to comply with this provision will be grounds for the Department of Commerce to refuse to renew or cause to be renewed the garment manufacturers license, subject to an administrative proceeding. A garment manufacturer found to be in violation of this subsection or any other provision of law applicable to the business license of a garment manufacturer is subject to a civil penalty not to exceed \$5,000 per day of noncompliance, the payment of which shall be a condition for license renewal.

§5704. Restriction on Issuance of Labor Certificates and Entry Permits.

The cause to be issued or renewed any Nonresident Worker Entry Permit or Nonresident Worker Certificate to or on behalf of any non-immigrant alien to be employed in the garment industry except upon a written finding by the Secretary of Labor and Immigration that the applicant is:

- (a) Renewing an existing employment contract with a qualified licensed garment manufacturer; or,
- (b) Recruited to replace a non-immigrant alien worker whose contract of employment with a qualified licensed garment manufacturer has terminated or will terminate within 90 days; or--and
- (c) Filling a position that is within quota authorized by law for the employment of non-immigrant alien workers by a qualified licensed garment manufacturer.
- (d) And recruited by a garment manufacturer who employs, on a full time basis, not less than 20 percent U. S. citizens, who are also residents of the CNMI, in management and supervisory positions.

§5705. Garment Worker Pool. [Repealed.]

Notwithstanding any other provision of law, the Department of Finance shall not renew or cause to be renewed to any applicant a business license for the purpose of garment manufacturing unless the applicant is a qualified manufacturer and can show the following:

- (a) That the applicant held a valid business license for the purpose of garment manufacturing and was engaged in the manufacturing of textiles or textile products prior to January 1, 1995 or pursuant to 4 CMC 5611(c); or
- (b) That the applicant was issued a valid business license for the purpose of garment manufacturing between January 1, 1995 and the effective date of this Act or pursuant to 4 CMC 5611(c); and
- (c) That the garment manufacturers operations in the Commonwealth employs, on a full time basis, at least 20% U.S. citizens, who are also residents of the CNMI, in management or supervisory positions, provided further that the garment manufacturer shall provide the necessary training to ensure compliance with this section. Failure to comply with this provision will be grounds for the Department of Commerce to refuse to renew or cause to be renewed the garment manufacturers license, subject to an administrative proceeding. A garment manufacturer found to be in violation of this subsection or any other provision of law applicable to the business license of a garment manufacturer is subject to a civil penalty not to exceed \$5,000 per day of noncompliance, the payment of which shall be a condition for license renewal.

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- (a) Renewing an existing employment contract with a qualified licensed garment manufacturer; or,
- (b) Recruited to replace a non-immigrant alien worker whose contract of employment with a qualified licensed garment manufacturer has terminated or will terminate within 90 days; or--and
- (c) Filling a position that is within quota authorized by law for the employment of non-immigrant alien workers by a qualified licensed garment manufacturer.
- (d) And recruited by a garment manufacturer who employs, on a full time basis, not less than 20 percent U. S. citizens, who are also residents of the CNMI, in management and supervisory positions.

§5705. Garment Worker Pool. [Repealed.]

There is hereby established a garment labor pool which shall consist of all unused or unfilled non-immigrant alien garment worker positions within the quota of a manufacturer. The criteria and procedures for defining and allocating these unused or unfilled positions among licensed qualified garment manufacturers shall be as set forth by regulation prior to October 15, 1995.

§5706. Reporting Requirements and Penalties.

Reporting requirements and penalties shall be as set forth by regulation prior to October 15, 1995.

§5707. Authority to Implement by Rules and Regulations.

The Secretary of Labor and Immigration, the Secretary of Commerce, and the Secretary of Finance shall jointly promulgate regulations to implement the purposes of this chapter. To the extent that they do not conflict with the provisions of this chapter, these regulations shall include repromulgating regulations originally published as emergency regulations in Commonwealth Register Vol. 9, No. 9 (October 15, 1987), republished as final regulations in Commonwealth Register Vol. 10, No. 1 (January 19, 1989), subsequently amended and in effect prior to their repeal effective May 15, 1995, and October 15, 1995.

§5708. Garment Manufacturing Industry Cap and Non-Resident Alien Worker Quota.

a) There is imposed on the garment industry in the Commonwealth a cap of not more than 15,727 non-resident alien workers. The cap includes positions in all job categories, from management to line worker in the garment industry.

(b) Each licensed garment manufacturer shall be allocated to a quota of non-resident alien workers pursuant to Schedule A. Provided, however, that the Secretary of Labor and Immigration shall, by regulation, establish a mechanism for the reallocation of non-resident alien workers among manufacturers based on need. To offset the cost of increased administration, the Secretary may assess a reasonable reallocation fee.

(c) If a license for garment manufacturing is revoked, not renewed, or otherwise permitted to lapse, the quota allocated to that to that licensee shall be reallocated, at the discretion of the Secretary of Labor and Immigration, to another qualified manufacturer.

§5709. Prohibition on Manpower Hire.

The hiring of nonresident workers through manpower agencies for the garment industry is hereby prohibited.

§5710. Criminal Penalties.

Any employee of the Commonwealth government who knowingly or willfully issues or cause to be issued any official document that would facilitate either the entry of an alien into the Commonwealth or the employment of an alien in violation of the provisions of this Act or the provision of any regulation promulgated thereunder, is guilty of a felony, and shall be punished by imprisonment of not less than one year but not more than five years and by a fine of not less that \$5,000 nor more than \$10,000. A person convicted under his provision shall be terminated from his or her employment and shall not be re-employed by the Commonwealth government, in any capacity for a period of five years after the date of conviction.

§5711. Maintaining and Monitoring Cap.

The Secretary of Labor and Immigration shall monitor the number of garment workers in the Commonwealth, and shall ensure that the cap as set forth herein is strictly maintained and monitored. At least once every six months, the Secretary shall submit report to the legislature on the status of the garment industry in the Commonwealth. This report shall include, at a minimum, the number of nonresident workers in the Commonwealth, the number of nonresident workers in the garment industry, and compliance with provisions of this chapter.

D. Division 5 (Business Regulation), Chapter 9 (Regulation of Foreign Investment), Article 1 (General), is amended in two sections as follows:

1) §5904 (Certification) is amended to read –

The secretary or his or her designee shall certify that an alien investor has met the requirements for a commerce certificate before a business license may be processed by the Secretary of Finance. The certification by the secretary shall be consistent with the recommendation by the Foreign Investment Review Committee. No business license or foreign national ID shall be issued or granted without the expressed approval by way of certification by the Secretary of Commerce.

This amendment is necessary because the Commonwealth no longer exercises the immigration authority reflected in the former section, which read:

§5904. Certification.

The secretary or his or her designee shall certify that an alien investor has met the requirements certificate before an immigration business of foreign investor visa could be processed by the Division of Immigration under the Department of Labor and Immigration. The certification by the secretary shall be consistent with the recommendation by the Foreign Investment Review Committee. No business or foreign visa shall be issued or granted by the Director of the Immigration Service without the expressed approval by way of certification of the secretary.

2) Section 5916 is amended by deleting the last two sentences. This section now reads –

The review committee may classify an alien who owns an interest in a foreign corporation that incorporates in the Commonwealth as an alien investor if the alien satisfactorily establishes his or her ownership interest in the foreign corporation and meets the requisite criteria and standards of the commerce certificate applied for.

This amendment is necessary because the Commonwealth no longer exercises the immigration authority reflected in the former section, which read:

§5916. Classification.

The review committee may classify an alien who owns an interest in a foreign corporation that incorporates in the Commonwealth as an alien investor if the alien satisfactorily establishes his or her ownership interest in the foreign corporation and meets the requisite criterias and standards of the commerce certificate applied for. The review committee may review, upon request and submission of sufficient documentation, the status of an alien not owning any interest in a Commonwealth corporation, and who is requesting issuance of either a 90 day business certificate and visa or a two year term business certificate and visa. The review committee may qualify such alien for any of the two business entry certificates. This exclusion shall only be limited to applicants from existing enterprises and corporations whose investments have been approved by the review committee and in which applicant will engage in a managerial or policy-making capacity and consistent with CNMI laws.

E. Division 5 (Business Regulation), Chapter 9 (Regulation of Foreign Investment), Article 3 (Regular Term Business Certificate) is repealed. This type of business regulation is no longer a part of the Commonwealth's regulation of foreign investors. This article provided:

Article 3. Regular-Term Business Certificate.

§5931. Regular-Term Business Certificate; Conditions.

(a) A holder of a regular-term business certificate entitles the alien investor to lawfully engage in business in the Commonwealth for not more than 90 days within a 12-month period.

(b) The application fee for a regular-term business certificate shall be paid to the CNMI Treasurer prior to filing an application for a regular term business certificate with the secretary.

(c) All applications for a regular-term business certificate must be made only after the applicant has lawfully entered the Commonwealth. Only a holder of a short-term business entry permit is allowed to apply for a regular-term business entry certificate.

(d) Applicants for a regular-term business certificate must file the application with the secretary at least 10 days prior to the expiration of the applicants immigration permit. Applications received with less than 10 days from expiration of applicants short-term business entry permit shall be denied.

§5932. Regular-Term Business Certificate; Standard of Review.

The standard of review of the regular-term business certificate shall be determined by the secretary. The criterias, requirements, and basis of approval shall be contained in standard operating procedures held at the office of the secretary.

§5933. Regular-Term Business Certificate; Application Process.

Applicants for a regular-term business certificate shall file with the Department of Commerce a completed application form approved by the secretary, to include a police clearance valid for the previous 90 days from the date of application for the regular term business certificate. The procedures for the review of regular-term business certificates are set forth in 4 CMC 5911-5915.

F. Division 5 (Business Regulation), Chapter 9 (Regulation of Foreign Investment), Article 5 (Foreign Investment Certificate), is amended in two places:

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- 1) §5953 is amended by deleting subsection 5953(b). This section is no longer operative because visas are issued by the United States. This section provided:
- (b) Certification. After the issuance of an approval letter to the applicant, the secretary shall certify to the Director of the Immigration Service that the applicant is eligible for a foreign investor visa.
- 2) §5957 is amended by deleting the last two sentences. That section provides:

The secretary shall either take steps to secure correction of any insufficiency or non-compliance, or revoke the certificate of foreign investment, the alien investor shall be afforded a six-month grace period following termination or revocation of his certificate, in order to take steps necessary to liquidate, transfer or otherwise dispose of assets connected with the alien investors approved investment activity. ~~The secretary shall inform the Secretary of Labor and Immigration in writing of his decision to revoke and/or deny renewal of the certificate of foreign investment, and compute the six months grace period date commencing from the date of denial and/or revocation. The alien investor's foreign investment visa (and any visas held by members of his immediate family) shall be valid up to and including the final day of the six month grace period following termination of the certificate of foreign investment.~~

G. Division 5 (Business Regulation), Chapter 10 (Foreign Retiree Investment Certificate) is amended as follows –

- 1) §50103 is amended by deleting the last sentence. This provision is no longer in force as the United States issues these visas. This section reads:

§50103. Certification; Identification Card.

After the alien applicant has submitted all documentation set forth in this Chapter, and fees as required, and is, based on a review of such documentation, determined by the secretary to be eligible for a foreign retiree investment certificate, the secretary shall issue an Approval Letter and identification card to the applicant which shall be evidence of a foreign retiree investment certificate. The secretary shall issue an identification card to each qualified dependent of a holder of a foreign retiree investment certificate; provided that the eligibility status of a dependent is subject to the eligibility status of the holder of a foreign retiree investment certificate, except as provided under 4 CMC 50107. The secretary shall certify to the director of immigration that the applicant is eligible for a foreign retiree investment visa.

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- 2) §50106 is deleted. This section refers to entry permits and is no longer applicable. This section reads:

§50106. Reports.

The Secretary of Immigration and Labor shall submit a yearly report to both the House and Senate detailing the impact of this legislation on the Commonwealth, and specify the number of permits issued, the number denied, and recommendations for the continuation or cessation of the issuance of permits under this chapter.

- H. Division 5 (Business Regulation), Chapter 10 (Northern Mariana Islands Free Trade Zone Act), Article 1 (General), §51109 is amended to delete the words “or immigration.”

That provision is as follows –

§51109. Disclosure of Proprietary Information to Unauthorized Persons Prohibited.

Except with the consent of a licensee or as authorized by law, no officer, agent, consultant, employee or attorney of the Authority, or any customs or ~~immigration~~ officer assigned to a free trade zone shall disclose any proprietary information or business trade secrets to a third party that may have come to his knowledge in the course of his duty.

Section 7: This section amends Title 6 of the Commonwealth Code.

- A. Division 1 (Crimes Against the Person), Part 1 (Crimes Against the Person), Chapter 5 (Human Trafficking and Related Offenses), Article 1 (Anti-Trafficking Act), §1508 (Immigration Status) is deleted. This section provides:

§1508. Immigration Status.

The Attorney General may defer any action to remove or deport an individual, or his or her dependent child(ren), who may be the subject of any violation under this Act pending final resolution of the criminal case or investigation.

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- B. Division 3 (Miscellaneous Offenses), Chapter 3 (Offenses Against Public Administration), §3306, is amended to delete subsection 3306(e). Section 3306 provides

§3306. Perjury.

Every person who takes an oath or any legal substitute for an oath before a competent tribunal, officer, or person, in any case in which a law of the Commonwealth authorizes an oath or any legal substitute for it to be administered, that he or she will testify, declare, depose, or certify truly, or that any written testimony, deposition, or certificate by the witness subscribed is true, and who willfully and contrary to such oath or legal substitute states or subscribes any material which he or she does not believe to be true, is guilty of perjury, and, upon conviction thereof, shall be fined and imprisoned as per the following:

- (a) First offense carries a \$500 fine and imprisonment of not more than six months.
- (b) Second offense carries a \$1,000 fine and imprisonment of not more than one year.
- (c) Third offense carries a \$2,000 fine and imprisonment of not more than two years.
- (d) Any subsequent violations carry a fine of not less than \$2001 and not more than \$5,000 and imprisonment of no less than two years and not more than five years.
- ~~(e) Falsification of any immigration documentation shall be grounds for immediate deportation in lieu of jail time.~~

- C. Division 9 (Criminal Justice System Components), Chapter 2 (Criminal History and Records), §9201 (Definitions) is amended to delete the words “and Immigration” in subsection 9201(b)(2).

(b) Criminal justice agency means:

- (1) All courts of the Commonwealth and the United States District Court.
- (2) A CNMI law enforcement agency which performs the administration of criminal justice pursuant to a statute or executive order which provides for criminal penalties or enforcement of CNMI laws. including the Department of Labor and Immigration; the Department of Lands and Natural Resources; the Department of Public Safety; the Office of Adult Probation; the Board of Parole; the Division of Customs; the Office of the Attorney General; the Bureau of Motor Vehicles; or their successor agencies.

[Note: HB 17-25, HS1 does not conflict with Title 6, Division 1, Part 1, Chapter 5 of the Commonwealth Code (Human Trafficking and Related Offenses) and does not limit the authority of the Commonwealth to bring an action pursuant to that chapter.]

Section 8: This section amends Title 8 of the Commonwealth Code.

A. Division 1 (Domestic Relations), Chapter 4 (Adoption), §1410 (Notice of Petition, Hearing and Investigation), subsection 1410(b) is deleted. This related solely to the CNMI immigration laws. This subsection provided:

(b) At least 20 days before the date of the hearing, in any adoption proceeding where either a petitioner or the person(s) to be adopted is an alien, the petitioner shall give notice to the office of the Attorney General of the filing of the petition and of the time and place of the hearing. The Attorney General shall have the right to intervene in any adoption; such intervention right shall be for the sole purpose of ensuring that the proceeding will not be used to circumvent or evade the immigration laws of the Commonwealth.

B. Division 1 (Domestic Relations), Chapter 4 (Adoption), §1410 (Notice of Petition, Hearing and Investigation), §1420 (Illegal Acts), subsection 1420(c) is deleted. This subsection provided:

Immigration Fraud. For purposes of this section, a person commits the offense of immigration fraud when he or she adopts another or intentionally induces a person to adopt another for the purpose gaining immigration benefits by either the person to be adopted or the person to adopt, under either Commonwealth or United States law

Section 9: This is a global amendment to change the former Labor and Immigration Identification Documentation System to the current Labor Identification Data System.

Section 10: This is a standard severability provision.

Section 11: This is a standard savings clause.

Section 12: This section sets the effective date at thirty days after approval by the Governor. This section provides that the Act has prospective application after the federalization transition effective date. The exception accommodates the tolling of the statute of limitations in §4950.

C. Legislative History

H.B. 17-25 was introduced by Representative Rafael S. Demapan on February 23, 2010, and referred to the Committee on the Judiciary and Government Operations for disposition. The Committee now reports the bill to the full house as H.B. 17-25, in the form of House Substitute 1.

D. Cost Benefit

Your Committee finds that H.B. 17-25, HS1 will not require budgetary changes at the Department of Labor. The omnibus bill maintains all current labor fees.

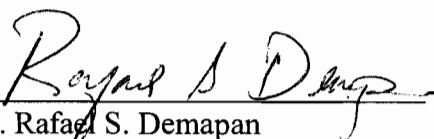
Your Committee finds that H.B. 17-25, HS1 will reduce costs in the Office of the Attorney General with the elimination of the operation of the Immigration Division.

Other departments and agencies are not affected.

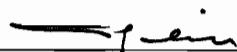
III. CONCLUSION

Your Committee recommends that House Bill No. 17-25 be PASSED by the House in the form of House Substitute 1.

Respectfully submitted,

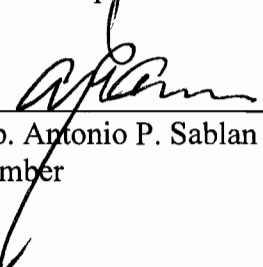


Rep. Rafael S. Demapan
Chairperson

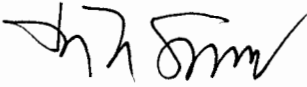


Rep. Joseph M. Palacios
Member

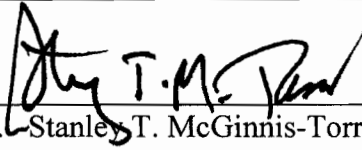
Rep. Felicidad T. Ogumoro
Vice Chairperson



Rep. Antonio P. Sablan
Member



Rep. Teresita A. Santos
Member



Rep. Stanley T. McGinnis-Torres
Member

Rep. Ray N. Yumul
Member

Reviewed By:



House Legal Counsel

Seventeenth Northern Marianas Commonwealth Legislature

IN THE HOUSE OF REPRESENTATIVES

_____ **Regular Session, 2010**

H. B. 17-25, HS1

A BILL FOR AN ACT

TO REPEAL CERTAIN SECTIONS OF THE COMMONWEALTH CODE
DEALING WITH IMMIGRATION FUNCTIONS; AND FOR OTHER
PURPOSES.

**BE IT ENACTED BY THE SEVENTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Short title.** This Act may be referred to as the “Immigration
2 Conformity Act of 2010.”

3 **Section 2. Findings and purpose.** The Commonwealth Legislature finds
4 the following with respect to the immigration functions previously controlled by
5 the Commonwealth of the Northern Mariana Islands and now controlled by the
6 U.S. Department of Homeland Security:

7 Section 503 of the Covenant provided that the immigration and
8 naturalization laws of the United States, except as provided in Section 502(b),
9 would not apply to the Northern Mariana Islands “except in the manner and to the
10 extent made applicable to them by Congress by law after termination of the
11 Trusteeship Agreement.”

12 Under the Covenant and the Commonwealth Constitution, the
13 Commonwealth of the Northern Mariana Islands since 1978 has enacted
14 immigration laws governing the admission and regulation of aliens entering the

HOUSE BILL 17-25, HS1

1 Commonwealth. It established a Division of Immigration to administer and
2 enforce these laws.

3 The Trusteeship Agreement was terminated with respect to the Northern
4 Mariana Islands in 1986. Twenty-two years later, in 2008, the United States
5 Congress enacted Public Law 110-229, Title VII, which applied the federal
6 immigration laws to the Commonwealth of the Northern Mariana Islands. This
7 law was signed by the President on May 8, 2008, and became effective on
8 November 28, 2009. Public Law 110-229, Title VII, expressly provided that the
9 Commonwealth's immigration laws would be preempted by the new application
10 of the federal immigration laws to the Commonwealth. The authority of the
11 federal government to apply the federal immigration laws to the Commonwealth
12 as provided by Public Law 110-229 was upheld by the decision of the U.S.
13 District Court for the District of Columbia on November 25, 2009, in
14 *Commonwealth of the Northern Mariana Islands v. United States of America, et*
15 *al.*

16 Public Law 110-229 does not *ipso jure* preempt the Commonwealth's
17 labor laws. In the United States federal system, there are areas in which the
18 States share responsibilities with the federal government. Labor (including the
19 terms and conditions under which workers are employed) is such an area. The
20 federal government can regulate labor through its control of interstate commerce
21 and immigration. But the States remain free to regulate labor under the power to
22 control *intrastate* commerce and under the general police power. The

HOUSE BILL 17-25, HS1

1 Commonwealth has all of the powers of a State in this area, as well as the powers
2 of local self-government under the Covenant. Employers and workers in the
3 Commonwealth must comply with both federal and CNMI law.

4 It is the intent of the Legislature that this Act shall amend the
5 Commonwealth Code to reflect the assumption of immigration responsibilities by
6 the federal government.

7 It is the intent of the Legislature that this Act shall exercise the authority
8 of the Commonwealth to regulate labor conditions and practices within the
9 Commonwealth to the full extent that this area could be regulated by a State and
10 can be regulated under the Covenant. It is further the intent of the Legislature to
11 regulate the terms and conditions under which permits previously issued by the
12 Commonwealth were granted so long as those permits remain in force and protect
13 the status of foreign national workers as lawfully present in the Commonwealth.

14 It is the intent of the Legislature that the umbrella permits issued by the
15 Department of Labor in 2009 continue to be governed under the Department's
16 normal processes. All umbrella permits and the bases on which they were granted
17 are ratified and approved, *nunc pro tunc*, any other provision of current or former
18 law or regulation notwithstanding.

19 It is the intent of the Legislature that this Act shall replace the decisions in
20 *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super. Ct. Small Claims Nos.
21 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI Super. Ct.
22 Small Claims Nos. 08-0452 et al. (February 5, 2009) so that plaintiffs holding

HOUSE BILL 17-25, HS1

1 unpaid awards under orders issued by the Administrative Hearing Office of the
2 Department of Labor may proceed with collection actions in the Commonwealth
3 courts without first exhausting collection remedies at the Department of Labor.

4 It is the intent of the Legislature to provide to the maximum extent
5 permitted by law an employment priority for United States citizens, United States
6 permanent residents, and CNMI permanent residents (as that status was defined
7 by Commonwealth law prior to April 23, 1981) in the workforce of the
8 Commonwealth in order to develop the human resources of the people of the
9 Commonwealth as reflected in the provisions and stated intent of PL 110-229. It
10 is the intent of the Legislature that the employment priority for United States
11 citizens, United States permanent residents, and CNMI permanent residents
12 established by Commonwealth law provide legitimate grounds under the
13 Immigration Reform and Control Act (IRCA), P.L. 99-603 (1986) for hiring
14 decisions based on citizenship in both the government and private sectors in the
15 Commonwealth.

16 It is the intent of the Legislature the Commonwealth Law Revision
17 Commission shall have discretion to adjust the numbering of code divisions,
18 parts, articles, or sections affected by this Act as necessary to effectuate a
19 reasonable codification of Sections 5 and 6 of this Act.

20 **Section 3. Amendment of Title 1.** Title 1 of the Commonwealth Code is
21 amended as follows:

1 A. Division 2 (Executive Branch), Part 1 (Organization of the Executive
2 Branch), Chapter 1 (Office of the Governor), Article 8 (Office of
3 Homeland Security), §20141(c) is amended to delete the reference to
4 “CNMI Immigration.”

5 B. Division 2 (Executive Branch), Part 1 (Organization of the Executive
6 Branch), Chapter 2 (Attorney General), Article 2 (Immigration) is
7 repealed.

8 C. Division 2 (Executive Branch), Part 2 (Employee Compensation and
9 Benefits), Chapter 6 (Law Enforcement Officers’ Death Benefits) is
10 amended to delete §8282(j).

11 **Section 4. Amendment of Title 2.** Title 2 of the Commonwealth Code is
12 amended as follows:

13 A. Division 1 (Maritime and Coastal Resources), Chapter 1 (Marine
14 Sovereignty Act of 1980), Article 1 (General), §1114(c)(1), is amended to
15 delete the word “immigration.”

16 **Section 5. Amendment of Title 3.** Title 3 of the Commonwealth Code is
17 amended as follows:

18 *Titles*

19 Division 4 of Title 3 is renamed “Employment and Registration” and the name
20 “Immigration” is deleted. Part 1 of Division 4 is repealed. Part 2 of Division 4 is
21 repealed. Part 3 (Employment) of Division 4 is renamed Part 1 (Employment). A
22 new Part 2 (Registration) is added.

1 *Part 1: Citizenship*

2 A. Division 4 (Immigration), Part 1 (Citizenship), Chapter 1 (Interim
3 Citizenship Status) is repealed.

4 B. Division 4 (Immigration), Part 1 (Citizenship), Chapter 2 (Permanent
5 Residency Status) is repealed.

6 *Part 2: Entry and Deportation*

7 C. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
8 (Commonwealth Entry and Deportation Act), Article 1 (General) is
9 repealed.

10 D. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
11 (Commonwealth Entry and Deportation Act), Article 2 (Organization) is
12 repealed.

13 E. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
14 (Commonwealth Entry and Deportation Act), Article 3 (Persons Entering
15 the Commonwealth) is repealed.

16 F. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
17 (Commonwealth Entry and Deportation Act), Article 4 (Entry
18 requirements and procedures) is repealed.

19 G. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
20 (Commonwealth Entry and Deportation Act), Article 5 (Deportation and
21 departure) is repealed.

1 H. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
2 (Commonwealth Entry and Deportation Act), Article 6 (Registration of
3 aliens) is repealed.

4 I. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
5 (Commonwealth Entry and Deportation Act), Article 7 (Criminal penalties
6 and miscellaneous provisions) is repealed.

7 J. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1
8 (Commonwealth Entry and Deportation Act), Article 8 (Detection and
9 apprehension of illegal aliens) is repealed.

10 *Part 3: Employment*

11 K. Division 4 (Immigration), Part 3 (Employment) shall become Division 4
12 (Employment and Registration), Part 1 (Employment) and shall be
13 renumbered accordingly.

14 L. The current Division 4 (Immigration), Part 3 (Employment), Chapter 1
15 (Department of Labor) is amended as follows:

16 1) §4401 is deleted.

17 2) §4402 is deleted.

18 3) §4403 is amended to delete the words “or the Commonwealth
19 immigration authority” in the first and second sentences.

20 4) A new §4404 is added as follows:

21 “The Secretary may appoint and by regulation define duties and
22 responsibilities for directors and managers in order that the

HOUSE BILL 17-25, HS1

1 Department's functions may be adjusted flexibly to meet citizen
2 employment needs under changing conditions.”

3 M. Division 4 (Immigration), Part 3 (Employment), Chapter 2 (Employment
4 Preference for Citizens and Permanent Residents), is amended as follows:

5 1) Article 1 (General) is amended to:

6 a) Add a new subsection after the current subsection 4511(b):

7 ““CNMI permanent resident” means a person who was granted the
8 status of CNMI permanent resident by the CNMI government prior
9 to April 23, 1981.”

10 b) Delete the current subsection 4511(f).

11 c) Add a new subsection after the current subsection 4511(f): ““FAS
12 citizen” means a citizen of the Freely Associated States, which are
13 the Federated States of Micronesia, The Republic of the Marshall
14 Islands, and the Republic of Palau, who is legally residing in the
15 Commonwealth.”

16 d) Amend current subsection 4511(i) to read: ““Job classification”
17 means job classifications described by regulations.”

18 e) Amend current subsection 4511(j).to read: ““Permanent resident”
19 or “permanent residents” includes U.S. permanent residents,
20 CNMI permanent residents, and FAS citizens in the
21 Commonwealth.”

22 f) Delete the current subsection 4511(k).

HOUSE BILL 17-25, HS1

- 1 g) Add a new subsection after the current subsection 4511(l): ““U.S.
2 permanent resident” means a person who has been granted
3 permanent resident status by the United States.”
- 4 h) Renumber the current subsections as required.
- 5 2) Article 2 (Private sector employment preference) is amended to:
- 6 a) Change the term “permanent resident” to the term “CNMI
7 permanent resident and U.S. permanent resident” everywhere the
8 term occurs in Article 2.
- 9 b) Change the terms “Employment Services” and “Director of
10 Employment Services” and “Director of Labor” and “Director” to
11 “the Department” everywhere those terms occur.
- 12 c) Amend §4523 to add to the end of the second sentence the words
13 “as prescribed by regulation” and to strike the third and fourth
14 sentences.
- 15 d) Amend §4525 to read: “In the full-time workforce of any
16 employer, the percentage of citizens, U.S. permanent residents, and
17 CNMI permanent residents and their immediate relatives employed
18 shall equal or exceed the percentage of citizens, U.S. permanent
19 residents, and CNMI permanent residents and their immediate
20 relatives in the available private sector workforce unless
21 attainment of this goal is not feasible within the current calendar
22 year after all reasonable efforts have been made by the employer.”

HOUSE BILL 17-25, HS1

- 1 e) Amend §4526 by –
- 2 i. Amending subsection 4526(a) by deleting the words “this
- 3 chapter” and substituting the words “section 4525.”
- 4 ii. Deleting the second and third sentences of subsection 4526(b).
- 5 iii. Deleting subsection 4526(c) and subsection 4526(d).
- 6 f) Amend §4527 by changing the term “lawful working conditions”
- 7 to “lawful working terms and conditions” and striking the rest of
- 8 the sentence.
- 9 g) Amend §4529 by deleting the word “following” and substituting
- 10 the words “relevant NAICS” and deleting the subsections (1)
- 11 through (6).
- 12 (3) [Article 3 (Government employment preference) is unchanged.]
- 13 N. Division 4 (Immigration), Part 3 (Employment), Chapter 3 (Moratorium
- 14 on the Hiring of Foreign National Workers) is repealed.
- 15 O. Division 4 (Immigration), Part 3 (Employment), Chapter 4 (Reserved) is
- 16 repealed.
- 17 P. Division 4 (Immigration), Part 3 (Employment), Chapter 5 (Certification
- 18 Pre-Clearance) is repealed.
- 19 Q. Division 4 (Immigration), Part 3 (Employment), Chapter 6 (Employment
- 20 of Foreign Nationals) is renumbered Chapter 3 and is amended to change
- 21 the terms “Director of Labor” and “Director” to “Department,” and to

HOUSE BILL 17-25, HS1

1 change the terms “entry permit” and “permit” to “identification card,” and
2 as follows:

3 1) Article 1 (General) is amended to:

4 a) Amend current §4911(f) to read: ““Identification Card” means an
5 identification card issued by the Department using the Labor
6 Information Data System (LIDS) or comparable system to assign a
7 unique identification number to a particular person;”

8 b) Amend current §4911(h) to read: ““Immediate relative” means a
9 parent, spouse, or child, whether natural or adopted, if adopted
10 before his or her eighteenth birthday, up to twenty-one years of age
11 including step children. A disabled child of any age qualifies as an
12 immediate relative if in the continuous custody and care of the
13 parent.”

14 c) Amend current §4911(g) to read: ““Foreign national worker”
15 means a person who is not a United States citizen, a United States
16 permanent resident, a CNMI permanent resident, or an immediate
17 relative of a United States citizen or a United States permanent
18 resident, or an immediate relative of a CNMI permanent resident
19 and who entered the CNMI as a nonimmigrant for the declared
20 purpose of being employed in the Commonwealth.”

21 d) Amend current §4911(j) to delete the words “whether” and “or by
22 deportation.”

HOUSE BILL 17-25, HS1

- 1 e) Amend current §4911(l) to delete the words “enters the
2 Commonwealth pursuant” and substitute the words “is a party.”
- 3 f) Add a new §4911(m) to read: ““Umbrella permit” means a two-
4 year permit issued prior to November 28, 2009 by the Department
5 of Labor, the Department of Commerce, or under the authority of
6 the Attorney General, to expire on November 27, 2011, that
7 protects the status of the holder to remain in the Commonwealth
8 until revoked or expired.”
- 9 g) Arrange the subsections of §4911 in alphabetical order as required.
- 10 2) Article 2 (Entry into the Commonwealth) is amended to:
- 11 a) Change the title of Article 2 to “Identification and Documentation”
- 12 b) Delete §4921.
- 13 c) Amend §4922 by –
- 14 i. In subsection 4922(b) by deleting the words “or part-time
15 casual employment” and substituting the words “and provide
16 for part-time casual and other employment.”
- 17 ii. In subsection 4922(d) by deleting the words “and forward it for
18 immigration clearance”
- 19 d) Amend §4923 by –
- 20 i. Deleting subsection 4923(a).
- 21 ii. Amending current subsection 4923(c) to delete the first
22 sentence.

HOUSE BILL 17-25, HS1

- 1 iii. Amending current subsection 4923(d) to read: “Upon
2 receiving notice that there is a medical reason any foreign
3 national worker or immediate relative should not be permitted
4 to remain in the Commonwealth for health reasons designated
5 as a threat to the public health in the Commonwealth by the
6 Secretary of Public Health, the Secretary shall notify the
7 foreign national worker and offer repatriation at the earliest
8 date on which it is medically safe to travel. If repatriation is
9 not accomplished, the Secretary shall forward the relevant
10 documentation to the federal immigration authorities for
11 deportation.”
- 12 iv. Renumbering the subsections as necessary.
- 13 e) Amend §4924 by –
- 14 i. Amending subsection 4924(a) to delete the words “issuance of
15 an entry permit for” and substitute the words “commencement
16 of work by”
- 17 ii. Amending subsection 4924(b) to add at the beginning: “After
18 the commencement of operation of the LTARF as provided in
19 subsection (e) of this section,” and then continuing with the
20 content of the current subsection.
- 21 f) Amend §4925 by –
- 22 i. Amending the title to read: “Foreign national worker status”

HOUSE BILL 17-25, HS1

- 1 ii. Changing the term “entry permit” to “identification card”
- 2 iii. Amending subsection 4925(a) to read: “The Secretary shall
- 3 cause to be issued an identification card which shall include the
- 4 foreign national worker’s name, LIDS number, such
- 5 identifying information as the Secretary shall find necessary,
- 6 and the expiration date of the card.”
- 7 iv. Amending subsection 4925(b) to delete the last two sentences.
- 8 v. Amending subsection 4925(c) to deleted the words “the
- 9 renewal of entry permits” and to substitute the word
- 10 “renewals.”
- 11 vi. Adding a new subsection 4925(e) to read: “Umbrella permits
- 12 issued by the Department continue in full force and effect until
- 13 revoked. Each holder of an umbrella permit must also hold a
- 14 current identification card.”
- 15 g) Amend §4926 by –
- 16 i. Amending the title to read: “Immediate relative of foreign
- 17 national worker status.”
- 18 ii. Changing the term “immediate family member” to “immediate
- 19 relative.”
- 20 iii. Deleting subsection 4926(a).
- 21 iv. Amending subsection 4926(b) to read: “Each immediate
- 22 relative of a foreign national worker shall be issued an

HOUSE BILL 17-25, HS1

- 1 identification card which shall include the sponsoring foreign
2 national worker's name, and the relative's name, LIDS
3 number, such identifying information as the Secretary finds
4 necessary, and the expiration date of the card. The expiration
5 date of the card shall be the same expiration date as the
6 identification card held by the sponsoring foreign national
7 worker.”
- 8 v. Deleting subsection 4926(c).
- 9 vi. Amending subsection 4926(d) to delete the last two sentences.
- 10 vii. Adding a new subsection 4926(e) to read: “Umbrella permits
11 issued by the Department to immediate relatives continue in
12 full force and effect until revoked. Each holder of an umbrella
13 permit must also hold a current identification card.”
- 14 viii. Renumbering the subsections as necessary.
- 15 ix. Deleting the sentence that provides: “This section shall have
16 only prospective application.”
- 17 h) Delete §4927.
- 18 3) Article 3 (Standards for Employment) is amended to:
- 19 a) Amend §4931 by –
- 20 i. Amending subsection 4931(a) by adding at the end thereof the
21 words “except as provided by regulation.”

HOUSE BILL 17-25, HS1

- 1 a) Amend §4947(d) to add a new subsection (9) to read: “Modify an
2 umbrella permit. An umbrella permit may be continued in effect on
3 any of the bases upon which it could have been granted.”
- 4 b) Amend §4947(d) to add a new subsection (10) to read: “Revoke
5 umbrella permits for violation of, or condition the continuation in
6 effect of umbrella permits as appropriate to secure compliance
7 with, Commonwealth law, regulations, orders of a hearing officer,
8 or terms of the permit.”
- 9 c) Amend §4947(d) to add a new subsection (11) to read: “Impose
10 such other sanction, order or relief as may reasonably give effect to
11 Division 4, Title 3.”
- 12 d) Add a new §4950 as follows –
- 13 “§4950. Preservation of private rights of action.
- 14 (a) A foreign national worker may bring a direct action in
15 the Commonwealth courts against an employer, or
16 against the issuer of any bond required by the
17 Department of Labor to secure the performance of an
18 employer, with respect to any obligation to pay wages,
19 overtime, medical expenses, or other benefits secured
20 by an employment contract.

1 (b) The Department of Labor may, but is not required to,
2 enforce its administrative orders by bringing an action
3 in the courts.

4 (c) Nothing in this Act shall be construed as limiting the
5 ability of a foreign national worker third-party
6 beneficiary of a bond to bring suit directly against the
7 surety to enforce the bond and collect from the surety to
8 the limits of the bond any finally adjudicated
9 unsatisfied liabilities of the employer to the worker.

10 (d) This section shall have retroactive effect. Claims shall
11 be preserved that are pending or were dismissed or
12 subject to dismissal for lack of authority to bring a
13 direct action. Any statute of limitations for such claims
14 shall be tolled from February 5, 2007, to the effective
15 date of this Act.”

16 5) Article 5 (Exit from the Commonwealth) is amended to:

17 a) Delete §4953.

18 b) Delete §4955.

19 6) Article 6 (Other Provisions) is amended to:

20 (a) Amend §4963 by –

HOUSE BILL 17-25, HS1

- 1 i. Amending subsections 4963(a)(1) and (2) by deleting the
2 words “under the provisions of this chapter” and substituting
3 the words “as a nonimmigrant resident alien.”
- 4 ii. Amending subsection 4963(c) by adding at the end the words
5 “except as provided by regulation.”
- 6 iii. Amending subsection 4963(e) by deleting the words
7 “termination of an approved employment contract, including
8 renewals” and substituting the words “expiration of an
9 identification card.”
- 10 iv. Amending subsection 4963(j) by deleting the words “an entry
11 permit pursuant to Section 4925” and substituting
12 “authorization to work.”
- 13 v. Amending subsection 4963(k) by deleting the words “with the
14 intent to obtain immigration status and entry to the
15 Commonwealth for a foreign worker but.”
- 16 b) Amend §4964 by –
- 17 i. Deleting the word “deportation” and substituting the word
18 “repatriation” and deleting the word “deportable” and
19 substituting the words “subject to repatriation.”
- 20 ii. Amending subsection 4964(m) to delete the words “or
21 deportation” as they occur before the word “costs” and to
22 delete the last sentence.

HOUSE BILL 17-25, HS1

- 1 c) Delete §4965.
- 2 d) Amend §4968 by –
- 3 i. Amending §4968(a) to read: “The Secretary shall establish
- 4 fees for the administrative actions to be taken by the
- 5 Department under this Act. The Commonwealth government
- 6 shall be exempted from paying such fees.”
- 7 ii. Amending §4968(b).to read: “Fees imposed under subsection
- 8 (a) for providing data not otherwise published by the
- 9 Department shall reflect, to the extent practicable, the full
- 10 allocated cost of collecting, storing, and delivering the data in
- 11 usable form.”
- 12 iii. Amending §4968(c) by deleting the first three sentences and
- 13 substituting the following: “All fees collected pursuant to
- 14 subsection (a) of this section shall be deposited into a fund to
- 15 be known as the Foreign Worker Fee Fund.” The remainder of
- 16 §4968 remains unchanged.
- 17 e) Amend §4969(a) by deleting the word “following” and substituting
- 18 the words “relevant NAICS” and deleting the subsections (1)
- 19 through (7).
- 20 f) Amend §4972 by –
- 21 i. Deleting from §4972(b) subsections (3) and (5)
- 22 ii. Deleting subsection 4972(c)

- 1 iii. Deleting subsection 4972(f)
- 2 R. Division 4 (Employment and Registration), Part 2 (Registration) shall be
- 3 added, as follows:
- 4 “§5001 Registration of aliens.
- 5
- 6 (a) Every alien who remains in the Commonwealth longer than 90 days
- 7 shall by regulation be required to be registered. Registration shall be
- 8 renewed annually. The parents or legal guardians of aliens under the
- 9 age of 18 are responsible for such child’s registration.
- 10 (b) Registration shall be conducted by the Department for all classes of
- 11 aliens. Registration information may be taken on oath or by
- 12 declaration. Such registration information as the Secretary may
- 13 require is confidential and may be made available only on request of
- 14 law enforcement authorities in connection with criminal or juvenile
- 15 delinquency investigations.
- 16 (c) Registered aliens will be issued an identification card, which will
- 17 contain the name of the alien, the LIDS number, such identifying
- 18 information as the Secretary may require, and the expiration date of
- 19 the card.
- 20 (d) Registered aliens 18 years old or older shall keep their identification
- 21 card in their personal possession or control at all times.

HOUSE BILL 17-25, HS1

1 (e) Any alien who knowingly fails to comply with this section shall be
2 guilty of a misdemeanor and upon conviction shall be punished by
3 imprisonment for not more than 90 days, or fine of not more than \$500
4 or both.

5 (f) An alien, for purposes of this section, is any person who is not a
6 citizen, national, or permanent resident of the United States, or a
7 CNMI permanent resident as provided by Commonwealth law prior to
8 April 23, 1981.”

9 **Section 6. Amendment of Title 4.** Title 4 of the Commonwealth Code
10 is amended as follows:

11 A. Division 1 (Revenue and Taxation), Chapter 4 (Excise Tax and User
12 Fees), Article 2 (3.7 Percent Customs Service Certification), §1426 is
13 deleted.

14 B. Division 5 (Business Regulation), Chapter 5 (Resident Workers Fair
15 Compensation Act), §9504 is amended to delete the words “and
16 Immigration.”

17 C. Division 5 (Business Regulation), Chapter 7 (Garment Manufacturing),
18 §§5701 through 5711 is repealed.

19 D. Division 5 (Business Regulation), Chapter 9 (Regulation of Foreign
20 Investment), Article 1 (General Provisions), is amended to:

21 **1)** Amend §5904 (Certification) to read –

HOUSE BILL 17-25, HS1

1 “The secretary or his or her designee shall certify that an alien investor
2 has met the requirements for a commerce certificate before a business
3 license may be processed by the Secretary of Finance. The
4 certification by the secretary shall be consistent with the
5 recommendation by the Foreign Investment Review Committee. No
6 business license or foreign national ID shall be issued or granted
7 without the expressed approval by way of certification by the
8 Secretary of Commerce.”

9 2) Amend §5916 (Classification) to delete the last two sentences. That
10 section shall read:

11 “The review committee may classify an alien who owns an interest in
12 a foreign corporation that incorporates in the Commonwealth as an
13 alien investor if the alien satisfactorily establishes his or her ownership
14 interest in the foreign corporation and meets the requisite criteria and
15 standards of the commerce certificate applied for.”

16 E. Division 5 (Business Regulation), Chapter 9 (Regulation of Foreign
17 Investment), Article 3 (Regular Term Business Certificate) is repealed.

18 F. Division 5 (Business Regulation), Chapter 9 (Regulation of Foreign
19 Investment), Article 5 (Foreign Investment Certificate) is amended to:

20 1) Amend §5953 by deleting subsection 5953(b).

21 2) Amend §5957 by deleting the last two sentences.

1 G. Division 5 (Business Regulation), Chapter 10 (Foreign Retiree Investment
2 Certificate) is amended to:

3 1) Amend §50103 by deleting the last sentence.

4 2) Delete §50106 is deleted.

5

6 H. Division 5 (Business Regulation), Chapter 14 (Northern Mariana Islands
7 Free Trade Zone Act), Article 1 (General Provisions), §51109 is amended
8 to delete the words “or immigration.”

9 **Section 7. Amendment of Title 6.** Title 6 of the Commonwealth Code is
10 amended as follows:

11 A. Division 1 (Crimes Against the Person), Part 1 (Crimes Against the
12 Person), Chapter 5 (Human Trafficking and Related Offenses), Article 1
13 (Anti-Trafficking Act), §1508 (Immigration Status) is deleted.

14 B. Division 3 (Miscellaneous Offenses), Chapter 3 (Offenses Against Public
15 Administration), §3306 is amended to delete subsection 3306(e).

16 C. Division 9 (Criminal Justice System Components), Chapter 2 (Criminal
17 History and Records), §9201 (Definitions) is amended to delete the words
18 “and Immigration” in subsection 9201(b)(2).

19 **Section 8. Amendment of Title 8.** Title 8 of the Commonwealth Code is
20 amended as follows:

1 A. Division 1 (Domestic Relations), Chapter 4 (Adoption), §1410 (Notice of
2 Petition, Hearing and Investigation), subsection 1410(b) is deleted, and the
3 remaining subsections are renumbered as appropriate.

4 B. Division 1 (Domestic Relations), Chapter 4 (Adoption), §1420 (Illegal
5 Acts), subsection 1420(c) is deleted.

6 **Section 9. Global amendment.** The Commonwealth Code is amended to
7 change the term “Labor and Immigration Identification Data System” and the
8 corresponding acronym “LIIDS” to “Labor Information Data System” and the
9 corresponding acronym “LIDS” wherever they occur.

10 **Section 10. Severability.** If any provision of this Act or the application
11 of any such provision to any person or circumstance should be held invalid by a
12 court of competent jurisdiction, the remainder of the Act or the application of its
13 provisions to persons or circumstances other than those to which it is held invalid
14 shall not be affected thereby.

15 **Section 11. Savings clause.** This Act and any repealer contained herein
16 shall not be construed as affecting any existing right acquired under contract or
17 acquired under statutes repealed or under any rule, regulation or order adopted
18 under the statutes. Repealers contained in this Act shall not affect any proceeding
19 instituted under or pursuant to prior law. The enactment of the Act shall not have
20 the effect of terminating, or in any way modifying, any liability, civil or criminal,
21 which shall already be in existence on the date this Act becomes effective.

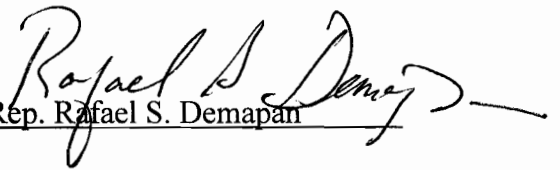
HOUSE BILL 17-25, HS1

1 **Section 12. Effective date.** This Act shall take effect upon its approval
2 by the Governor or becoming law without such approval and shall be retroactive
3 to November 28, 2009 except as otherwise specifically provided herein..

Prefiled: 02/11/2010

Date: 02/23/2010

Introduced By: /s/ Rep. Rafael S. Demapan



Reviewed for Legal Sufficiency by:

/s/ Joey P. San Nicolas

House Legal Counsel