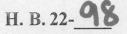
Twenty-Second Northern Marianas Commonwealth Legislature

IN THE HOUSE OF REPRESENTATIVES

Session, 2022



A BILL FOR AN ACT

To reestablish a CNMI Minimum Wage by repealing and reenacting 4 CMC §§ 9221, 9222 and 9223; to repeal and amend certain sections of the Minimum Wage and Hour Act; to abolish the Wage Review Committee; and for other purposes.

BE IT ENACTED BY THE 22nd NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Findings and Purpose. The Legislature finds that the current 2 minimum wage in the Commonwealth of the Northern Mariana Islands (CNMI) 3 was established by U.S. Public Law 110-28, the Fair Minimum Wage Age of 2007, 4 which mandated incremental increases from the previous minimum wage of \$3.05 5 per hour in 2007 until the minimum wage reached the federal minimum level of 6 \$7.25 per hour in 2017. The Legislature finds that the current CNMI minimum 7 wage of \$7.25 per hour is still far lower than more than half of U.S. states. Half of 8 the states have seen minimum wage increases from 2021 to 2022, and eleven states 9 plus the District of Columbia have legislation placing them on track to reach a minimum wage of \$15 per hour. California, some New York counties, and 10 Washington, D.C., have a \$15 per hour minimum wage now. 11

1 The Legislature further finds that the CNMI minimum wage of \$7.25 has 2 not been increased since 2017, while the cost of goods and services, housing, and 3 other living expenses has gradually increased in the CNMI. The Legislature finds 4 that the current CNMI minimum wage is not a living wage that would enable an 5 individual or family to afford adequate shelter, food, and other basic necessities. 6 The CNMI minimum wage should be gradually increased to keep pace with the 7 rising cost of living. 8 The Massachusetts Institute of Technology's (MIT) Department of Urban 9 Studies and Planning developed a living wage calculator for each U.S. state and the 10 District of Columbia that takes into account the basic standard of living costs in 11 each area. In 2021, MIT's living wage calculator determined that the lowest living 12 wage in the U.S. is \$12.61 per hour for one adult in South Dakota and the highest

is \$20.12 per hour for one adult in Washington, D.C. Even the lowest living wage
in the U.S. states is still at least \$5.00 more than the current minimum wage in the
CNMI, where the cost of living is higher than some places in the U.S.

According to the 2021 CNMI Prevailing Wage Study conducted by the Department of Commerce, Central Statistics Division, dated May 25, 2021, the CNMI's median hourly wage was \$9.97. This means that half of the CNMI's workforce is already making \$9.97 per hour or more. Moreover, the overall mean hourly wage in the CNMI was \$13.53. The Legislature finds that gradually increasing the CNMI minimum wage to \$10.00 per hour in four years is both
 reasonable and attainable.

3 Accordingly, the purposes of this legislation are to establish a CNMI 4 minimum wage that is not less than the federal minimum wage; to gradually 5 increase the CNMI minimum wage by \$0.55 increments within 120 days of the 6 effective date of this Act, and every year thereafter until the minimum wage is 7 \$10.00 per hour; and to repeal or amend certain obsolete or problematic sections of 8 the Minimum Wage and Hour Act. To improve protections for workers in the 9 CNMI, this legislation repeals or amends certain sections of the administration and 10 enforcement provisions of the Minimum Wage and Hour Act; repeals minimum 11 wage exemptions; removes obstacles for employees to pursue a cause of action for 12 violations of the Minimum Wage and Hour Act; and abolishes the Wage Review 13 Committee.

The Legislature further intends that Ninth Circuit jurisprudence interpreting
the federal Fair Labor Standards Act (FLSA) should be controlling in interpreting
terms defined similarly to those in the FLSA throughout Title 4, Division 9, Article
2 of the Commonwealth Code.

18 Section 2. <u>Repealer and Reenactment.</u> 4 CMC §§ 9221 and 9222 are
19 hereby repealed and reenacted to read as follows:

20 **"§ 9221. Minimum Wages.**

1	(a) Every employer shall pay to each of his or her employees a minimum
2	wage that is not less than the federal minimum wage pursuant to Section 6 of the
3	Fair Labor Standards Act of 1938 (29 U.S.C. 206), as it may be amended from time
4	to time.
5	(b) Every employer shall pay to each employee employed by him or her, a
6	minimum wage as follows:
7	(1) \$7.80 per hour, beginning on the 120^{th} day after the enactment
8	of this Act;
9	(2) \$8.35 per hour, beginning 12 months after that 120 th day;
10	(3) \$8.90 per hour, beginning 24 months after that 120 th day;
11	(4) \$9.45 per hour, beginning 36 months after that 120 th day; and
12	(5) \$10.00 per hour, beginning 48 months after that 120 th day.
13	(c) No employment contract shall be upheld which purports to contract
14	around this provision.
15	(d) Provided, that if the federal minimum wage provided in the Fair Labor
16	Standards Act of 1938 (29 U.S.C. 206) as amended and described in subsection (a)
17	of this section, is increased at any time and exceeds the CNMI minimum wage
18	provided in subsection (b), then the federal minimum wage shall apply.
19	§ 9222. Maximum Hours.
20	(a) No employer shall employ any employee in excess of 40 hours a week,
21	unless the employee receives compensation for employment in excess

1	of such weekly hours at a rate not less than one and one-half times the
2	regular rate at which the employee is employed. "Regular rate" shall be
3	defined according to the guidelines set forth in the federal Fair Labor
4	Standards Act at 29 U.S.C. § 207(e).
5	(b) This section shall not apply to any employee employed in a bona fide
6	executive, administrative, or professional capacity, as defined at 29
7	U.S.C. § 213(a)(1).
8	(c) No employment contract shall be upheld which purports to contract
9	around this provision."
10	Section 3. <u>Repealer.</u> The following statutory provisions are hereby
11	repealed in their entirety and codification of Title 4 of the Commonwealth Code
12	may be renumbered as appropriate:
13	(a) 4 CMC §§ 9223, 9234, 9239, and 9240; and
14	(b) Chapter 6 (Wage Review Committees), Division 9, Title 4 of the
15	Commonwealth Code [4 CMC §§ 9601-03].
16	Section 4. Amendment. 4 CMC § 9212 is hereby amended to read as
17	follows:
18	"§ 9212. Definitions.
19	As used in this chapter:

(a) "Agriculture" means agriculture as defined in Section 3(f) of the federal
Fair Labor Standards Act of 1938 [29 U.S.C. § 203(f)], or as the same may be
amended from time to time.
(b) "Department" means the Department of Commerce and Labor;
provided, however, that "department" means the Civil Service Commission for
employers and employees of the Commonwealth government.
(c) "Secretary Director" means the Secretary of Labor Director of
Commerce and Labor; provided, however, that "director" means the Personne
Officer for employers and employees of the Commonwealth government
"Director" and includes his or her authorized representative.
(d) "Employ" means to suffer or permit to work.
(e) "Employee" means employee as defined in Section 3(e) of the federa
Fair Labor Standards Act of 1938 [29 U.S.C. § 203(f)], or as the same may be
amended from time to time any individual employed by an employer.
(f) "Employer" means employer as defined in Section 3(d) of the federa
Fair Labor Standards Act of 1938 [29 U.S.C. § 203(f)], or as the same may be
amended from time to time any individual, partnership, association, corporation
business trust, legal representative, the government, its agencies and
instrumentalities, or any organized group of persons, acting directly or indirectly in
the interest of an employer in relation to an employee, but does not include the
United States government.

(g) "Wage" paid to an employee means legal tender of the United States, or
checks on banks convertible into cash on demand at face value, and includes in
addition thereto the reasonable cost, as determined by the department, to the
employer of furnishing an employee with board, lodging or other facilities which
are customarily furnished by such employer to his or her employees.
(h) "Week" or "workweek" means any period of seven consecutive days."
Section 5. Amendment. 4 CMC § 9231 is hereby amended to read as
follows:
"§ 9231. Duty of Director <u>Secretary: Staff</u> .
The Secretary director shall enforce the provisions of this chapter. The
Secretary director may employ such staff as may be required to assist in enforcing
the provisions of this chapter, pursuant to budgetary appropriations. The Secretary
shall maintain a record of all administrative actions and all private suits undertaken
in enforcement of this chapter and shall annually present such report to the Office
of the Governor and the presiding officers of both houses of the Legislature. Such
record shall include but not be limited to: all enforcement actions, including
complaints filed or received and the status of adjudication; investigations
performed; amounts found to be owed; amounts recovered; the nature or categories
of violations; employees and employers implicated; length of time to resolve the
matter; the number and nature of actions that are appealed and the result thereof;

and recommendations, if any, for legislative or executive action, or other policy
 reform."
 Section 6. Amendment. 4 CMC § 9232 is hereby amended to read as

3 Section 6. <u>Amendment</u>. 4 CMC § 9232 is hereby amended to read as
4 follows:

5 "§ 9232. Employer Records; Furnishing of Pay Data;
6 <u>SecretaryDirector</u>'s Rights and Duties.

(a) Every employer shall keep in or about the premises wherein any 7 employee is employed a record of the name, address and occupation of each 8 employee, of the amount paid each pay period to each employee, of the hours 9 10 worked each day and each workweek by each employee, and of other information 11 and for periods of times as the Secretary director may by regulation prescribe. Such 12 records shall be maintained for a period of at least six years. The Secretary director shall for the purpose of examination have access to and the right to copy from such 13 14 records.

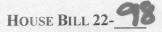
(b) Every employer shall furnish to the <u>Secretary director</u> such information
relating to the employment of workers and in such manner as the <u>Secretary director</u>
may prescribe, and shall permit the <u>Secretary director</u> to interview employees
during working hours at the place of employment.

(c) Every employer shall furnish each employee at every pay period a
written statement showing the employee's total hours worked; overtime hours;
straighttime compensation; overtime compensation; other compensation; total

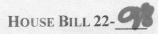
1	gross compensation; amount and purpose of each deduction; total net
2	compensation; date of payment; and pay period covered.
3	(d) The director shall print and distribute copies of this chapter to interested
4	persons upon request without charges. Copies of orders, and of rules and
5	regulations of the director shall also be furnished to affected employers without
6	charge."
7	Section 7. Amendment. 4 CMC § 9233 is hereby amended to read as
8	follows:
9	"§ 9233. Disclosure of Information.
10	Except as otherwise provided in this chapter, information secured from
11	inspection of the records, or from the transcription thereof, or from inspection of
12	the employers' premises by the Secretary director, shall be held confidential and
13	shall not be disclosed or be opened to any person. The information may be made
14	available:
15	(a) To officials concerned with, and for the purposes of the administration
16	of the laws relating to matters under the jurisdiction of the Secretary director;
17	(b) To any agency of the Commonwealth government;
18	(c) To any employee, to the extent necessary for the proper presentation of
19	his claim under 4 CMC § 9243;
20	(d) To the Wage and Hour and Public Contracts Divisions of the United
21	States Department of Labor.

Section 8. Amendment. 4 CMC § 9235 is hereby amended to read as 1 2 follows: 3 "§ 9235. Oaths, Affidavits, and Subpoenas; Witnesses and Immunities. 4 (a) The Secretary director may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony 5 of witnesses and the production of all books, records and other evidence relative to 6 any matter under investigation. The subpoena shall be signed and issued by the 7 Secretary director. If any person fails to comply with any subpoena lawfully issued 8 9 under this section, or on the refusal of any witness to produce evidence or to testify 10 to any matter regarding which he may lawfully be questioned, the judge of the Commonwealth Superior Court, upon the application of the Secretary director, shall 11 compel obedience by a proceeding for contempt, as in the case of disobedience of 12 the requirements of a subpoena issued by the court or a refusal to testify therein. 13 14 The Secretary-director may certify to official acts. (b) No person shall be excused from attending and testifying or from 15 16 producing books, papers, correspondence, memoranda, contracts, or other records and documents before the Secretary director, or in obedience to the subpoena of the 17 Secretary director, or in any cause or proceeding instituted under this chapter, on 18

19 the ground that the testimony or evidence documentary or otherwise required of the 20 person may tend to incriminate or subject the person to a penalty or forfeiture; but 21 no individual shall be prosecuted or subject to any penalty or forfeiture for or on



account of any transaction, matter or thing concerning which he or she is compelled 1 2 to testify or produce evidence, documentary or otherwise, after having claimed the 3 privilege against self-incrimination, except that the individual so testifying shall not 4 be exempt from prosecution and punishment for perjury committed in so 5 testifying." Section 9. Amendment. 4 CMC § 9236 is hereby amended to read as 6 7 follows: 8 "§ 9236. Rules and Regulations. 9 The department shall adopt rules and regulations as are necessary to carry 10 out the purposes of this chapter or to prevent the circumvention or evasion of this 11 chapter and to safeguard the minimum wage rates established. These rules and regulations may define terms used in this chapter, including, but not limited to, 12 restriction or prohibition of industrial or household homework or of other acts or 13 14 practices as the department finds necessary. Such rules and regulations may also 15 provide for reasonable deductions from the minimum wage applicable under this chapter for board, lodging or other similar benefits furnished by an employer to his 16 17 employee. 18 Section 10. Amendment. 4 CMC § 9241 is hereby amended to read as 19 follows: "§ 9241. Willful Violations; Penalty. 20



1	Any employer who willfully hinders or delays the Secretary director in the
2	performance of his or her duties in the enforcement of this chapter, or who willfully
3	refuses to admit the Secretary director to any place of employment, or who fails to
4	keep or falsifies any record required under 4 CMC § 9232, or who refuses to make
5	such records accessible or to give information required for the proper enforcement
6	of this chapter, upon demand, to the Secretary director shall for each instance be
7	fined not more than $\frac{500}{1,000}$ or imprisoned not more than 90 days, or both.
8	Section 11. Amendment. 4 CMC § 9242 is hereby amended to read as
9	follows:
10	"§ 9242. Other Criminal Violations.
11	(a) The following persons may be found guilty of a misdemeanor:
12	(1) Any person disclosing information in violation of 4 CMC §
13	9233; or
14	(2) Any employer who willfully violates any provisions of this
15	chapter or of any rule, regulation or order issued under the authority
16	of this chapter; or
17	(3) Any employer or employer's agent who engages in retaliation,
18	including discharges or discriminationes against any employee
19	because the employee has made a complaint, either orally or in
20	writing, to the employer, to the Secretary director, or to any other
21	person that the employee has not been paid wages in accordance

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1	with this chapter employer has committed a violation of this chapter,
2	either as to himself/herself or others, or has testified or is about to
3	testify in any proceedings; or
4	(4) Any employer or employer's agent who pays or agrees to pay
5	any employee compensation less than that which the employee is
6	entitled to under this chapter.
7	(b) Any such person is punishable by a fine of not less than 500 nor more
8	than \$500 \$1000 for each instance, or by imprisonment not in excess of one year,
9	or both."
10	Section 12. Amendment. 4 CMC § 9243 is hereby amended to read as
11	follows:
12	"§ 9243. Liability of Employer to Employee.
13	(a) Any employer who violates any provisions of 4 CMC §§ 9221 or 9222
14	is liable to the employee or employees affected in the amount of their unpaid
15	minimum wages and/or unpaid overtime compensation, and in the case of willful
16	violation, an additional equal amount as liquidated damages.
17	(b) In such an action, the employer shall bear the burden of proving the
18	accuracy of records maintained pursuant to 4 CMC § 9232 and the precise amount
19	of work performed.
20	(c) In addition to a private right of action against an employer for unpaid
21	wages, employees shall have a right of action for money damages, which may

1	include punitive damages, and equitable relief for unlawful retaliation, as defined
2	in 4 CMC § 9242(a)(3). Employers who engage in retaliation shall also be liable
3	for an additional amount of liquidated damages not to exceed \$10,000.00 per
4	instance of retaliation.
5	(d) In the event of joint employment, joint employers may be held jointly
6	and severally liable."
7	Section 13. Amendment. 4 CMC § 9244 is hereby amended to read as
8	follows:
9	"§ 9244. Collection Suits; Attorney's Fees; Assignments; Relief from
10	Costs.
11	(a) An action to recover liability under 4 CMC §§ 9221 or 9222, or for
12	unlawful retaliation, may be maintained in any court of competent jurisdiction by
13	any one or more employees for and in on behalf of himself or themselves and other
14	employees similarly situated, or the employee or employees may designate an agent
15	or representative to maintain an action for and in on behalf of all employees
16	similarly situated.
17	(b) The court in such action shall, in addition to any judgment awarded to
18	the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a
19	reasonable attorney's fee to be paid by the defendant, and the cost of the action.
20	(c) At the request of any employee paid less than the amount to which he
21	or she is entitled under this chapter, the Secretary director may take an assignment

in trust for the assigning employee of the full amount to which he is entitled under
this section and may bring any legal action necessary to collect the claim. The
employer shall be required to pay the costs and such reasonable attorney's fees as
may be allowed by the court in the event the <u>Secretary director</u> prevails.

(d) The Secretary director shall not be required to pay the filing fee or other 5 costs in connection with such action. The Secretary director, in case of suit, may 6 7 join various claimants against the employer in one action. The right provided by 8 this section to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the 9 10 filing of a complaint by the director in an action in which restraints are sought by any further delay in the payment of unpaid minimum wages, or the amount of 11 unpaid overtime compensation owing to the employee under 4 CMC §§ 9221 or 12 9222 by an employer liable therefor." 13

Section 14. <u>Amendment</u>. 4 CMC § 9245 is hereby amended to read as
follows:

16 "§ 9245. Injunctions.

Whenever it appears to the <u>Secretary director</u> that any employer is engaged in any act or practice which constitutes or will constitute a violation of any provision of this chapter or of any rule or regulation, the <u>Secretary director</u> may bring an action in a court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this chapter or with the rule or regulation, and upon a

proper showing, a permanent or temporary injunction or decree or restraining order 1 shall be granted without bond." 2 Section 15. Amendment. 4 CMC § 9246 is hereby amended to read as 3 4 follows: 5 "§ 9246. Limitation of Actions. (a) Except as provided in subsection (bc) of this section, any action 6 commenced on or after the effective date of this Act October 4, 1996, to enforce a 7 cause of action for unpaid wages, unpaid overtime compensation, or liquidated 8 damages, or retaliation under the Minimum Wage and Hour Act, 4 CMC § 9211 et 9 10 seq., or any other cause of action related to the Employment of Foreign Nationals set forth at 3 CMC § 4911 et seq. under the Nonresident Worker Act, 3 CMC § 11 4411 et seq., must be commenced within six years months after the cause of action 12 accrued, or after the violation became reasonably discoverable, whichever is later. 13 and every action shall be forever barred unless commenced within six months after 14 the cause of action accrued, except that a cause of action arising out of a willful 15 violation may be commenced within one year after the cause of action accrued. 16 (b) The termination of an employment contract shall not prevent or bar the 17 18 commencement of any action to enforce a cause of action for unpaid wages, unpaid overtime compensation, liquidated damages, or retaliation under the Minimum 19 Wage and Hour Act, 4 CMC § 9211 et seq., or any other cause of action related to

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the Employment of Foreign Nationals set forth at 3 CMC § 4911 et seq., within six
 years after the cause of action accrued.

(bc) Any cause of action which accrued prior to the effective date of this
Act October 4, 1996, and which would otherwise be barred by subsection (a) of this
section, may nevertheless be brought if commenced on or before a date six months
after the effective date of this Act October 4, 1996, or two years after the cause of
action accrued, whichever is earlier, or if arising out of a willful violation, on or
before a date one year after the effective date of this Act October 4, 1996, or three
years after the cause of action accrued, whichever is earlier."

Section 16. <u>Enactment.</u> There is enacted in Title 4, Division 4, Part 2,
Chapter 7 of the Commonwealth Code a new Article 5, Liability of shareholders
for wages due employees.

"§ xxx. Liability of shareholders for wages due to employees. 13 (a) The ten largest shareholders, as determined by the fair value of their 14 beneficial interest as of the beginning of the period during which 15 the unpaid services referred to in this section are performed, of every 16 domestic corporation or of any foreign corporation, when the unpaid 17 services were performed in the Commonwealth, shall jointly and severally be 18 personally liable for all wages or other amounts due and owing to any of its 19 employees by such corporation pursuant to this chapter. Before such employee shall 20 21 charge such shareholder for such amounts, he or she shall give notice in writing to such shareholder that he or she intends to hold the shareholder liable under this
 section.

Such notice shall be given within six (6) years after termination of such 3 4 employment, except that if, within such period, the employee demands an 5 examination of the record of shareholders, the corporation shall be obligated to 6 provide that record of shareholders, and such notice may be given within ninety 7 (90) days after the employee has been given the opportunity to examine the record of shareholders. An action to enforce such liability shall be commenced within one 8 9 year after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for such amounts. 10

(b) A shareholder who has paid more than such shareholder's pro rata share 11 under this section shall be entitled to contribution pro rata from the other 12 shareholders liable under this section with respect to the excess so paid, over and 13 above such shareholder's pro rata share, and may sue them jointly or severally or 14 15 any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this subsection, "pro rata" means in proportion 16 to beneficial share interest. Before a shareholder may claim contribution from other 17 shareholders under this paragraph, such shareholder shall, unless they have been 18 given notice by an employee under subsection (a), give them notice in writing that 19 such shareholder intends to hold them so liable to such shareholder. Such notice 20

shall be given by such shareholder within twenty days after the date that notice was
 given to such shareholder by an employee under subsection (a).

- 3 (c) The Secretary of Labor shall maintain a record of all actions undertaken
 4 in enforcement of this section and shall annually present such report to the Office
 5 of the Governor and the presiding officers of both houses of the Legislature."
- 6 Section 17. Severability. If any provision of this Act or the application of 7 any such provision to any person or circumstance should be held invalid by a court 8 of competent jurisdiction, the remainder of the Act or the application of its 9 provisions to persons or circumstances other than those to which it is held invalid 10 shall not be affected thereby.
- 11 Section 18. <u>Savings clause</u>. This Act and any repealer contained herein 12 shall not be construed as affecting any existing right acquired under contract or 13 acquired under statutes repealed or under any rule, regulation or order adopted 14 under the statutes. Repealers contained in this Act shall not affect any proceeding 15 instituted under or pursuant to prior law. The enactment of the Act shall not have 16 the effect of terminating, or in any way modifying, any liability, civil or criminal, 17 which shall already be in existence on the date this Act becomes effective.
- 18 Section 19. Effective date. This Act shall take effect upon its approval by
 19 the Governor or upon its becoming law without such approval.
 Prefiled: ADVI 14, 2022

HOUSE BILL 22-98

Date:

4/119/22

Introduced By:

Reviewed for legal sufficiency by:

House Legal Co Isel

Rep. Christina Marie E. Sablan Junai (Denky)