

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2006

H. B. NO. 15-38, CS 2, HD 8, SD 2

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A BILL FOR AN ACT

TO REPEAL AND RE-ENACT CHAPTERS 4 THROUGH 8 OF DIVISION 4 OF TITLE  
3 OF THE COMMONWEALTH CODE; AND FOR OTHER PURPOSES.

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2 **BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS**  
3 **COMMONWEALTH LEGISLATURE:**  
4

5 **Section 1. Short title.** This Act may be referred to as the “Commonwealth  
6 Employment Act of 2007.”

7 **Section 2. Findings and purpose.** The Commonwealth Legislature finds the  
8 following with respect to fair and adequate employment within the Commonwealth of the  
9 Northern Mariana Islands:

10 Economic development and prosperity in the Commonwealth require that citizens and  
11 permanent residents be given maximum opportunity for employment in the public and  
12 private sectors of the economy.

13 The employment preference for citizens and permanent residents is implemented by  
14 clarifying and improving provisions of the current law, such as limiting public sector jobs to  
15 citizens and permanent residents to the maximum extent practicable, requiring that employers  
16 in the Commonwealth provide jobs to citizens and permanent residents that amount to at least  
17 thirty percent (30%) of the employer’s work force, and restructuring the moratorium on new  
18 hiring of foreign nationals, among other measures.

19 This employment preference is promoted by effective training to qualify citizen and  
20 permanent resident employees, particularly indigenous Carolinian and Chamorro people, for  
21 jobs that require special skills, effective advertising of available jobs with full equivalent  
22 wages or benefits compared to any wages or benefits that would be offered to a person who  
23 is not a citizen or permanent resident, and effective job referral services provided to citizens  
24 and permanent residents.

25 The Covenant envisioned the employment of foreign nationals in the Commonwealth  
26 in order to create an economic base that would provide the citizens of the Commonwealth the

1 economic opportunities and standard of living that their counterparts on the mainland are  
2 able to enjoy because of the vast area and large population from which communities on the  
3 mainland may draw employees. In order for the economy to sustain and foster the  
4 development that will produce an increasing number of such jobs, foreign national workers  
5 must be available to fill the unskilled and lower skilled jobs that make larger business  
6 enterprises economically viable in the Commonwealth.

7         The Commonwealth's very substantial investment in secondary and post-secondary  
8 education over the past 30 years has strived to produce a local work force well qualified for  
9 managerial, supervisory, technical, professional, visitor industry, and other jobs that are of  
10 vital importance to the growth and development of the Commonwealth's economy. The  
11 Commonwealth's goal is to establish a regulatory environment so that jobs are available for  
12 its qualified high school, college, and graduate school graduates. To accomplish that goal,  
13 the Commonwealth requires a two-pronged approach. First, with respect to all jobs, citizens  
14 and permanent residents must be given preference over foreign workers imported to fill  
15 specific jobs. Second, with respect to jobs for which the Commonwealth's investment in its  
16 citizens and permanent residents has already produced a sufficient supply of qualified  
17 persons, employers must be required to hire only those citizens and permanent residents. As  
18 to the second prong, a minimum wage rate may not be sufficient to attract citizens and  
19 permanent residents to take a job for which they are qualified. If the job is reserved for  
20 citizens and permanent residents, then the competitive economy will cause the wage rate to  
21 rise to a level that citizens and permanent residents find acceptable. As to jobs for which  
22 qualified citizens and permanent residents are available, the Legislature finds that it benefits  
23 the Commonwealth very substantially to have the wage rate rise to the level required. Wage  
24 rates will not rise so long as cheap foreign labor is available. The incentives to foreign  
25 workers to remain in the Commonwealth are very large because the working conditions in  
26 the Commonwealth are so far superior to the working conditions in their home countries. For  
27 that reason, foreign workers will always accept lower wages than citizens and permanent  
28 residents. It was never the purpose of the legislative enactments with respect to the use of  
29 foreign labor in the Commonwealth to perpetuate jobs at the minimum wage rate. If that  
30 happens, much of the Commonwealth's investment in secondary and post-secondary

1 education for its citizens will be lost as those citizens migrate outside the Commonwealth to  
2 find good-paying jobs.

3 In 2006, the Office of the Public Auditor launched a year-long study to identify jobs  
4 in the current Commonwealth economy for which citizens and permanent residents are  
5 currently available or will be available in the near future. The Public Auditor reported: “The  
6 survey was prompted by complaints from residents who were unable to find employment  
7 despite statutory provisions requiring preferential hiring of residents, as well as the added  
8 concern of increased resident unemployment due to the workforce reductions in the private  
9 sector and possible downsizing within the Government.” The Public Auditor reported that  
10 the study’s “conclusions and recommendations are critical foundations in establishing a  
11 sustainable resident workforce.” The study identified specific positions that “can be easily  
12 filled by the existing resident pool.” The Public Auditor’s study examined carefully all of the  
13 jobs currently reserved for citizens and permanent residents and expanded the list of job  
14 classifications that should be reserved for residents. The Public Auditor’s study was assisted  
15 by an organized committee comprised of private sector employers from various industries,  
16 government officials, and other interested parties. The study consulted with the Department  
17 of Labor, the Division of Immigration, the Northern Marianas College, the Workforce  
18 Investment Agency, and the Department of Commerce. Prior to the release of the jobs study  
19 report, more than a dozen presentations on the preliminary study were made to various public  
20 and private sector groups to “ensure that input and feedback from the community was  
21 considered before final release of the report.”

22  
23 The Fourteenth Amendment to the United States Constitution does not deny to States the  
24 power to treat different classes of persons in different ways.” *Reed v. Reed*, 404 U.S. 71, 75  
25 (1971). Under the rational basis test, “[a] classification ‘must be reasonable, not arbitrary,  
26 and must rest upon some ground of difference having a fair and substantial relation to the  
27 object of the legislation, so that all persons similarly circumstanced shall be treated alike.’”  
28 *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The statistics provided to the  
29 Legislature by the Department of Labor with respect to the history of employment in the  
30 Commonwealth since 1983 when the initial foreign worker legislation was enacted; the  
31 underlying goals with respect to the structure of and progress within the economy in the

1 Commonwealth; and Jobs Study Report and ongoing work of the Public Auditor form a  
2 rational basis on which to treat foreign workers, present in the Commonwealth for temporary  
3 work, differently from citizens and permanent residents. The Legislature finds these factors  
4 form a rational basis for the government's interest in preventing all nonresident workers from  
5 working in specific job classifications and a rational basis for the government's an interest in  
6 singling out specific job classifications from all other jobs in the Commonwealth and finds  
7 that the regulatory power delegated to the Secretary of Labor may be exercised in these  
8 respects to implement this statute.

9 The current economic situation in the Commonwealth requires the continued  
10 availability of foreign nationals to augment the work force in the Commonwealth but also  
11 demands that the system for regulating the employment of foreign nationals be more efficient  
12 and less costly to operate.

13 The Commonwealth has the responsibility to provide fair employment conditions for  
14 foreign nationals, to use their labor for the purposes of economic growth and stability for  
15 which it was intended, and to regulate labor practices in order to protect against potential  
16 abuses.

17 Experience over the past 30 years has provided certain benchmarks with respect to  
18 fair employment conditions for foreign nationals: The system should have clear rules, be easy  
19 to understand, provide for lack of facility with the English language, protect basic rights, and  
20 assist employers with compliance. The overall guiding policy with respect to foreign national  
21 workers is to provide for a stable work force and protect due process rights without creating  
22 entitlements.

23 The early-intervention mediation that is an integral part of the current system  
24 achieves good results in promoting fair employment relationships between foreign national  
25 employees and employers in the Commonwealth. Early intervention can be expanded to  
26 prevent and resolve disputes more efficiently to the benefit of both employees and  
27 employers.

28 Economic stability and growth in the Commonwealth require support for the visitor  
29 industry and other investments, both local and foreign, that generate new employment  
30 opportunities. The overall employment system must achieve a balanced approach to

1 opportunities, benefits, and costs to the Commonwealth and, in the Legislature's judgment,  
2 that objective is achieved by this Act.

3 It is the intent of the Legislature that this Act shall not apply to persons admitted to  
4 the Commonwealth as tourists, or to persons employed illegally, i.e. without the approval of  
5 the Department of Labor, or to those persons employing others illegally in the  
6 Commonwealth unless specific provision has been made herein. It is the intent of the  
7 Legislature that persons illegally employing others or illegally employed be prohibited from  
8 using the terms of this Act to receive or avail themselves of a legal right or benefit. This Act  
9 shall not bar any other remedy provided by law.

10 The Legislature finds that requiring a foreign national worker to submit proof of  
11 earnings in excess of the federal poverty guidelines before bringing family members into the  
12 Commonwealth for the first time serves the important government interest of maintaining the  
13 public welfare and not overburdening public institutions and services in the Commonwealth.

14 The Legislature finds that a statutory, rather than regulation-based, entry permit for  
15 religious activities is necessary due to the need to respect religious requirements and at the  
16 same time avoid abuse. The Legislature supports the free expression of religious belief by  
17 persons or groups present in the Commonwealth and recognizes the need for their  
18 employment of religious professionals for that purpose. The Legislature finds that there is no  
19 impairment of the pursuit of religious beliefs or undue burden in the requirement that foreign  
20 nationals entering for religious employment be employed by identifiable religious  
21 organizations and subject to the same contract requirements as other foreign national  
22 workers.

23 It is the intent of the Legislature that this Act shall not conflict with treaty obligations  
24 of the United States. In the event of conflict, U.S. treaty provisions shall pre-empt the  
25 provisions of this Act.

26 It is the intent of the Legislature that this Act shall not conflict with Chapter 5 of Part  
27 1 of Division 1 of Title 6 of the Commonwealth Code (Human Trafficking and Related  
28 Offenses). This Act shall in no way limit the authority of the Commonwealth to bring an  
29 action pursuant to that chapter.

30 It is the intent of the Legislature to repeal current Chapters 5 and 7 of Division 4 of  
31 Title 3 of the Commonwealth Code.

1 It is the intent of the Legislature that this Act shall supersede any conflicting portions  
2 of Public Law 15-5, effective April 10, 2006. It is the intent of the Legislature that this Act  
3 shall supersede Public Law 15-45, effective January 29, 2007, but shall preserve its purpose  
4 and intent.

5 It is with these stated objectives that the 15<sup>th</sup> Commonwealth Legislature enacts these  
6 labor reforms in order to meet the economic needs of citizens, permanent residents,  
7 businesses, and foreign national workers in the Commonwealth.

8 **Section 3. Recodification.** Division 4 of Title 3 of the Commonwealth Code is  
9 recodified as follows:

10 (a) Chapters 1 and 2 shall be codified as Part 1, Chapters 1 and 2 of Division 4. Part 1  
11 shall be entitled “Citizenship.”

12 (b) Chapter 3 shall be codified as Part 2, Chapter 1 of Division 4. Part 2 shall be entitled  
13 “Entry and Deportation.”

14 (c) Chapters 4-8 shall be repealed and reenacted pursuant to Section 4 of this Act and  
15 codified as Part 3, Chapters 1-6 of Division 4. Part 3 shall be entitled “Employment.”

16 (d) The Commonwealth Law Revision Commission shall have the discretion to adjust the  
17 numbering of code divisions, parts, articles, or sections affected by this Act as  
18 necessary to effectuate a reasonable codification of Sections 3 and 4 of this Act.

19 **Section 4. Repealer and reenactment.** The Nonresident Workers Act of the  
20 Commonwealth of the Northern Mariana Islands, codified in Title 3, Division 4, Chapters 4-8  
21 of the Commonwealth Code, is repealed and re-enacted as Part 3, Chapters 1-6 of Division 4  
22 of Title 3 as follows:

23  
24 **“PART 3. Employment.**

25 **CHAPTER 1. Department of Labor.**

26 **CHAPTER 2. Employment Preference for Citizens and Permanent Residents.**

27 **CHAPTER 3. Moratorium on the Hiring of Foreign National Workers.**

28 **CHAPTER 4. Reserved.**

29 **CHAPTER 5. Certification Pre-clearance.**

30 **CHAPTER 6. Employment of Foreign Nationals**

31

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1 **CHAPTER 1. Department of Labor.**

2 **§ 4401. Director of Labor: functions and duties**

3 **§ 4402. Director of Employment Services: functions and duties**

4 **§ 4403. Conflicts of interest**

5

6 **§ 4401. Director of Labor: functions and duties.**

7 For the purposes of this chapter, and without limitation on the scope or extent of powers,  
8 duties, and responsibilities vested by any other provision of law, the Director of Labor and in  
9 the case of the First and Second Senatorial Districts the Resident Director shall, under the  
10 supervision of the Secretary, have the following functions and duties:

11 (a) Enforce, pursuant to Chapter 2 of this part, the employment preferences for citizens  
12 and permanent residents and the provisions of Commonwealth law related thereto;

13 (b) Enforce, pursuant to Chapter 3 of this part, the moratorium on the hiring of foreign  
14 national workers;

15 (c) Enforce, pursuant to Chapter 5 of this part, the certification pre-clearance  
16 requirements; and

17 (d) Enforce, pursuant to Chapter 6 of this part, the approved employment contracts of  
18 foreign national workers and the provisions of Commonwealth law related thereto;  
19 and oversee, monitor, and review the use of foreign national workers, all matters  
20 related to wages, work hours and conditions, and specific contractual provisions for  
21 the services or labor of such workers.

22 (c) Nothing in this part shall restrict the Secretary from delegating any of the duties and  
23 responsibilities of the Director of Labor to another division within the Department of  
24 Labor.

25 **§ 4402. Director of Employment Services: functions and duties.**

26 For the purposes of this chapter, and without limitation on the scope or extent of the  
27 powers, duties, and responsibilities vested by any other provision of law, the Director of  
28 Employment Services shall, under the supervision of the Secretary, have the following  
29 responsibilities and duties:

- 1 (a) Establish and maintain a system of registration, referral, and other employment  
2 services to assist citizens and permanent residents in obtaining employment and assist  
3 employers in locating citizen and permanent resident employees;
- 4 (b) Establish or recommend methods for alleviating shortages of qualified citizen and  
5 permanent resident applicants for employment and reducing the need for foreign  
6 national workers through such means as providing job training, advising graduates  
7 from the Northern Marianas College or other training institutions of job opportunities,  
8 and making job referrals and job placements into the private sector; provided that for  
9 purposes of this subsection, the term “graduate” includes those citizens and  
10 permanent residents who have been awarded a degree or certificate in a business,  
11 visitor services, technical or professional program established or sponsored by the  
12 Northern Marianas College or other institutions; and
- 13 (c) Establish occupational categories and minimum standards of qualification for job  
14 positions, monitor the proportional employment trends in all sectors of the population  
15 to ensure that indigenous Carolinian and Chamorro citizens and permanent residents  
16 are not disproportionately impacted in employment, and report annually to the  
17 Legislature of this matter with recommendations.

18 Nothing in this part shall restrict the Secretary from delegating any of the duties and  
19 responsibilities of the Director of Employment Services to another division within the  
20 Department of Labor.

21 **§ 4403. Conflicts of interest.**

22 No employee or official of the Department of Labor or the Commonwealth immigration  
23 authority, or his or her immediate relative as defined in 3 CMC § 4303(m), shall own or have  
24 an equity interest in an employment agency or other business engaged in recruiting or  
25 processing employment-related documents. No employee of the Department of Labor or the  
26 Commonwealth immigration authority shall accept a gratuity or other benefit from an  
27 employer or employee whose activities are regulated by this Act unless otherwise permitted  
28 by law or regulation. Any person who violates this section shall be guilty of a felony, and  
29 may be punished by a fine of five thousand dollars (\$5,000). In addition to any fine, any  
30 person who violates this section may be punished by imprisonment for not more than five (5)

1 years. A person convicted under this section shall be terminated from his or her government  
2 employment and shall not be re-employed by the Commonwealth government, in any  
3 capacity, for a period of ten (10) years from the date of conviction.

4  
5 **CHAPTER 2. Employment Preference for Citizens and Permanent Residents.**

6  
7 **Article 1. General**

8 **Article 2. Private sector employment preference**

9 **Article 3. Government employment preference**

10  
11 **Article 1. General**

12 **§ 4511. Definitions**

13  
14 **§ 4511. Definitions**

15 As used in this chapter, the following terms shall, unless the context clearly indicates  
16 otherwise, have the following meanings:

- 17 (a) “Administrative Hearing Office” means the hearing office of the Department of  
18 Labor; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to  
19 this chapter;
- 20 (b) “Citizen” means a person who is a citizen or national of the United States;
- 21 (c) “Department” means the Department of Labor;
- 22 (d) “Domestic helper” means a person who assists an employer with the domestic duties  
23 of a household, including but not limited to cooking, cleaning, and care for children,  
24 elders, and handicapped persons in the home; and does not include farmers;
- 25 (e) “Employer” means a person, corporation, partnership, or other legal entity that has a  
26 current business license issued by the Commonwealth, is doing business in the  
27 Commonwealth, and has one or more approved employment contracts with foreign  
28 national workers, or is acting directly or indirectly in the interest of a person,  
29 corporation, partnership or other legal entity in relation to an employee; or a person  
30 employing a farmer or domestic helper; and does not include the government of the  
31 United States;

- 1 (f) “Employment Services” means the Division of Employment Services of the  
2 Department of Labor;
- 3 (g) “Hearing officer” means a hearing officer appointed by the Secretary who serves in  
4 the Administrative Hearing Office and who conducts mediations, hearings, and other  
5 proceedings as necessary; and for purposes of 1 CMC §§9109 and 9110 as those  
6 provisions may apply to this chapter;
- 7 (h) “Indigenous” means a person generally recognized in the community as a person of  
8 Northern Marianas Descent, who is also a citizen or permanent resident of the  
9 Commonwealth and speaks the Carolinian or Chamorro language to a degree of  
10 fluency such that the person may accomplish the basic daily tasks of life without  
11 resorting to a language other than the Carolinian or Chamorro language.
- 12 (i) “Job classification” means the job classifications described by regulation promulgated  
13 by Employment Services;
- 14 (j) “Permanent resident” means a person who is legally residing in the Commonwealth  
15 without restrictions as to employment in the Commonwealth, including but not  
16 limited to eligible immediate relatives of citizens and citizens of the Freely  
17 Associated States of the Federated States of Micronesia, The Republic of the  
18 Marshall Islands, and the Republic of Palau;
- 19 (k) “Regulation” means a regulation or regulations promulgated by the Secretary of  
20 Labor, the Secretary of Public Health, or the Commonwealth immigration authority  
21 pursuant to this part.
- 22 (l) “Secretary” means the Secretary of Labor.

23  
24 **Article 2. Private sector employment preference**

25 **§ 4521. Job preference**

26 **§ 4522. Job vacancy announcement**

27 **§ 4523. Job referral and advertising**

28 **§ 4524. Compliance with the “Resident Workers Fair Compensation Act”**

29 **§ 4525. Work force participation by citizens and permanent residents**

30 **§ 4526. Exemptions**

31 **§ 4527. Investigations**

1       **§ 4528. Adjudication of claims**

2       **§ 4529. Statistical data**

3       **§ 4530. Regulations**

4

5       **§ 4521. Job preference.**

6       Citizens and permanent residents shall be given preference for employment in the  
7 Commonwealth. Capability in the official languages of the Commonwealth is an important  
8 skill with respect to working effectively within the Commonwealth.

9       **§ 4522. Job vacancy announcement.**

10       Any employer may utilize Employment Services to fill a job vacancy by filing a job  
11 vacancy announcement which includes information as required by the Secretary by  
12 regulation. Any employer seeking permission to employ workers other than citizens or  
13 permanent residents shall utilize Employment Services as provided in this chapter.

14       **§4523. Job referral and advertising.**

15       Upon receiving a job vacancy announcement, the Director of Employment Services shall  
16 assess the good faith efforts by the employer to fill the job vacancy with a qualified citizen or  
17 permanent resident and then shall endeavor to fill the job vacancy by referral of qualified  
18 citizens and permanent residents registered with Employment Services. If sufficient  
19 qualified citizens and permanent residents are not supplied by such good faith efforts or  
20 referral, the Director of Employment Services shall cause the existence of the vacancy and  
21 other applicable information regarding the job to be published. The vacancy shall be  
22 advertised by publication in a newspaper of general circulation in the Commonwealth or  
23 equivalent. The Secretary shall prescribe by regulation the equivalent foreign language  
24 media, radio, television, or online advertising, if any. The job vacancy announcement shall  
25 state the wages and all benefits offered, together with the net cash equivalent of employer-  
26 supplied medical insurance, housing, food, transportation, and other benefits, if any, and shall  
27 be published for no less than two consecutive days in each of two weeks or equivalent. This  
28 requirement may not be waived.

29       **§4524. Compliance with the “Resident Workers Fair Compensation Act.”**

30       All notices issued under this Article shall comply with 4 CMC §9501 et seq., the  
31 “Resident Workers Fair Compensation Act.”

1       **§4525. Work force participation by citizens and permanent residents.**

2       (a) In the full-time work force of any employer, the number of citizens and permanent  
3           residents employed shall be at least thirty percent (30%) of all employees within five  
4           years of the enactment of this Act, as provided by regulation.

5       (b) The Secretary shall not waive the requirements of this section.

6       **§ 4526. Exemptions.**

7       (a) The provisions of this chapter shall not apply to employers of fewer than five (5)  
8           employees, provided however, the Secretary may, by regulation, require each  
9           business to have at least one employee who is a citizen or permanent resident, or  
10          remove the exemption available to employers against whom two or more judgments  
11          are entered in Department proceedings in any two (2) year period.

12       (b) The Secretary, or an authorized designee, may grant an exemption from this chapter  
13          for a particular construction project of limited duration. Persons who are not citizens  
14          or permanent residents and who enter the Commonwealth for work on an exempted  
15          project shall not transfer to another project or employer and shall exit the  
16          Commonwealth within seven (7) days of the completion of their work on the  
17          exempted project. No immediate family member may enter the Commonwealth in  
18          connection with such worker's employment on an exempted project.

19       (c) An incentive exemption shall be available if citizen and permanent resident  
20          employees in the full-time work force of an employer in professional, managerial,  
21          human resources, office or administrative assistant, secretary, cashier, retail clerk,  
22          front desk receptionist, tour guide, boat captain, and sports and recreation positions  
23          and other positions that may be specified by regulation substantially exceed thirty  
24          percent (30%) of the employer's total full-time work force in these positions. The  
25          Secretary shall provide the incentive benchmarks by regulation.

26       (d) The Secretary may continue waivers granted prior to January 1, 2007, for light  
27          manufacturing, at the Secretary's discretion.

28       **§ 4527. Investigations.**

29       The Director of Labor or a designee shall conduct investigations as the Director may  
30          deem appropriate and necessary to enforce the provisions of this chapter and regulations  
31          promulgated thereunder, and to ensure lawful working conditions, employer-supplied

1 benefits, and the health and safety of citizens, permanent residents, and foreign national  
2 workers.

3 **§ 4528. Adjudication of claims.**

4 (a) A citizen or permanent resident who is qualified for a job may make a claim for  
5 damages if an employer has not met the requirements of Section 4525, the employer  
6 rejects an application for the job without just cause, and the employer employs a  
7 person who is not a citizen or permanent resident for the job.

8 (b) The Administrative Hearing Office has original jurisdiction to resolve all claims filed  
9 pursuant to this section.

10 (c) A hearing officer shall have general power to issue subpoenas, summon witnesses,  
11 require production of books, papers, documents and records, administer oaths, and  
12 such other powers as may be necessary to implement this chapter effectively. A  
13 hearing officer may refer a matter to the Director of Labor for investigation if the  
14 hearing officer deems investigation warranted and justified under the circumstances.

15 (d) A hearing shall be commenced as soon as practicable after filing of a complaint and  
16 any mediation that may be held in the matter. Notwithstanding any other provision of  
17 law, hearings shall be open to the public. Adequate notice and opportunity to present  
18 relevant evidence shall be given to all parties.

19 (e) The hearing officer shall, upon concluding the hearing, issue any necessary findings,  
20 decisions, and orders as soon as practicable. Issuance of findings, decisions, and  
21 orders shall be pursuant to 1 CMC 9110, but shall not be judicially reviewable until  
22 final.

23 (f) The hearing officer is authorized to:

24 (1) Award actual and liquidated damages in an amount up to six months' wages for  
25 the job for which a citizen or permanent resident applied; and

26 (2) Levy a fine not to exceed two thousand dollars (\$2,000) for each violation of any  
27 provision of this chapter.

28 (g) Within fifteen (15) days of issuance, any person or party affected by findings,  
29 decisions, or orders made pursuant to subsection (f) of this section may appeal to the  
30 Secretary. Upon appeal, the Secretary may, in the Secretary's discretion, restrict  
31 review to the existing records, supplement the record with new evidence, hear oral

1 argument, or hear the matter *de novo* pursuant to 1 CMC §§ 9109 and 9110. The  
2 Secretary shall have the same powers as a hearing officer in addition to other powers  
3 pursuant to this section. Upon completion of review, the Secretary shall affirm or  
4 modify the finding, decision, or order in writing. Any modification shall include  
5 supplemental findings. The Secretary's decision shall constitute final action for  
6 purposes of judicial review.

7 (h) Judicial review of a final action of the Secretary is authorized after exhaustion of all  
8 administrative remedies and shall be initiated within thirty (30) days of the final  
9 action. Judicial review shall be pursuant to 1 CMC §9112. Appeals from a final  
10 action by the Secretary shall be made directly to the Commonwealth Superior Court.

11 **§ 4529. Statistical data.**

12 The Secretary shall maintain statistical data with respect to the number of citizens and  
13 permanent residents employed in each of the following categories:

- 14 (1) Professional, technical, and managerial;
- 15 (2) Clerical, sales, and service;
- 16 (3) Agriculture, fisheries, forestry, and groundskeeping;
- 17 (4) Light manufacturing;
- 18 (5) Construction and structural work; and
- 19 (6) Housework, gardening, and related private residence work.

20 The Secretary shall describe any special definitions used in these regards to account for all  
21 employment of citizens and permanent residents within the enumerated categories.

22 **§ 4530. Regulations.**

23 The Secretary shall promulgate regulations to implement the intent of this chapter  
24 pursuant to the Administrative Procedures Act including any delegation of the Secretary's  
25 duties as imposed herein to any employee of the Department.

26  
27 **Article 3. Government employment preference**

28 **§ 4531. Restrictions on government employment**

29 **§ 4532. Exemptions**

30 **§ 4533. Manpower training programs**

31 **§ 4534. Reserved**

1       **§ 4535. Contract personnel**

2       **§ 4536. Payment of medical and related expenses**

3

4       **§ 4531. Restrictions on government employment.**

5       Employment by departments, agencies, and all other instrumentalities of the  
6 Commonwealth government is limited to citizens and permanent residents; provided that the  
7 government may enter into contracts with foreign nationals for services performed outside of  
8 the Commonwealth.

9       **§ 4532. Exemptions.**

10       Persons other than citizens and permanent residents may be exempted from the  
11 employment restriction in 3 CMC §4531 and employed within the following government  
12 entities and positions, on a case by case basis.

13       (a) Department of Public Health. United States or Canadian board-certified physicians  
14       and dentists licensed to practice in the Commonwealth.

15       (b) Department of Commerce. Temporary or part-time employees as needed for  
16       censuses and statistical surveys.

17       (c) Government translators. Approved foreign national translators for: the Department of  
18       Labor, the Office of the Attorney General, the Office of the Public Defender, the  
19       Department of Public Safety, the Commonwealth Superior Court, the Commonwealth  
20       Supreme Court, and the Marianas Visitors Authority. The Attorney General shall  
21       establish guidelines for the approval of foreign national translators for the Executive  
22       Branch. The Supreme Court may establish guidelines for the approval of foreign  
23       national translators for the Judiciary.

24       **§4533. Manpower training programs.**

25       In coordination with the Office of Personnel Management, the Northern Marianas  
26       College, the Public School System, and the Workforce Investment Agency, each  
27       Commonwealth government entity, except the judiciary, authorized pursuant to this chapter  
28       to employ workers other than citizens and permanent residents shall develop, maintain, and  
29       implement a comprehensive manpower training and education plan covering each position  
30       held by a foreign national worker. Failure of the government hiring authority to comply with  
31       this provision shall, after thirty (30) days, automatically suspend the privilege of hiring

1 workers other than citizens and permanent residents by the non-complying entity, and this  
2 provision shall be strictly enforced. The Office of Personnel Management shall monitor  
3 automatic suspensions and shall not approve any contract for the employment of a foreign  
4 national worker at a government agency that has been suspended for non-compliance  
5 pursuant to this section.

6 **§ 4534. Reserved.**

7 **§ 4535. Contract personnel.**

8 A government entity authorized to employ persons other than citizens and permanent  
9 residents under this chapter may employ such persons through a direct employment contract  
10 or by a contract for such services with a licensed manpower agency.

11 **§ 4536. Payment of medical and related expenses.**

12 All employment contracts in which any branch, agency or instrumentality of the  
13 Commonwealth government is the employer shall provide for payment of the costs of health  
14 insurance for a foreign national worker, as defined in 3 CMC §4911, on the same terms as for  
15 citizen and permanent resident employees and other workers, and shall provide for the  
16 payment of the costs of repatriation, as defined in 3 CMC §4911.

17  
18 **CHAPTER 3. Moratorium on the Hiring of Foreign National Workers.**

19  
20 **§ 4601. Moratorium**

21 **§ 4602. Exemptions**

22 **§ 4603. Expiration**

23 **§ 4604. Employment requirements**

24 **§ 4605. Reserved**

25 **§ 4606. Enforcement**

26 **§ 4607. Penalties**

27  
28 **§ 4601. Moratorium.**

29 There is hereby enacted a moratorium on the hiring of foreign national workers, as  
30 defined in 3 CMC §4911. This moratorium shall be read in conjunction with Section 4532 of

1 Chapter 2 of this part, and said moratorium shall be strictly construed and adhered to by all  
2 agencies and instrumentalities of the Commonwealth government.

3 **§ 4602. Exemptions.**

4 (a) Renewals. The renewal of an employment contract with a foreign national worker for  
5 the same position shall not be affected by the moratorium. A foreign national worker  
6 who exits the Commonwealth pursuant to Section 4953 of Chapter 6 of this part,  
7 shall, at the conclusion of the required six (6) month absence, be considered a renewal  
8 for the purposes of this moratorium.

9 (b) Replacements. In the case of the expiration or termination without renewal of an  
10 employment contract with a foreign national worker, the foreign national worker may  
11 be replaced only with a citizen or permanent resident, except for the following job  
12 categories which shall not be subject to this moratorium: healthcare professionals,  
13 educators, scientists, engineers, utility technicians, accountants, positions which are  
14 required for the delivery of critical services, construction workers, domestic helpers,  
15 farmers, and foreign language translators provided they are approved in the same  
16 manner as required under §4532(c) of this part.

17 (c) Incentive hiring. An incentive exemption shall be available if citizen and permanent  
18 resident employees in the full-time work force of an employer in professional,  
19 managerial, human resources, office or administrative assistant, secretary, cashier,  
20 retail clerk, front desk receptionist, tour guide, boat captain, sports and recreation  
21 positions, and other positions that may be specified by regulation substantially exceed  
22 thirty percent (30%) of the employer's total full-time work force in these positions.  
23 The Secretary shall provide the incentive benchmarks by regulation.

24 (d) Visitor industry. An exemption shall be available for employment within the visitor  
25 industry and supporting services if the twenty percent (20%) citizen and permanent  
26 resident employment requirement has been met or will be met within one (1) year and  
27 a viable plan exists to maintain the required citizen and permanent resident  
28 employment indefinitely.

29 (e) Major new development. The Secretary shall have the authority to grant exemptions  
30 from the moratorium imposed by this chapter and allow the hiring of foreign national  
31 workers for newly created positions upon making findings that:

1 (1) The new development, expansion or hiring by existing enterprises is in the best  
2 interest of the Commonwealth; and

3 (2) The employment will be on the premises of a new development or expansion of  
4 an existing development in which the prospective employer has invested at least  
5 one million dollars (\$1,000,000) in the Third Senatorial District or two hundred  
6 fifty thousand dollars (\$250,000) in the First or Second Senatorial Districts.

7 Projects that receive an exemption under §4526 of this part from the required  
8 percentage employment of citizens and permanent residents requirement may also  
9 receive an exemption under this subsection. Prior to granting an exemption, the  
10 Secretary shall inform the Governor and the presiding officers of the Legislature of  
11 the intention to grant such exemption and the reasons for the exemption.

12 (f) Legislated hiring. All hiring in light manufacturing shall be subject to the provisions  
13 of Chapter 7 of Division 5 of Title 4 of the Commonwealth Code.

14 **§ 4603. Expiration.**

15 The moratorium shall expire on January 1, 2011 and shall be phased out by that date as  
16 provided by regulation.

17 **§ 4604. Employment requirements.**

18 The employment of persons other than citizens and permanent residents pursuant to any  
19 provision of this chapter shall be governed by the provisions of Chapter 6 and regulations  
20 promulgated thereunder.

21 **§ 4605. Reserved.**

22 **§ 4606. Enforcement.**

23 The Department of Labor shall not issue any work permit to any foreign national worker  
24 in derogation of the moratorium. The Secretary of the Department of Labor, and, where  
25 appropriate, the Commonwealth immigration authority, shall enforce the provisions of this  
26 chapter and shall promulgate such regulations as are necessary to implement the provisions  
27 of this chapter.

28 **§ 4607. Penalties.**

29 Any person, including an employee of the Commonwealth government, who knowingly  
30 or willfully issues or causes to be issued any official document which would facilitate either  
31 the entry of an foreign national into the Commonwealth or the employment of a foreign

1 national in the Commonwealth in violation of the provisions of this chapter or the provisions  
2 of any regulation promulgated thereunder is guilty of a felony, and may be punished by a fine  
3 of two thousand dollars (\$2,000). In addition to any fine, any person who violates this  
4 section may be punished by imprisonment for not more than five (5) years. A person  
5 convicted under this section shall be terminated from his or her government employment and  
6 shall not be re-employed by the Commonwealth government, in any capacity, for a period of  
7 ten (10) years from the date of conviction.

8  
9 **CHAPTER 4. Reserved.**

10  
11 **CHAPTER 5. Certification Pre-clearance.**

12  
13 **§ 4801. Required clearances; acceptance limited.**

14 **§ 4802. Approved list.**

15 **§ 4803. Limited applicability of Administrative Procedure Act.**

16  
17 **§ 4801. Required clearances; acceptance limited.**

18 The Department of Labor shall not accept any health clearance or certification, insurance  
19 certification, police clearance, or criminal background check obtained outside the  
20 Commonwealth from any person, agency, or entity other than one on an approved list  
21 maintained as provided by Section 4802 of this chapter.

22 **§ 4802. Approved list.**

23 The Secretary of the Department of Labor shall establish and maintain a list of persons,  
24 agencies, and entities in foreign countries from which the Department will accept clearances  
25 or certifications in satisfaction of Commonwealth requirements for such certifications or  
26 clearances, as provided by section 4801 of this chapter. The list shall include all persons,  
27 agencies, and entities approved by the United States Department of State, the United States  
28 Citizenship and Immigration Service, or the United States Department of Justice for  
29 comparable purposes and may include such other persons, agencies, or entities as the  
30 Secretary may determine with the concurrence of the Secretary of Public Health with regard

1 to health clearances or certifications and the Commissioner of Public Safety with regard to  
2 police clearances or criminal background checks.

3 **§ 4803. Limited applicability of Administrative Procedure Act.**

4 The approved list established and maintained pursuant to Section 4802 of this chapter,  
5 and any amendments thereto, shall be published in the Commonwealth Register, but no  
6 comment period shall be required and such list and amendments thereto shall go into effect  
7 upon publication.

8  
9 **CHAPTER 6. Employment of Foreign Nationals**

10  
11 **Article 1. General**

12 **Article 2. Entry into the Commonwealth**

13 **Article 3. Standards for employment**

14 **Article 4. Adjudication of disputes**

15 **Article 5. Exit from the Commonwealth**

16 **Article 6. Other provisions**

17  
18 **Article 1. General.**

19 **§ 4911. Foreign National Workers: Definitions**

20  
21 **§ 4911. Foreign National Workers: Definitions.**

22 The definitions in 3 CMC §4511 are hereby incorporated by reference and, in addition, as  
23 used in this chapter, the following terms shall, unless the context clearly indicates otherwise,  
24 have the following meanings:

- 25 (a) “Approved employment contract” means a written contract between a foreign  
26 national worker and an employer, which has been approved by the Secretary,  
27 specifying the terms and conditions for work to be performed by the foreign national  
28 worker within the Commonwealth;
- 29 (b) “Approved health insurance contract” means a written contract executed by an  
30 employer, providing coverage for health care costs of one or more foreign national  
31 workers, in a form that has been approved by the Secretary of Public Health;

- 1 (c) “Approved security contract” means a written contract executed by an employer  
2 providing full security for all employer obligations with respect to the employment of  
3 foreign national workers as required by this chapter, in a form that has been approved  
4 by the Secretary;
- 5 (d) “*Bona fide* non-profit religious undertaking” means a religious organization legally  
6 established or incorporated in the Commonwealth that is exempt from  
7 Commonwealth taxation, or U.S. taxation as an organization described in 26 U.S.C.  
8 §501(c)(3);
- 9 (e) “Debarment” means, pursuant to an administrative order, the temporary or  
10 permanent prohibition on employment by an employer of foreign national workers;
- 11 (f) “Entry permit” means the entry permit card issued by Commonwealth immigration  
12 authority using the Labor and Immigration Identification Data System (LIIDS) or  
13 comparable system, and delivered to a foreign national worker pursuant to this  
14 chapter;
- 15 (g) “Foreign national worker” means any person who is not a citizen of the United States  
16 or a permanent resident of the Commonwealth who enters the Commonwealth for the  
17 purpose of being employed or otherwise to perform services for compensation in the  
18 Commonwealth; but does not include persons exempted pursuant to section 4965;
- 19 (h) “Immediate family” of a foreign national worker means a legally recognized spouse  
20 or a child, whether natural or adopted, if adopted before his or her 18<sup>th</sup> birthday;
- 21 (i) “Mediation” means an informal, non-public, confidential meeting attended by the  
22 parties to a labor dispute or potential labor dispute together with a mediator at the  
23 Administrative Hearing Office in order to seek a voluntary resolution of the dispute  
24 satisfactory to all parties and reflected in a written agreement;
- 25 (j) “Repatriation” means the exit from the Commonwealth and travel to the point of hire  
26 for a foreign national worker or member of the immediate family of a foreign national  
27 worker whether by voluntary action of the foreign national worker or by deportation;  
28 and in the case of the death of a foreign national worker while in the Commonwealth,  
29 the embalming and shipment of the body to the point of hire;
- 30 (k) “Termination” means, with respect to an approved employment contract, the  
31 expiration of the contract according to its terms, termination by a party for cause or as

1 otherwise permitted by this chapter during the term of the contract, or termination by  
2 the Secretary for cause during the term of the contract; and

3 (l) “Transfer” means any process by which a foreign national worker who enters the  
4 Commonwealth pursuant to an approved employment contract with one employer  
5 becomes employed by a different employer without first exiting the Commonwealth.  
6

7 **Article 2. Entry into the Commonwealth.**

8 **§ 4921. Entry by foreign national workers**

9 **§ 4922. Approved employment contract**

10 **§ 4923. Health certifications**

11 **§ 4924. Approved security contract**

12 **§ 4925. Entry permit**

13 **§ 4926. Entry by immediate family members of foreign national workers**

14 **§ 4927. Entry by foreign national workers in religious occupations**

15

16 **§ 4921. Entry by foreign national workers.**

17 A foreign national worker who is twenty-one (21) years of age or older may enter the  
18 Commonwealth only pursuant to an approved employment contract, an approved health  
19 certification, an approved health insurance contract, and an approved security contract.  
20 Compliance with entry requirements is reflected by the issuance of the entry permit.

21 **§ 4922. Approved employment contract.**

22 (a) Each foreign national worker in the Commonwealth shall be a party to a currently  
23 effective approved employment contract.

24 (b) An employer may apply to the Director of Labor for an approved employment  
25 contract pursuant to which a specifically identified foreign national worker will be  
26 employed for a one (1) year or a two (2) year term, at the employer’s option, provided  
27 however that the Secretary may, by regulation, provide for approved employment  
28 contracts of shorter terms for specialty jobs or part-time casual employment.

29 (c) The application for an approved employment contract shall be accompanied by a non-  
30 refundable application fee to be established by the Department and supported by the  
31 following documentation:

- 1 (1) A proposed employment contract signed by the foreign national worker in full  
2 compliance with all applicable Commonwealth laws;
- 3 (2) A copy of the Notice to Foreign National Workers, required by section 4938(a),  
4 that has been delivered to the foreign national worker in his or her native  
5 language;
- 6 (3) An approved health insurance contract signed by the employer;
- 7 (4) Such other documentation as required by the Secretary; and
- 8 (5) All applicable fees.
- 9 (d) The Director of Labor shall, in writing, either approve the application and forward it  
10 for immigration clearance or deny the application and state the reasons for denial;  
11 provided however, the Director may defer action on any application if the employer is  
12 a party to any pending case either in the Department or in any court arising from an  
13 alleged violation of Commonwealth labor or wage laws.
- 14 (e) The Director of Labor shall approve only one employment contract for any foreign  
15 national worker; provided however, that a foreign national worker in addition to one  
16 full time contract employment, or an eligible member of the immediate family of a  
17 foreign national worker, may be employed by the Central Statistics Division of the  
18 Department of Commerce on a temporary or part-time basis as an enumerator or  
19 translator to assist with the census and surveys to be conducted by the Central  
20 Statistics Division.

21 **§4923. Health certifications.**

- 22 (a) A foreign national worker entering the Commonwealth, or a person entering the  
23 Commonwealth as a member of the immediate family of a foreign national worker,  
24 shall have in his or her possession a certificate of freedom from communicable  
25 disease. This certificate shall have been executed not more than thirty (30) days prior  
26 to the date of entry into the Commonwealth in a jurisdiction and by an authority on  
27 the approved list established pursuant to 3 CMC §4802.
- 28 (b) The Secretary may require a foreign national worker admitted to the Commonwealth,  
29 or a person admitted to the Commonwealth as a member of the immediate family of a  
30 foreign national worker, to undergo a physical examination in the Commonwealth  
31 performed by any medical physician licensed to practice general medicine in the

1 Commonwealth by the Commonwealth Medical Professional Licensing Board within  
2 ten (10) business days after entry into the Commonwealth. The cost of a physical  
3 examination of a foreign national worker shall be paid by the employer of the foreign  
4 national worker. The cost of an examination of a member of the immediate family of  
5 the foreign national worker shall be paid by the foreign national worker.

6 (c) A person subject to physical examination pursuant to subsection (b) of this section  
7 shall surrender his or her certificate of freedom from communicable disease to the  
8 examining physician or other designated person at the time of the examination.  
9 Within ten (10) business days after the examination, the examining physician shall  
10 transmit the certificate to the Secretary of Public Health for transmission to the  
11 Secretary of Labor together with a finding as to whether there is any medical reason  
12 that the person should not be permitted to remain in the Commonwealth. This finding  
13 shall be based on the medical probability that any disease, whether or not  
14 communicable, or any disability or any other medical condition would result in  
15 significant danger to the health of the inhabitants of the Commonwealth or the need  
16 for prolonged medical care or treatment while in the Commonwealth.

17 (d) Upon receiving notice that there is a medical reason that any foreign national worker  
18 or member of the immediate family of a foreign national worker should not be  
19 permitted to remain in the Commonwealth, the Secretary shall notify the employer  
20 and the foreign national worker, or immediate family member, and the affected  
21 person shall immediately surrender his or her entry permit to the Secretary for  
22 appropriate action. The Secretary shall transmit a copy of all relevant documents to  
23 the Commonwealth immigration authority, and the foreign national worker shall be  
24 repatriated. Repatriation shall take place at the earliest date on which it is medically  
25 safe for the affected person to travel.

26 **§ 4924. Approved security contract.**

27 (a) Prior to issuance of an entry permit for a foreign national worker, an employer shall  
28 submit to the Secretary an approved security contract providing financial assurance,  
29 in an amount acceptable to the Secretary, for the faithful performance of the  
30 obligations of the employer under the approved employment contract and  
31 Commonwealth law with respect to the employment of foreign national workers.

1 (b) The approved security contract must be in one of three forms:

2 (1) Bonding by contract with a bonding company carrying a national rating in the  
3 United States and approved by the Secretary;

4 (2) Bonding by contract with a bonding company approved by the Secretary and  
5 within an allotment established by the Secretary for that company for a specified  
6 number of foreign workers based on the financial assets of the company, the  
7 estimated total repatriation costs plus an estimated amount to meet other  
8 obligations of the employers to be covered by the company's financial assets, and  
9 other relevant factors as provided by regulation; or

10 (3) Trust account coverage by direct contract with the Department for payment for  
11 each foreign national worker into an account maintained by the Department,  
12 provided however that only employers with no outstanding unpaid amounts due  
13 the trust account or judgments arising out of Department proceedings more than  
14 sixty (60) days in arrears, except those pending appeal, are eligible for trust  
15 account coverage. The total amount paid into the trust account by an employer  
16 must cover the estimated total repatriation cost for the foreign worker plus an  
17 estimated amount to cover other obligations of the employer. If a foreign national  
18 worker is repatriated by the employer and the Department determines that there  
19 are no outstanding obligations of the employer with respect to that worker, the  
20 amount paid into the trust account with respect to that worker shall be repaid by  
21 the Department to the employer less an amount, as determined by the Secretary,  
22 to reimburse the Department for its actual administrative costs; such costs shall  
23 not exceed 4% of the amount deposited by the employer.

24 (c) Each approved security contract shall include the term "Department of Labor surety."

25 An instrument including the term "Department of Labor surety" is payable up to the  
26 full amount, without regard to any limiting terms, notice, attendance at hearing, or  
27 any other procedural requirement, immediately upon issuance of a final order or  
28 judgment by a hearing officer, the Secretary, or a court of competent jurisdiction  
29 arising out of any Department proceeding.

30 (d) Any default on an approved security contract shall require the Department to publish  
31 an appropriate notice that the defaulting person or corporate entity is no longer

1 acceptable to the Department. An employer that is a party to any approved security  
2 contract with such defaulting person or entity must provide the Department with a  
3 substitute approved security contract within sixty (60) days of receipt of notice or  
4 forfeit the privilege of employing foreign national workers.

5 (e) There is hereby created the Labor Trust Account Revolving Fund (LTARF) which  
6 shall be accounted for separately from the General Fund.

7 (1) All monies received as payments under contracts provided for in subsection (b)(3)  
8 above shall be deposited into the LTARF.

9 (2) Expenditure authority over the LTARF is vested in the Secretary. Monies in the  
10 revolving fund shall be available without appropriation by the Legislature and  
11 shall be used to pay judgments for repatriation, unpaid wages, and other damages  
12 against employers arising out of Department proceedings with respect to foreign  
13 national workers, which remain unpaid by employers or their bonding companies  
14 after sixty (60) days or as provided by regulation. The Department shall have a  
15 right to proceed against any such employer or bonding company in the place of  
16 the foreign national worker to whom or on whose behalf payments were made  
17 from the revolving fund. Any balance remaining from funds collected under  
18 subsection (b)(3) shall be refunded to the employer in accordance with that  
19 subsection.

20 (3) Any interest earned on the LTARF shall become part of the fund.

21 (4) With respect to the management of the LTARF and the expenditures made from  
22 it, the Department is exempt from Title 1, Division 7, Part 1, Chapters 1 through  
23 7, 1 CMC §7101 et seq.

24 **§ 4925. Entry permit.**

25 (a) After receipt of an approved employment contract and an approved security contract  
26 together with any other documentation required by the Secretary, the Commonwealth  
27 immigration authority shall authorize for entry or deny entry to the foreign national  
28 worker named in the approved employment contract.

29 (1) If the foreign national worker is admitted for entry, the Commonwealth  
30 immigration authority shall cause to be issued an entry permit which shall include  
31 the foreign national worker's name, employer, job classification, citizenship,

1 expiration date of the entry permit, and entry permit number. The foreign  
2 national worker shall take receipt of the permit as provided in 3 CMC §4934. No  
3 penalty shall be imposed upon a foreign national worker for failure to comply  
4 with 3 CMC §§4931(b) or any other provision of law regarding possession of  
5 entry permits until after receipt of the permit by the foreign national worker.

6 (2) If the foreign national worker is denied entry, the Commonwealth immigration  
7 authority shall state in writing and transmit to the Director of Labor and the  
8 employer the reasons for denying entry.

9 (b) Each entry permit may be renewed annually until the foreign national worker leaves  
10 the Commonwealth. Calculation of the date for the annual renewal of an entry permit  
11 shall begin on the date the foreign national worker arrives in the Commonwealth.  
12 Except as provided in this chapter, a foreign national worker shall not be required to  
13 exit the Commonwealth in order to renew an entry permit.

14 (c) The Secretary, by regulation, may establish streamlined procedures for the renewal of  
15 entry permits, including letter renewal, if there are no changes in the information  
16 contained on the initial application.

17 (d) All fees for the initial application for and annual renewals of entry permits for a  
18 foreign national worker shall be the responsibility of and shall be paid, without offset  
19 or charge back to the foreign national worker, by the employer or the employer's  
20 registered agent.

21 **§ 4926. Entry by immediate family members of a foreign national worker.**

22 (a) Immediate family members of a foreign national worker may enter the  
23 Commonwealth during the term of an approved employment contract under which  
24 the foreign national worker is employed, provided however that no immediate family  
25 member may enter the Commonwealth until ninety (90) days after the entry of the  
26 foreign national worker.

27 (b) Every member of the immediate family of a foreign national worker who enters the  
28 Commonwealth shall have an entry permit which shall expire upon the expiration or  
29 termination of that foreign national worker permit by which he or she entered.

30 (c) Prior to issuance of an entry permit for a member of the immediate family of a  
31 foreign national worker, the foreign national worker shall provide to the Secretary

1 proof that the foreign national worker earns an annual wage equal to or greater than  
2 one hundred fifty percent (150%) of the United States Department of Health and  
3 Human Services Poverty Guidelines for the State of Hawaii, that the foreign national  
4 worker has, as a condition of entry of each immediate family member, obtained  
5 medical insurance coverage for each immediate family member, and that the foreign  
6 national worker has made education arrangements for each minor child.

7 (d) Each entry permit for an immediate family member shall be renewed annually.  
8 Calculation of the date for the annual renewal of an entry permit shall begin on the  
9 date the foreign national worker arrives in the Commonwealth. An immediate family  
10 member is not required to exit the Commonwealth in order to renew an entry permit.

11 (e) All fees for the initial application for and annual renewals of entry permits for  
12 immediate family members shall be the responsibility of the foreign national worker.

13 This section shall have only prospective application.

14 **§ 4927. Entry by foreign national workers in religious occupations.**

15 (a) A specifically identified foreign national who for the two (2) years immediately  
16 preceding the time of application for entry has been a minister or its equivalent of a  
17 religious denomination outside the Commonwealth and seeks entry to be employed at  
18 a *bona fide* non-profit religious undertaking in the Commonwealth for the purposes of  
19 carrying on the vocation of minister or its equivalent, may enter the Commonwealth  
20 under an approved employment contract for a period not to exceed three (3)  
21 consecutive years.

22 (b) Except for §4922(b) of this chapter, foreign national workers who enter under this  
23 section shall be subject to the requirements of this chapter. Approved employment  
24 contracts issued under this section shall be for a period not to exceed three (3) years.

25 (c) Entry of immediate family members of foreign national workers admitted under this  
26 section shall be subject to Section 4926 of this chapter.

27 (d) The Commonwealth immigration authority shall not issue an entry permit to any  
28 person who is not a citizen or permanent resident and who intends to enter the  
29 Commonwealth for the activities described in subsection (a) of this section unless the  
30 provisions of this section have been fully satisfied. This section shall have only  
31 prospective application.

1

2 **Article 3. Standards for employment.**3 **§ 4931. Standard conditions of employment**4 **§ 4932. Medical insurance**5 **§ 4933. Benefits**6 **§ 4934. Orientation**7 **§ 4935. Contract renewal**8 **§ 4936. Transfer by administrative order**9 **§ 4937. Reductions in force**10 **§ 4938. Avoidance and early resolution of potential labor disputes**11 **§ 4939. Inspection of worksites**12 **§ 4940. Investigations**

13

14 **§ 4931. Standard conditions of employment.**15 (a) Single employer. A foreign national worker may be employed by only one employer  
16 pursuant to a single approved employment contract.17 (b) Identification. Upon being issued an entry permit, a foreign national worker shall  
18 maintain the entry permit in his or her personal possession at all times during  
19 working hours, including at all times during travel by airplane or boat during working  
20 hours. Loss or destruction of the entry permit shall be reported to the Department  
21 within two (2) business days. Seizure of an entry permit by an employer shall be a  
22 violation of this section.23 (c) Wage rates. No foreign national worker employed pursuant to this chapter shall be  
24 paid less than the minimum wage provided by law. An approved employment  
25 contract shall provide that any future increase in the applicable minimum wage prior  
26 to the termination of the contract shall apply to work performed under the contract on  
27 or after the effective date of the increase.28 (d) Location of work site. The location of the work site shall be specified in the  
29 approved employment contract.30 (e) Hours of work. The hours of work shall be specified in the approved employment  
31 contract. Overtime work may be offered by the employer but not required. Any

1 period of time during which the foreign national worker is required to be present at  
2 any location within the Commonwealth designated by his or her employer shall be  
3 considered working hours for purposes of determining wages and overtime pay.

4 (f) Payment of wages. Unless otherwise provided by law, a foreign national worker  
5 shall be paid bi-weekly in an amount specified in the approved employment contract.  
6 Nothing in this section requires an employer to pay wages for which the employee  
7 did not work. Payment of wages shall be in full compliance with Commonwealth law  
8 and applicable federal law.

9 (g) Deductions from wages. Each expense of the employer to be deducted from the  
10 wages of a foreign national worker shall be specified in the approved employment  
11 contract and shall be itemized on the wage documentation provided to the foreign  
12 national worker by the employer. Allowable deductions shall be defined in  
13 regulations, and no other deductions may be made from the wages of a foreign  
14 national worker.

15 (h) Documents. The employer shall provide to each foreign national worker promptly  
16 after arrival in the Commonwealth a copy of the approved employment contract. No  
17 employer may withhold from any foreign national worker any passport, entry permit,  
18 or other document related to the status of the foreign national worker.

19 (i) Subcontracting. Any subcontract by an employer to another employer for the  
20 services of a foreign national worker shall be implemented or performed only with  
21 the prior approval of the Secretary. The exception for census workers in section  
22 4922(e) shall apply to this subsection.

23 (j) Contract changes. Any change to an existing approved employment contract shall be  
24 implemented or performed only with the prior approval of the Secretary.

25 (k) Manpower plan. Prior to the approval of an employment contract for a foreign  
26 national worker, an employer with ten (10) or more employees shall submit to the  
27 Department a comprehensive manpower training and education plan for increasing  
28 the percentage of citizens and permanent residents in the workforce of the employer;  
29 provided however, the Secretary may, by regulation, remove the exemption available  
30 to employers against whom two (2) or more judgments are entered in Department  
31 proceedings in any two (2) year period. An employer that has submitted adequate

1 documentation with respect to compliance for the immediately preceding two (2)  
2 years with the twenty percent (20%) requirement under Chapter 2 of this part may be  
3 exempted at the discretion of the Secretary.

4 **§ 4932. Medical insurance.**

5 (a) Employers of foreign national workers shall be required to have an approved health  
6 insurance contract providing coverage for each foreign national worker employed.  
7 This contract shall be effective upon entry of the foreign national worker to the  
8 Commonwealth and may be cancelled upon the expiration of the employer's  
9 obligation as provided in subsection (b) of this section.

10 (b) The employer's obligation to carry medical insurance for each foreign national  
11 worker employed shall continue for the duration of an approved employment contract  
12 and until the earliest of the following:

13 (1) Exit of the foreign national worker from the Commonwealth; or

14 (2) Sixty (60) days after the lawful termination of an approved employment contract  
15 with the foreign national worker, except that the employer's obligation to pay  
16 medical expenses shall continue during the pendency of a renewal application  
17 filed with the Department.

18 (c) The approved health insurance contract must cover all needed nonelective care for  
19 foreign national workers, include a co-pay element approved by the Secretary of  
20 Health, and must be in one of three forms:

21 (1) Self insurance by direct contract with one or more medical providers licensed in  
22 the Commonwealth or elsewhere, provided however that only employers with  
23 more than \$1 million in assets and no outstanding unpaid bills more than sixty  
24 (60) days in arrears to CHC are eligible to self-insure;

25 (2) Insurance by contract with an insurance company carrying a national rating in the  
26 United States and approved by the Secretary of Public Health; or

27 (3) Pool insurance by direct contract with the Commonwealth Health Center for a  
28 monthly premium for each foreign national worker, provided however that only  
29 employers with no outstanding unpaid premiums more than sixty (60) days in  
30 arrears to CHC are eligible for pool insurance and the total annual premium  
31 payments for pool insurance must be calculated to cover the total annual cost of

1 the care provided to workers in the pool. The Secretary of Public Health shall  
2 promulgate regulations for the implementation of this section.

3 (d) There is hereby created the Labor Health Insurance Revolving Fund (LHIRF) which  
4 shall be accounted for separately from the General Fund.

5 (1) All monies received as payments under contracts provided for in subsection (c)(3)  
6 above shall be deposited into the LHIRF.

7 (2) Expenditure authority over the LHIRF is vested in the Secretary of Public Health.  
8 Monies in the revolving fund shall be available without appropriation by the  
9 Legislature and be used to pay for the health care obligations of participating  
10 employers with respect to foreign national workers and the health care obligations  
11 of participating foreign national workers with respect to their immediate family  
12 members and associated or supporting expenses of the Commonwealth Health  
13 Center.

14 (3) Any interest earned on the LHIRF shall become part of the Fund.

15 (4) With respect to the management of the revolving fund and the expenditures made  
16 from it, the Department of Public Health is exempt from Title 1, Division 7, Part  
17 1, Chapters 1 through 7, 1 CMC §7101 et seq.

18 **§ 4933. Benefits.**

19 Except as otherwise provided by a memorandum or other agreement between the  
20 Commonwealth and the foreign country that issued a passport to the foreign national worker,  
21 employers may but are not required to provide housing, food, transportation, and other  
22 benefits beyond the medical insurance required under Section 4932; and foreign national  
23 workers may not be required by an employer to utilize housing, food, transportation, or other  
24 benefits beyond the medical insurance required under Section 4932 .

25 **§ 4934. Orientation.**

26 (a) Within one (1) week of arrival in the Commonwealth each foreign national worker  
27 shall attend an orientation at the Department or other location as designated by the  
28 Secretary. The orientation shall cover the rights and obligations of employers, agents  
29 of employers, and foreign national workers and such other information as the  
30 Secretary deems useful in avoiding potential labor disputes. Orientations shall be  
31 conducted on normal business days by employees of the Department.

1 (b) Entry permits issued pursuant to 3 CMC §4925 shall be delivered to the foreign  
2 national worker at the orientation session. The foreign national worker shall  
3 acknowledge receipt of the permit and attendance at the orientation.

4 (c) Any employer of a foreign national worker or a representative may attend an  
5 orientation session at any time.

6 (d) The Secretary may cancel an orientation session due to lack of demand.

7 **§ 4935. Contract renewal.**

8 (a) An approved employment contract with a foreign national worker may be renewed  
9 for work within the same job classification under which the foreign national worker  
10 first entered the Commonwealth or under which the foreign national worker was  
11 employed immediately prior to the effective date of this chapter. No right to renewal  
12 is conferred by this or any other section in this chapter. The number of permitted  
13 renewals of approved employment contracts and the conditions or criteria for  
14 approval of renewals shall be provided by regulation.

15 (b) A request for renewal shall be made by submitting to the Secretary a renewal form  
16 signed by the employer and foreign national worker; a new approved employment  
17 contract if necessary; an approved health insurance contract as provided in section  
18 4932, an approved security contract as provided in Section 4924; a nonrefundable and  
19 nontransferable renewal application fee; and such additional documentation the  
20 Secretary may require by regulation.

21 (c) A request for renewal shall be submitted no earlier than forty-five (45) days prior to  
22 the termination date and no later than thirty (30) days prior to the termination date of  
23 an approved employment contract.

24 **§ 4936. Transfer by administrative order.**

25 A foreign national worker shall not transfer from one employer to another at any time  
26 prior to or after contract expiration. A transfer may be granted as a remedy only pursuant to  
27 an administrative order after a hearing. This section shall not limit any right or remedy  
28 provided under Commonwealth law.

29 **§ 4937. Reductions in force.**

1 An employer who employs foreign national workers may reduce the number of current  
2 employees based on economic necessity. The employer shall provide notice to the  
3 Department at least sixty (60) days prior to the reduction in force.

4 **§ 4938. Avoidance and early resolution of potential labor disputes.**

5 (a) Notice to Foreign National Workers. The Secretary shall approve a form of written  
6 notice to be delivered by the employer to each prospective foreign national worker  
7 prior to arrival in the Commonwealth and to be delivered to each prospective foreign  
8 national worker upon arrival at immigration in the Commonwealth. The notice shall  
9 be in the principal language of the foreign national worker and shall explain clearly,  
10 in separate sentences, each of the basic legal employment rights of foreign national  
11 workers in the Commonwealth as provided by law; and such other information as the  
12 Secretary deems useful in avoiding potential labor disputes.

13 (b) Reporting of potential disputes.

14 (1) In the event that an employer fails to make full and complete payment of bi-  
15 weekly wages less allowable deductions on two successive occasions, or if a  
16 conflict arises between the foreign national worker and the employer about  
17 working conditions or the implementation of the terms of the approved  
18 employment contract, the foreign national worker shall report the potential  
19 dispute to the Department promptly in order to facilitate early resolution of the  
20 potential dispute and to maintain the employment relationship.

21 (2) In the event that a foreign national worker fails to report for work for two (2)  
22 successive weeks without notice to the employer of medical or other reasons for  
23 absence, or if a conflict arises between the employer and the foreign national  
24 worker about working conditions or the implementation of the terms of the  
25 approved employment contract, the employer shall report the potential dispute to  
26 the Department promptly in order to facilitate early resolution of the potential  
27 dispute and to maintain the employment relationship.

28 (c) Accountability. Each employer is accountable for every foreign national worker for  
29 whom the employer has had an approved employment contract in effect at any time  
30 during the preceding calendar year and shall ensure that such persons are currently  
31 employed by the employer, have transferred to another employer by administrative

1 order, have exited the Commonwealth, are otherwise accounted for as remaining in  
2 the Commonwealth lawfully, or are deceased. In the event that an employer  
3 becomes unable to account for a foreign national worker, the employer shall report  
4 to the Department within fifteen (15) business days. This provision shall have only  
5 prospective application.

6 (d) Mediation of labor disputes. The Administrative Hearing Office shall, as it finds  
7 necessary and useful, conduct early intervention in potential and actual labor disputes  
8 in order to seek a mediated resolution.

9 (1) Upon the filing of a labor complaint, or upon the receipt of a report from an  
10 employer or a foreign national worker pursuant to subsection (c) of this section  
11 that reasonably appears likely to be resolved through mediation, the  
12 Administrative Hearing Office may set the matter for prompt mediation and  
13 notify the parties to appear.

14 (2) In the event that a matter is set for mediation, the parties shall attend the  
15 mediation and make a good faith attempt to settle the dispute before proceeding  
16 with the claim. If the Department is the complainant, it may waive the mediation  
17 requirement.

18 (3) Failure of a complainant to appear at the mediation without providing the  
19 Administrative Hearing Office with advance written notice at least five (5) days  
20 prior to the scheduled appearance may result in the dismissal of a complaint  
21 without prejudice.

22 (4) At a mediation session, a hearing officer may issue a notice of hearing with  
23 respect to the complaint, dismiss a complaint as untimely under section 4962(b),  
24 and take other administrative actions to assist in the prompt resolution of the  
25 complaint.

26 **§ 4939. Inspection of worksites.**

27 (a) Administrative inspections of worksites. In order to enforce the labor laws of the  
28 Commonwealth, the Secretary or a designee may inspect any worksite where foreign  
29 national workers are employed.

30 (1) No warrant is required for inspection of a worksite, and the Department need not  
31 present any evidence of a violation of labor laws or regulations as a basis for such

1 an inspection. As a condition of enjoying the privilege of employing foreign  
2 national workers in the Commonwealth, every employer who executes an  
3 approved employment contract with a foreign national worker shall be deemed to  
4 have consented, expressly and in writing, to administrative inspections of the  
5 employer's worksites in accordance with the provisions of this chapter.

6 (2) No notice of the date and time of the inspection need be given to the employer in  
7 advance of the actual inspection.

8 (3) The Department shall furnish, at a reasonable cost, to every employer of foreign  
9 national workers whose worksite is subject to inspection a list of revised statutes  
10 and regulations describing the employer's obligations and defining the  
11 inspector's authority.

12 (b) Frequency of inspections. The rules governing the frequency of administrative  
13 inspections shall be prescribed by regulation and published in an administrative  
14 schedule.

15 (c) Scope of inspections. The inspector may inspect:

16 (1) All public areas of the worksite and premises to which the general public might  
17 reasonably be expected to have access to during normal business hours;

18 (2) All areas of the worksite and premises in which workers are observed, or might  
19 reasonably be expected to have access to during the normal operation of the  
20 employer's business;

21 (3) The employer's payroll records, approved foreign national worker contracts, or  
22 any other documents or business records the employer is required to collect,  
23 maintain or produce for inspection pursuant to this chapter, regulations, and the  
24 Minimum Wage and Hour Act;

25 (4) All equipment, machines, tools, or devices any worker might reasonably be  
26 expected to use, operate or maintain, in the normal course of the employer's  
27 business;

28 (5) All safety devices, safeguards (such as machine guarding, electrical protection,  
29 scaffolding, safe walking-working surfaces, means of egress in case of  
30 emergencies or fire, ventilation, noise exposure protection, personal protective

1 equipment for eyes, face, head and feet, fire protection and sanitation), drinking  
2 water supply and toilet facilities;

3 (6) All waste disposal equipment, trash and refuse containers; and

4 (7) Employer-provided housing and common areas, including, but not limited to: fire  
5 protection devices or improvements; sanitation equipment; ventilation, whether  
6 natural or mechanical; drinking water supply; toilet facilities; cooking facilities,  
7 equipment and appliances; food and food storage equipment and facilities;  
8 lighting; windows and screens; bedding; laundry facilities, equipment and  
9 supplies.

10 (d) Authority of inspectors.

11 (1) If a violation of any labor law or regulation is found, the inspector may issue a  
12 citation, notice of violation, or other process intended to correct the violation or  
13 enjoin the employer from certain practices or commence an enforcement action  
14 against the employer.

15 (2) The inspector may contact all persons on the worksite to ascertain whether they  
16 are foreign national workers and whether they are in possession of valid entry  
17 permits, as required by law.

18 (3) The inspector shall not detain or arrest any person, but may refer any person to  
19 another enforcement agency for further action consistent with the laws of the  
20 Commonwealth or of the United States.

21 (e) Show cause hearing. The Administrative Hearing Office shall disqualify an employer  
22 who has refused inspection from employing foreign national workers for a period of  
23 at least six (6) months, unless the employer can prove by clear and convincing  
24 evidence, that the inspection:

25 (1) Was not requested during normal business hours;

26 (2) Exceeded the frequency of inspections allowed;

27 (3) Exceeded the scope of inspections allowed or was outside the regulatory authority  
28 of the Department;

29 (4) Was motivated by spite, harassment, or some improper motive unrelated to the  
30 enforcement of this chapter;

1 (5) Was contrary to specific, valid privacy concerns to the employer that are not  
2 accommodated by provisions (1) through (4) of this subsection.

3 (f) Personnel for inspections. For purposes of carrying out responsibilities pursuant to  
4 this section, the Secretary may, by agreement with other agencies of the  
5 Commonwealth government, utilize with or without reimbursement, the services,  
6 personnel, or facilities of the other agencies including without limitation the  
7 Commonwealth immigration authority.

8 (g) Inspections of worksites pursuant to warrant.

9 (1) In those instances where the Secretary or a designee intends to inspect any  
10 location or worksite in furtherance of obtaining evidence related to a specific  
11 criminal investigation, a search warrant from the Commonwealth Superior Court,  
12 requiring a showing of probable cause, shall be required.

13 (2) In the event that an employer refuses consent for an inspection or if the  
14 Department's inspection will exceed the scope or frequency of the inspections  
15 authorized under subsections (a) through (e) of this section, the Secretary or a  
16 designee may seek an administrative warrant from the Department's  
17 Administrative Hearing Office.

18 (3) An administrative warrant shall be granted if the Department demonstrates to the  
19 satisfaction of a hearing officer that one of the following standards has been met:

20 (i) The worksite has been chosen for an inspection on the basis of a general  
21 administrative plan derived from neutral criteria for the enforcement of  
22 Commonwealth labor laws and regulations;

23 (ii) The Department has presented evidence establishing reasonable suspicion of a  
24 recent, ongoing or imminent violation of this chapter, regulations, the  
25 Minimum Wage and Hour Act, or any other Commonwealth law protecting  
26 the health and safety of employees, at the worksite for which the  
27 administrative warrant is sought; or

28 (iii) The Department has presented evidence that the employer has been cited for  
29 a violation of Commonwealth labor laws or regulations within the past twelve  
30 (12) months at the worksite in question, and the past violation is one that is

1 easily repeated, easily concealed, and poses a risk to the health and safety of  
 2 one or more employees.

3 **§ 4940. Investigations.**

4 The Director of Labor or a designee shall conduct investigations as the Director may  
 5 deem appropriate and necessary to enforce the provisions of this chapter and regulations, and  
 6 to ensure lawful working conditions, employer-supplied benefits, and the health and safety of  
 7 foreign national workers.

8

9 **Article 4. Adjudication of employment disputes.**

10 **§ 4941. Complaints and actions in labor matters**

11 **§ 4942. Jurisdiction of the Administrative Hearing Office**

12 **§ 4943. Reserved**

13 **§ 4944. Powers of the hearing officer**

14 **§ 4945. Service of process**

15 **§ 4946. Conduct of hearings**

16 **§ 4947. Orders and relief**

17 **§ 4948. Appeal to the Secretary**

18 **§ 4949. Judicial review**

19

20 **§ 4941. Complaints and actions in labor matters.**

21 (a) Individual complaints. Any foreign national worker who is aggrieved by the failure  
 22 or refusal of his or her employer to comply with an approved employment contract  
 23 may make a complaint to the Department. Any employer of a foreign national  
 24 worker who is aggrieved by the failure or refusal of his or her employee to comply  
 25 with an approved employment contract may make a complaint to the Department.

26 (b) Department actions. The Department may commence an action against an employer  
 27 or a foreign national worker for an alleged violation of the labor or wage laws of the  
 28 Commonwealth.

29 (c) Court actions. The Attorney General, at the request of the Secretary, may institute an  
 30 action in any court of competent jurisdiction for a temporary restraining order,  
 31 injunction, or other appropriate remedy to enforce any provision of this chapter.

1       **§ 4942. Jurisdiction of the Administrative Hearing Office.**

2       (a) Jurisdiction. The Administrative Hearing Office shall have original jurisdiction to  
3       resolve all actions involving alleged violations of the labor and wage laws of the  
4       Commonwealth, including but not limited to any violation of this chapter and  
5       regulations promulgated thereunder. The Commonwealth Superior Court shall have  
6       concurrent jurisdiction to resolve all labor and wage violations that are criminal in  
7       nature.

8       (b) Single action required. The Administrative Hearing Office shall hear all claims of the  
9       foreign national worker or the employer in a single action. The failure of a party to  
10      assert all claims before the Administrative Hearing Office arising out of an  
11      employment relationship shall result in a waiver by the party of unasserted claims and  
12      bar assertion in a subsequent proceeding to the fullest extent permitted by  
13      Commonwealth law.

14      (c) Limitation on stays of proceedings. The Administrative Hearing Office shall not stay  
15      any proceeding to allow the parties to proceed with their claims in a different forum  
16      except upon order of a court of competent jurisdiction.

17      **§ 4943. Reserved.**

18      **§ 4944. Powers of the hearing officer.**

19      A hearing officer shall have general power to issue subpoenas, summon witnesses,  
20      require production of books, papers, documents and records, administer oaths, and such other  
21      powers as may be necessary to implement this chapter effectively. A hearing officer may  
22      refer a matter to the Director of Labor for investigation if the hearing officer deems  
23      investigation warranted and justified under the circumstances.

24      **§ 4945. Service of process.**

25      Service of process for any notice of any kind required for any proceeding conducted by  
26      the Administrative Hearing Office may be by personal service, by first class mail, postage  
27      prepaid, to the foreign national worker at the address supplied with the complaint or any  
28      written update provided to the Department, and to the employer at the address supplied with  
29      the application for the approved employment contract or any written update provided to the  
30      Department, or by publication in any English-language newspaper of general circulation in  
31      the Commonwealth, at the discretion of the Administrative Hearing Office.

1       **§ 4946. Conduct of hearings.**

2       A hearing shall be commenced as soon as practicable after filing of a complaint and any  
3 mediation that may be held in the matter. Adequate notice and opportunity to present  
4 relevant evidence shall be given to all parties. Notwithstanding any other provision of law, a  
5 hearing may be closed at the discretion of the Administrative Hearing Office upon a showing  
6 that it is in the best interests of a party. A decision to close or not to close a hearing shall be  
7 reviewable by the Secretary.

8       **§ 4947. Orders and relief.**

9       (a) The hearing officer may, after notice and an opportunity to be heard is provided to the  
10 parties, dismiss *sua sponte* a complaint that the hearing officer finds ~~on its face~~ to be  
11 without merit. Dismissal shall be reviewable pursuant to the Administrative  
12 Procedure Act (1 CMC §9101 et seq.)

13       (b) The hearing officer shall, upon concluding a hearing, issue any necessary findings,  
14 decisions, and orders as soon as practicable.

15       (c) Issuance of findings, decisions, and orders shall be pursuant to 1 CMC §9110, but  
16 shall not be judicially reviewable until final.

17       (d) The hearing officer is authorized to:

18           (1) Award unpaid wages or overtime compensation, amounts unlawfully deducted  
19 from wages or unlawfully required by an employer to be paid by a foreign  
20 national worker, damages for unlawful termination of an approved employment  
21 contract, or damages, when appropriate, for conduct of the employer that is in  
22 violation of Commonwealth or federal law;

23           (2) Assess liquidated damages in twice the amount of unpaid wages or overtime  
24 compensation in any case in which a foreign national worker prevails on unpaid  
25 wages or overtime compensation claims unless the hearing officer finds  
26 extenuating circumstances; and assess liquidated damages in an amount to be  
27 determined at the hearing in cases in which the employer's conduct in failing to  
28 pay wages or overtime is found to have been willful or retaliatory;

29           (3) Cancel or modify an entry permit or an approved employment contract;

30           (4) Order temporary or permanent debarment of an employer;

- 1 (5) Disqualify a foreign national worker, temporarily or permanently, from  
2 employment in the Commonwealth;
- 3 (6) Levy a fine not to exceed two thousand dollars (\$2,000) for each violation of any  
4 provision of this chapter;
- 5 (7) Issue declaratory or injunctive relief as appropriate; and
- 6 (8) Award attorneys fees when appropriate in addition to any other enumerated  
7 remedy; provided however that attorneys fees shall not be recoverable against the  
8 Commonwealth.
- 9 (e) If other remedies are insufficient to provide a foreign national worker the benefit of  
10 the bargain made when entering the approved employment contract, the hearing  
11 officer may grant a transfer so that a foreign national worker may become employed  
12 under a new approved employment contract without first exiting the Commonwealth,  
13 provided that:
- 14 (1) The grounds for granting transfer relief are limited to an unlawful termination of  
15 an approved employment contract by an employer; the voiding of an approved  
16 employment contract or debarment of an employer for a violation under this  
17 chapter; a reduction in force pursuant to Section 4937; the abandonment of the  
18 worker during the term of an approved employment contract, but prior to ninety  
19 (90) days before the termination date of the contract, by an employer who failed  
20 to pay bi-weekly wages on two successive occasions, closed a business, declared  
21 bankruptcy, or exited the Commonwealth evidencing an intent not to return; or,  
22 upon a finding by the hearing officer that the foreign national worker has  
23 prevailed under an equivalent theory of law or equity and that transfer relief is  
24 appropriate.
- 25 (2) A transfer may be granted only to a foreign national worker who has complied  
26 with the provisions of the approved employment contract to the extent practicable  
27 under the circumstances, and for whom transfer relief is required in order to  
28 assure receipt of the benefit of the bargain under the contract that is the subject of  
29 the action.
- 30 (3) A transfer shall be completed within thirty (30) days of the order and in  
31 compliance with Sections 4922, 4924, and 4925 of this chapter.

- 1 (f) The hearing officer may authorize a foreign national worker to be employed in the  
2 Commonwealth on a temporary basis pending a hearing with respect to a labor  
3 complaint. A temporary work authorization shall end two (2) business days after the  
4 hearing officer's order is issued.
- 5 (g) The hearing officer may assess costs for repatriation of a foreign national worker.
- 6 (h) The hearing officer may find an action to be frivolous if it is unfounded in fact or law  
7 or initiated primarily to obtain an undue pecuniary benefit or for distraction or delay.  
8 The filing of an action which is determined by a preponderance of the evidence to be  
9 frivolous shall be grounds for permanently disqualifying the foreign national worker  
10 who filed the action from employment in the Commonwealth or permanently barring  
11 an employer who filed the action from further employment of foreign national  
12 workers.
- 13 (i) The hearing officer shall notify the Commonwealth immigration authority promptly  
14 upon cancellation or modification of an entry permit.

15 **§ 4948. Appeal to the Secretary.**

- 16 (a) Within fifteen (15) days of issuance, any person or party affected by findings,  
17 decisions, or orders made pursuant to Section 4947 of this chapter may appeal to the  
18 Secretary by filing a written notice of appeal, in a form prescribed by regulations,  
19 stating the grounds for the appeal. If no appeal is made to the Secretary within fifteen  
20 (15) days, the findings, decisions, or orders shall be unreviewable administratively or  
21 judicially.
- 22 (b) Upon appeal, the Secretary may, in the Secretary's discretion, restrict review to the  
23 existing records, supplement the record with new evidence, hear oral argument, or  
24 hear the matter *de novo* pursuant to 1 CMC §§ 9109 and 9110. The Secretary shall  
25 have the same powers as a hearing officer, including but not limited to the power to  
26 grant or extend a temporary work authorization, in addition to other powers pursuant  
27 to this chapter.
- 28 (c) Upon completion of review, the Secretary shall confirm or modify the finding,  
29 decision, or order in writing as soon as practicable. Any modification shall include  
30 supplemental findings. The Secretary's decision shall constitute final action for  
31 purposes of judicial review. Failure by the Secretary to confirm or modify a finding,

1 decision, or order within thirty (30) days shall constitute confirmation of each of the  
2 findings, decisions, or orders of the hearing officer as the final action of the Secretary  
3 for purposes of judicial review.

4 **§ 4949. Judicial review.**

5 (a) Judicial review of a final action of the Secretary is authorized after exhaustion of all  
6 administrative remedies and shall be initiated within thirty (30) days of final action.

7 (b) Except as may be contrary to the provisions of this chapter, judicial review shall be  
8 pursuant to 1 CMC §9112. Appeal from a final action by the Secretary shall be  
9 directly to the Commonwealth Superior Court.

10 (c) Notwithstanding any other provision of law:

11 (1) Notice of all actions and proceedings pursuant to this section shall be served upon  
12 the Attorney General;

13 (2) Judicial review shall be confined to the record; and

14 (3) Actions involving judicial review of final action by the Secretary shall be limited  
15 to the appeal; other causes of action may not be alleged in the action for judicial  
16 review.

17  
18 **Article 5. Exit from the Commonwealth.**

19 **§ 4951. Exit during the contract term**

20 **§ 4952. Exit after the contract term**

21 **§ 4953. Periodic exit required**

22 **§ 4954. Responsibility for costs of repatriation**

23 **§ 4955. Re-entry of foreign national workers**

24 **§ 4956. Limited stay and re-entry for litigation purposes**

25 **§ 4957. No stay or bar in other actions**

26  
27 **§ 4951. Exit during the contract term.**

28 A foreign national worker who exits the Commonwealth during the term of an approved  
29 employment contract for any purpose other than employment shall inform the Department of  
30 the date of exit and date of return. No final administrative order shall be entered during the

1 absence of a foreign national worker in compliance with this section prior to the date of  
2 return indicated.

3 **§ 4952. Exit after the contract term**

4 A foreign national worker shall exit the Commonwealth within fifteen (15) days after the  
5 date of termination of the approved employment contract or renewal, except as provided by  
6 §4956 of this chapter.

7 **§ 4953. Periodic exit required.**

8 (a) Except as provided herein, a foreign national worker shall exit and remain absent  
9 from the Commonwealth for at least six (6) consecutive months during every forty-  
10 two (42) month period.

11 (b) The requirement in subsection (a) shall not apply to foreign national workers who are  
12 key employees and have skills essential to the success of the business of an employer  
13 of ten (10) or more employees; provided that the employer is in compliance with  
14 Section 4525 of this part and provided that no foreign national worker may remain in  
15 the Commonwealth for more than seven consecutive years without an exit as required  
16 under subsection (a). The designation of key employees is at the discretion of the  
17 employer. The number of employees who may be exempted from subsection (a) for  
18 each employer may not exceed ten percent (10%) of the employer's foreign national  
19 workers and shall be governed by the Secretary by regulation to assist in achieving  
20 the efficient implementation of the periodic exit requirement.

21 (c) For purposes of this subsection, foreign national workers lawfully in the  
22 Commonwealth on the effective date of this section shall be deemed to have entered  
23 the Commonwealth on the effective date of this section unless otherwise provided by  
24 regulation. Nothing in this subsection shall be construed as providing an exemption  
25 from the requirements of 3 CMC §4521 or any other provision of this part.

26 **§ 4954. Responsibility for costs of repatriation.**

27 (a) The last employer of record of a foreign national worker shall be responsible for the  
28 costs of repatriating that worker except that employment under a temporary work  
29 authorization shall not give rise to this obligation. For the purposes of this section, a  
30 person employing a foreign national worker without an approved employment

1 contract or entry permit or otherwise in violation of Commonwealth law may be held  
2 jointly or severally liable for repatriation costs whenever assessed.

3 (b) A foreign national worker shall be responsible for the repatriation costs for any  
4 member of the immediate family of that worker previously declared upon entry to the  
5 Commonwealth regardless of divorce or any other claim or controversy with respect  
6 to status as immediate family.

7 (c) The Director of Labor may assess repatriation costs by order to a last employer of  
8 record or other employer or, in the case of an immediate family member, to a foreign  
9 national worker. Within fifteen (15) days of the issuance of an assessment of  
10 repatriation costs by the Director, any person or party affected by the assessment  
11 order may appeal the order in accordance with Section 4948 and seek judicial review  
12 in accordance with Section 4949.

13 **§ 4955. Reserved.**

14 **§ 4956. Limited stay and re-entry for litigation purposes.**

15 (a) A foreign national worker who is required to exit the Commonwealth shall be  
16 permitted to remain in the Commonwealth for a period not to exceed thirty (30) days  
17 in order to pursue a civil or criminal claims, or to pursue violations of any  
18 Commonwealth labor law. After the filing of an action, this period may be extended  
19 and departure stayed by a hearing officer or court of competent jurisdiction as  
20 necessary to ensure due process rights are protected.

21 (b) A foreign national worker who has exited the Commonwealth shall be permitted to  
22 re-enter the Commonwealth not more than five (5) days prior to a scheduled trial or  
23 for any other proceeding for which his or her attendance is required, unless a court of  
24 competent jurisdiction orders otherwise.

25 (c) A foreign national worker remaining or re-entering under this section shall exit the  
26 Commonwealth within three (3) days of the close of the proceeding, unless a court of  
27 competent jurisdiction orders otherwise.

28 (d) The Commonwealth immigration authority shall promulgate regulations for the  
29 implementation of this section.

30 **§ 4957. No stay or bar in other actions.**

1 No provision of this chapter shall make available or operate as a stay of any court order  
2 of deportation. No provision of this chapter shall bar any other civil or criminal action.

3  
4 **Article 6. Other provisions.**

5 **§ 4961. Regulations and legislative oversight**

6 **§ 4962. Limitations**

7 **§ 4963. Prohibitions**

8 **§ 4964. Sanctions and penalties**

9 **§ 4965. Exemptions**

10 **§ 4966. No liability**

11 **§ 4967. Required records**

12 **§ 4968. Fees**

13 **§ 4969. Statistical data**

14 **§ 4970. Required reports**

15 **§ 4971. Electronic filing**

16 **§ 4972. Transition**

17 **§ 4973. Authorization for appropriations**

18  
19 **§ 4961. Regulations and legislative oversight.**

20 (a) The Secretary, the Secretary of Public Health, the Commonwealth immigration  
21 authority, and any other government agency so authorized by this part shall  
22 promulgate regulations to implement the intent of this part pursuant to the  
23 Administrative Procedure Act (1 CMC §9101 et seq.), including the delegation of any  
24 duties as imposed herein.

25 (b) Any changes to the regulations after the effective date of this part, before coming into  
26 effect, shall be put before the Legislature for thirty (30) days and may be rejected in  
27 whole or in part by joint resolution.

28 **§ 4962. Limitations.**

29 (a) Limitation on effect of foreign national worker status. No employment contract,  
30 registration, certification, permit, or the presence of a foreign national worker in the  
31 Commonwealth pursuant thereto, shall be grounds for naturalization, or citizenship,

1 or permanent residence in the Commonwealth except as may otherwise be provided  
2 by law.

3 (b) Limitation on time for filing labor complaints. No labor complaint may be filed more  
4 than six (6) months after the date of the last-occurring event that is the subject of the  
5 complaint, except in cases where the actionable conduct was not discoverable upon  
6 the last-occurring event. In such instance no labor complaint may be filed more than  
7 six (6) months after the date a complainant of reasonable diligence could have  
8 discovered the actionable conduct. In any event, no labor complaint may be filed  
9 more than thirty (30) days after the termination of an approved employment contract.

10 **§ 4963. Prohibitions.**

11 (a) (1) No person who enters the Commonwealth under the provisions of this chapter  
12 may obtain a financial interest in, operate, or engage in any business, or become  
13 an employer without first qualifying under Chapter 9 of Division 5 of Title 4, or  
14 under other applicable provisions of Commonwealth law; provided however that  
15 only U.S. citizens may qualify as a notary public.

16 (2) No person who enters the Commonwealth under the provisions of this chapter  
17 may employ a foreign national worker.

18 (3) No person who has at any time entered the Commonwealth for employment may  
19 maintain a financial interest in, operate, or engage in any business, or employ  
20 others without first qualifying under Chapter 9 of Division 5 of Title 4, or under  
21 other applicable provisions of Commonwealth law.

22 (b) No foreign national worker under the age of twenty-one (21) shall be employed in the  
23 Commonwealth.

24 (c) A foreign national worker shall not perform any services or labor within the  
25 Commonwealth for any employer other than the employer with whom the foreign  
26 national worker has an approved employment contract.

27 (d) An employer or a foreign national worker shall not make a materially false statement  
28 or give materially misleading information, orally or in writing, to the Department or  
29 any employee or officer of the Executive Branch with respect to any requirement of  
30 this chapter.

- 1 (e) A foreign national worker shall not work in any capacity, including but not limited to  
2 employment or engagement for training, other pre-employment purposes, or any other  
3 arrangement that constitutes an employment relationship, prior to the issuance or after  
4 the termination of an approved employment contract, including renewals.
- 5 (f) A foreign national worker, after filing a labor complaint, shall not perform services or  
6 labor for any employer other than under an approved employment agreement or under  
7 a temporary work authorization issued by the Department.
- 8 (g) An employer with a total full-time work force of ten (10) or more employees shall not  
9 employ foreign national workers who hold temporary work authorizations in more  
10 than ten (10) percent of all positions. An employer with a total full-time work force  
11 of fewer than ten (10) employees shall not employ more than one foreign national  
12 worker who holds a temporary work authorization.
- 13 (h) An employer shall not pay a foreign national worker at a rate of pay lower than the  
14 minimum wage as provided by Commonwealth law or applicable federal law or at a  
15 rate of pay higher than the rate at which the job was advertised in compliance with 3  
16 CMC § 4523.
- 17 (i) An employer shall not make any deduction from the wages of a foreign national  
18 worker in violation of Commonwealth law.
- 19 (j) An employer shall not employ a person who is not a citizen or permanent resident and  
20 who has entered the Commonwealth without an entry permit pursuant to Section  
21 4925; provided however, the Attorney General may authorize a witness or victim of  
22 human trafficking or a material witness or victim in another civil or criminal  
23 proceeding to work in the Commonwealth without regard to this provision.
- 24 (k) An employer shall not file an application for an approved employment contract with  
25 the Department with the intent to obtain immigration status and entry to the  
26 Commonwealth for a foreign national worker but without the intent or present  
27 capability to provide a viable wage-paying job for the foreign national worker within  
28 the Commonwealth.
- 29 (l) This section shall not stay or bar any civil or criminal action in any court.

30 **§ 4964. Sanctions and penalties.**

31 After hearing pursuant to the Administrative Procedure Act, 1 CMC §9191 et seq.:

- 1 (a) Violation of any subsection of Sections 4923 and 4931 by an employer shall be  
2 grounds for debarment of the employer; provided however confiscation of travel  
3 documents for the purpose of controlling the movements of a trafficking victim  
4 pursuant to the Anti-Trafficking Statute, Chapter 5 of Division 1 of Title 6, is not a  
5 violation of this chapter
- 6 (b) Violation of any subsection of Sections 4923 and 4931 by a foreign national worker  
7 shall be grounds for deportation pursuant to 3 CMC §4340(e).
- 8 (c) An employer who knowingly requires or permits a foreign national worker to pay  
9 initial application or renewal fees shall be subject to debarment.
- 10 (d) In order to prevent the solicitation of sponsorships under circumstances when a  
11 foreign national worker is present in the Commonwealth and seeking to stay, a  
12 foreign national worker who, while in the Commonwealth, pays for an application fee  
13 or a renewal fee shall be deportable under 3 CMC §4340(e).
- 14 (e) Violation of Section 4931(k) by making any unapproved change to an approved  
15 employment contract shall be, in the discretion of the Secretary and in addition to  
16 other available sanctions, grounds for a declaration that the contract is void and for  
17 revocation of an entry permit of a foreign national worker, and for debarment of an  
18 employer.
- 19 (f) Failure by a foreign national worker to comply with Section 4934(a) by failing to  
20 attend an orientation session shall be grounds for cancellation of the entry permit and  
21 deportation of the foreign national worker pursuant to 3 CMC §4340(e).
- 22 (g) Violation of Section 4937 by failing to provide notice of a reduction in force shall be  
23 grounds for imposition of a fine in the employer of up to two thousand dollars  
24 (\$2,000) for each foreign national worker terminated in the reduction in force and  
25 debarment of the employer.
- 26 (h) Violation of Section 4952 by failing to exit the Commonwealth as required by law  
27 shall be grounds for deportation pursuant to 3 CMC §4340(e) and the imposition of a  
28 fine on the foreign national worker of up to two thousand dollars (\$2,000).
- 29 (i) Violation of any subsection of section 4963 by an employer shall be grounds for the  
30 denial of an application for an approved employment contract, voiding of an existing

1 approved employment contract, debarment of an employer, and a fine of up to two  
2 thousand dollars (\$2,000) for each unlawful action.

3 (j) Violation of any subsection of Section 4963 by a foreign national worker shall be  
4 grounds for deportation pursuant to 3 CMC §4340(e) and forfeiture of all claims by a  
5 foreign national worker for money damages and other relief with respect to  
6 employment in the Commonwealth.

7 (k) Debarment of an employer shall apply to all business organizations for which that  
8 employer serves as an officer, board member, partner, or limited liability corporation  
9 member. Such business organizations shall be prohibited from hiring foreign national  
10 workers on the same terms as the employer against whom the debarment was issued.  
11 Debarment of an employer that is a business organization shall apply to all persons  
12 who serve that business organization as an officer, board member, partner, or limited  
13 liability corporation member.

14 (l) Failure after thirty (30) days from assessment to pay repatriation expenses for a  
15 foreign national worker incurred by the Commonwealth shall be grounds for the  
16 Attorney General to order the Division of Revenue and Taxation to deduct the full  
17 amount of the repatriation or deportation costs and the full amount of the award from  
18 the employer's NMTIT tax rebate. All such deductions for deportation costs shall be  
19 returned to the Alien Deportation Fund, 3 CMC §4347.

20 (m) Failure by an employer to make prompt and reasonable efforts to repatriate a foreign  
21 national worker, thereby allowing the worker to become an illegal resident of the  
22 Commonwealth and subject to deportation, shall be grounds for the Attorney General  
23 to order the Division of Revenue and Taxation to deduct the full amount of the  
24 anticipated repatriation or deportation costs from the employer's NMTIT tax rebate.  
25 All such deductions for deportation costs shall be returned to the Alien Deportation  
26 Fund, 3 CMC §4347.

27 (n) Failure to comply with the payment terms of an administrative order, in addition to  
28 any penalties or damages imposed in the order, shall be subject to additional  
29 monetary sanctions of up to twenty-five (25) dollars per day until the obligation is  
30 satisfied. Such additional penalties may be assessed as a sanction either by the

1 Administrative Hearing Office, or by the Commonwealth Superior Court pursuant to  
2 a civil action filed by the Attorney General.

3 (o) Any fine pursuant to this section may be imposed by a hearing officer in an  
4 administrative order or by a court in an action filed by the Attorney General.

5 (p) This section shall not stay or bar any civil or criminal action or remedy in any court  
6 of competent jurisdiction.

7 **§ 4965. Exemptions.**

8 (a) Consular operations. This chapter shall not govern the entry conditions of any person  
9 who represents a foreign government in the Commonwealth in a diplomatic, consular,  
10 or similar official capacity, or assists in such representation, as certified by the  
11 Governor; provided that the person does not perform any ownership or commercial  
12 activity for which a business license or permit is required by law.

13 (b) Foreign investment certificate holders. This chapter shall not govern the entry  
14 conditions of any person who is the holder of a valid certificate of foreign investment  
15 issued pursuant to Chapter 9 of Division 5 of Title 4 of the Commonwealth Code or  
16 the immediate family of such certificate holder.

17 (c) Treaty obligations. This chapter shall not govern the entry conditions of persons  
18 whose right to enter the United States is governed by a treaty between the United  
19 States and another government. Such persons shall be permitted to enter the  
20 Commonwealth under the same conditions as they are permitted to enter the United  
21 States.

22 (d) Employees on temporary assignment. This chapter shall not govern the entry  
23 conditions for persons who are employed by a corporation incorporated and with a  
24 principal place of business outside the Commonwealth and whose principal place of  
25 employment is outside the Commonwealth.

26 (e) Employment for less than 21 days: This chapter shall not govern the entry conditions  
27 of persons who enter the Commonwealth for a period of less than twenty-one (21)  
28 days for employment in artistic, cultural, educational, or scientific presentations,  
29 performances, or studies.

30 (f) Tourist visas: This chapter shall not govern the entry conditions of persons who enter  
31 the Commonwealth on a tourist visa, provided however that any person found

1 engaged in employment while on a tourist visa or who is deported for a violation  
2 under this chapter is not eligible for another tourist visa for visits to the  
3 Commonwealth.

4 (g) Refugee permits. This chapter shall not apply to persons seeking employment  
5 following a grant of refugee protection pursuant to 3 CMC §4344(d). The  
6 Commonwealth immigration authority shall promulgate regulations for the entry and  
7 employment status of persons granted refugee protection.

8 (h) Student work/study: This chapter shall not govern the employment conditions of  
9 persons who hold Foreign Student Entry Permits issued by the Commonwealth  
10 immigration authority, provided that such employment is in a school sanctioned  
11 work/study or internship program.

12 **§ 4966. No liability.**

13 The review and approval of any employment contract for a foreign national worker shall  
14 not subject the Secretary, the Department, or the Commonwealth government to liability on  
15 the employment contract, even if the approved employment contract does not comply with  
16 the requirements of laws or regulations.

17 **§ 4967. Required records.**

18 An employer of any foreign national worker shall keep, and present immediately upon  
19 demand by the Secretary or a designee, the following information:

20 (a) Personnel records for each foreign national worker including the name, current  
21 residence address, age, domicile, citizenship, point of hire, and approved employment  
22 contract termination date;

23 (b) Payroll records for each foreign national worker including the job classification;  
24 wage rate or salary, number of hours worked each week, gross compensation,  
25 itemized deductions, and net payments made biweekly;

26 (c) Documentation for each foreign national worker including police clearance, health  
27 certificate, and tax payment records; and

28 (d) Business license and any other information or documentation required by regulations.

29 **§ 4968. Fees.**

30 (a) The Secretary shall establish fees for processing requests and submissions under this  
31 Act and for each annual renewal of entry permits for foreign national workers. The

1 Commonwealth government shall be exempted from paying the fee for initial  
2 application for or renewal of entry permits.

3 (b) Fees imposed under subsection (a) of this section shall be in addition to the fee  
4 imposed pursuant to 3 CMC §4347.

5 (c) The “Commonwealth Non-Resident Worker Fee Fund” established pursuant to the  
6 former 3 CMC §4424(c) shall hereafter be known as the “Foreign National Worker  
7 Fee Fund.” All fees collected pursuant to subsection (a) of this section shall be  
8 deposited into the Foreign Worker Fee Fund. In addition, fees previously collected  
9 pursuant to the former 3 CMC §4424 shall remain in the Foreign Worker Fee Fund.  
10 Funds provided for in this subsection shall not be subject to reprogramming, and shall  
11 be available without fiscal year limitation. The Secretary shall be the expenditure  
12 authority for this account. The Secretary of Finance shall collect the funds and direct  
13 proceeds annually into four separate accounts as set forth below:

14 (1) Northern Marianas College Human Resources and Business Development  
15 Account. Except as provided in subsections (c)(2)-(4), all of the fees collected  
16 shall be placed into an account known as the Northern Marianas College Human  
17 Resources and Business Development Account. This account shall be available  
18 for legislative appropriation. An appropriation from this account shall be used  
19 only to fund business, professional, or visitor industry programs conducted or  
20 sponsored by the Northern Marianas College.

21 (2) Northern Marianas College U.S. Apprenticeship Program Account. Fifty percent  
22 (50%) or a maximum of one million five hundred thousand dollars (\$1,500,000)  
23 of fees collected shall be reserved for the Northern Marianas College U.S.  
24 Apprenticeship Program Account. This program shall be administered and  
25 coordinated by the Northern Marianas College. Funds shall be expended only for  
26 the implementation and purposes of Public Law 15-5, and shall not be  
27 commingled with other funds of the College. The president of the college shall  
28 have expenditure authority for these funds.

29 (3) Tinian and Rota Account. Five percent (5%) or a maximum of seventy-five  
30 thousand dollars (\$75,000) of fees collected shall be reserved for Tinian and five  
31 percent (5%) or a maximum of seventy-five thousand dollars (\$75,000) of fees

1 collected shall be reserved for Rota which shall be used for youth employment  
2 training programs on those islands. The mayors of Tinian and Rota shall have  
3 expenditure authority for these funds.

4 (4) Department of Labor Account. Twenty-five percent (25%) or a maximum of five  
5 hundred seventy-five thousand dollars (\$575,000) of fees collected shall be  
6 reserved for the Department for use in administering and enforcing the provisions  
7 of this part.

8 (d) All funds dedicated under 1 CMC §2282(a)(1) and (a)(2) shall be deposited in the  
9 Technical Education Program unless otherwise provided by law.

10 **§ 4969. Statistical data.**

11 (a) The Secretary shall maintain statistical data with respect to the number of foreign  
12 national workers employed in each of the following categories:

13 (1) Professional, technical, and managerial;

14 (2) Clerical, sales, and service;

15 (3) Agriculture, fisheries, forestry, and groundskeeping;

16 (4) Light manufacturing;

17 (5) Construction and structural work;

18 (7) Housework, gardening, and related private residence work;

19 (b) The Secretary shall describe any special definitions used in these regards to account  
20 for all employment of foreign national workers within the enumerated categories.

21 **§ 4970. Required reports.**

22 (a) The Secretary shall prepare and submit to the Governor and the presiding officers of  
23 the Legislature the following written reports:

24 (1) Within one hundred twenty (120) days of the end of the government fiscal year,  
25 the Secretary shall prepare an annual report including data regarding the number  
26 of foreign national workers employed in the Commonwealth during the year, the  
27 citizenship of the workers, the job classifications filled by the workers; data  
28 regarding the number of citizens and permanent residents employed in the  
29 Commonwealth during the year, the job classifications filled by these employees;  
30 and other information as appropriate.

- 1 (2) Pursuant to Section 4526(c), the Secretary shall report any exemptions granted  
2 within thirty (30) days after the close of each calendar quarter.
- 3 (3) Pursuant to Section 4527, the Secretary shall investigate and report in writing to  
4 the Attorney General any death of a citizen or permanent resident employee as a  
5 result of employment, or any injury of a citizen or permanent resident employee  
6 as a result of employment which causes substantial physical or mental  
7 impairment.
- 8 (4) Pursuant to Section 4924, the Secretary shall submit a yearly report on the status  
9 of approved security contracts not later than thirty (30) days after the close of the  
10 fiscal year. The report shall contain the number of approved security contracts  
11 accepted in the fiscal year, the dollar limits of each approved security contract  
12 arrangement accepted, and a list of any signatories to approved security contracts  
13 in default.
- 14 (5) Pursuant to Section 4940, the Secretary shall investigate and report in writing to  
15 the Attorney General any death of a foreign national worker as a result of  
16 employment, or any injury to a foreign national worker as a result of employment  
17 which causes substantial physical or mental impairment.
- 18 (b) Pursuant to section 4533, at least sixty (60) days prior to the beginning of each fiscal  
19 year, any government entity employing foreign national workers shall prepare and  
20 submit to the Governor and the presiding officers of the Legislature a report on the  
21 progress of implementation of the manpower training and education plan together  
22 with a funding request necessary to implement the plan.
- 23 (c) Pursuant to Section 4968(d), no later than ninety (90) days after the end of the fiscal  
24 year:
- 25 (1) The Secretary of Finance shall prepare and submit to the Governor and the  
26 presiding officers of the Legislature a report on the status of the Foreign Worker  
27 Fee Fund;
- 28 (2) The president of the Northern Marianas College shall prepare and submit to the  
29 Governor and the presiding officers of the Legislature a report on the expenditure  
30 of such funds; and

1 (3) The mayors of Rota and Tinian shall prepare and submit to the Governor and the  
2 presiding officers of the Legislature a report on the expenditure of such funds.

3 **§ 4971. Electronic filing and access.**

4 (a) The Secretary shall establish by regulation a plan for switching from hard copy filing  
5 of documents to electronic filing of documents at the Department in order to reduce  
6 paperwork and the cost of administration of the requirements with respect to foreign  
7 national workers in the Commonwealth. Employers with one hundred (100) or more  
8 employees shall be converted to electronic filing by 2010. Employers with more than  
9 fifty (50) but fewer than one hundred (100) employees shall be converted to  
10 electronic filing by 2012. Employers with fifty (50) or fewer employees shall be  
11 converted to electronic filing as prescribed by regulations.

12 (b) The Secretary shall establish by regulation a plan for access via the Internet for  
13 employers and foreign national workers to revised statutes and regulations,  
14 announcements, notices, opinions and orders, and public data from the Department.  
15 The plan shall also include secure access to data pertaining to individual employers or  
16 foreign national workers for purposes of updating, correction, or supplementation of  
17 the Department's records.

18 **§4972. Transition provisions.**

19 (a) Transition for employment contracts: Any employer employing foreign national  
20 workers in the Commonwealth, and any foreign national worker within the  
21 Commonwealth, shall comply fully with all provisions of this chapter, and no  
22 contract, contract modification, renewal, or transfer shall be permitted except in full  
23 compliance with this chapter.

24 (b) Transition exemptions for government employment.

25 (1) Public School System. Foreign language instructors may be exempted if they are  
26 graduates of a college or university approved or accredited in accordance with the  
27 Public School System Regulations on Employment of Certified Personnel.  
28 Specialists in special education and pre-primary education may be exempted not  
29 to exceed a total of 10 positions when required in order to comply with federal  
30 law provided that the Public School System will first recruit for such positions in  
31 Canada, England, Australia, and New Zealand. Persons exempted under this

1 subsection shall, prior to being issued an entry permit, pass a teacher certification  
2 test as designated by the Board of Education. This exemption shall expire on  
3 September 30, 2010, and no contract may provide to the contrary.

4 (2) Department of Public Health.

5 (i) Nurses may be exempted if they are graduates of recognized colleges or  
6 universities with a degree in nursing science and satisfy the professional  
7 licensing requirements in their country of origin as well as satisfying the  
8 licensing requirements established by the Commonwealth Board of Nursing  
9 for Licensed Practical Nurse (LPN) or Registered Nurse (RN). Nurses  
10 employed pursuant to this subsection shall meet all minimum requirements for  
11 employment as provided by law, except that any minimum experience  
12 requirement shall not apply to a foreign national worker who completed the  
13 nursing education program at the Northern Marianas College or other  
14 approved vocational nursing school in the Commonwealth, passed the  
15 NCLEX exam, and is employed on or before December 31, 2009, in a nursing  
16 position at the Department of Public Health.

17 (ii) Engineering technicians and allied health personnel such as lab technicians, x-  
18 ray technicians, respiratory technicians, physical therapists, pharmacy  
19 therapists and pharmacy specialists may be exempted if they are graduates of  
20 recognized colleges and universities with a degree in their area of specialty in  
21 their country of origin and shall have satisfied all of their country's  
22 professional licensing and certification requirements in addition to satisfying,  
23 if applicable, the licensure requirements established by the Commonwealth  
24 Medical Professional Licensure Board.

25 (iii) The exemptions provided in subsections (b)(2)(i) and (ii) of this section shall  
26 expire on September 30, 2017, for all positions covered thereunder, and no  
27 contract may provide to the contrary.

28 (3) Public Auditor. Positions in the office of the Public Auditor may be exempted if  
29 the employees meet minimal professional qualifications established by the Public  
30 Auditor. This exemption shall expire on September 30, 2008, and no contract  
31 may provide to the contrary.

- 1           (4) Northern Marianas College. Foreign language instructors and research scientists  
2           at the Northern Marianas College may be exempted if they are graduates of  
3           colleges or universities in the United States, or colleges or universities which are  
4           accredited by United States accrediting associations, or, alternatively, if they have  
5           earned degree(s) from colleges, universities, or institutions abroad that are  
6           recognized by the Board of Regents and meet all other professional requirements  
7           set by the Board of Regents. This exemption shall expire on September 30, 2010,  
8           and no contract may provide to the contrary.
- 9           (5) Commonwealth Utilities Corporation. Engineers may be exempted, and CUC  
10           may contract with manpower services for power plant mechanics and utility  
11           technicians who may be exempted. This exemption shall expire on September 30,  
12           2008, and no contract may provide to the contrary.
- 13       (c) Transition provisions for religious occupations. Pursuant to Section 4927, before  
14       October 1, 2008, a foreign national who seeks to enter the Commonwealth for the  
15       purposes of working for a *bona fide* non-profit religious undertaking at the request of  
16       the same in a professional capacity in a religious vocation or occupation at the  
17       undertaking in the Commonwealth may enter for a period not to exceed three (3)  
18       years.
- 19       (d) Transition for owners of businesses. Persons who are not citizens or permanent  
20       residents and whose first entry into the Commonwealth for purposes of employment  
21       occurred on or before July 28, 1987, and who at the time of enactment of this chapter  
22       have a financial interest in, operate, or engage in any business or are employing  
23       others in the Commonwealth pursuant to a valid business license shall be granted a  
24       transition period by the Department to qualify for entry under Chapter 9 of Division 5  
25       of Title 4, or under other applicable provisions of Commonwealth law. The  
26       Secretary, in consultation with the Department of Commerce, shall implement a  
27       reasonable transition process and time period not to exceed two (2) years from the  
28       effective date of this chapter. This subsection shall expire and automatically repeal  
29       two years from the effective date of this chapter.

1 (e) Transition for notaries public. The Department of Commerce shall not renew the  
2 license as a notary public of any person who is not a citizen or permanent resident  
3 after January 1, 2009.

4 (f) Transition for periodic exit requirement. In order to provide for an orderly transition  
5 to the periodic exit requirement and to ease the burden on employers and employees,  
6 the exit requirement may be spread across the three (3) years after the effective date  
7 of this chapter at the convenience of employers and employees. To provide an  
8 incentive for this to happen voluntarily, employers who carry out the periodic exit  
9 requirement of at least twenty percent (20%) of the exit-eligible work force within the  
10 first twelve (12) months after the effective date of this chapter shall be able to claim a  
11 key employee exemption for three percent (3%) of the full-time work force and  
12 employers who carry out the periodic exit requirement of at least twenty percent  
13 (20%) of the exit-eligible work force within the second twelve (12) months after the  
14 effective date of this chapter shall be able to claim a key employee exemption for two  
15 percent (2%) of their exit-eligible work force, as provided by regulation. Key  
16 employees who are exempted from the periodic exit that occurs after the effective  
17 date of this chapter are not required to complete the periodic exit until five (5) years  
18 after the effective date of this chapter.

19 (g) Transition for regulations: The Secretary of Labor may implement regulations  
20 pursuant to Section 4961(a) separately from the regulations of the Secretary of Public  
21 Health and the Commonwealth immigration authority. In the event that the Secretary  
22 of Public Health does not implement regulations with respect to Section 4932 on  
23 medical insurance prior to the effective date of this statute, the provisions of prior law  
24 with respect to the responsibility of employers for the medical care of foreign  
25 national workers shall continue in full force and effect until the effective date of such  
26 final regulations.

27 **§4973. Authorization of Appropriations.**

28 There is hereby authorized to be appropriated such sums as may be necessary to carry out  
29 the provisions of this chapter.”

30 **Section 5. Global amendment.** All references to the term “non-resident worker” in  
31 the Commonwealth Code shall be replaced by the term “foreign national worker” as defined

1 in Sections 4911 and 4965 of this Act. The term “resident worker” in 4 CMC §9502(b) shall  
2 be replaced by the term “citizen or permanent resident” worker as defined in Section 4511 of  
3 this Act.

4 **Section 6. Amendment.** Title 4 Section 5941 of the Commonwealth Code is  
5 amended as follows:

6 **“5941. Long Term Business Certificate; conditions.**

7 (a) A holder of a long term business certificate is entitled to lawfully engage in business  
8 in the Commonwealth for a period of two years; provided, however, that the holder  
9 shall post \$25,000 to secure payment of claims made by the Commonwealth  
10 government for taxes and government fees and penalties. The deposit shall be in the  
11 form of a bond in the amount of \$25,000 issued by a surety company licensed to  
12 transact business in the Commonwealth, and approved by the Commonwealth  
13 Insurance Commissioner, naming the Secretary of the Department of Commerce as  
14 the beneficiary. Such surety company shall be listed as acceptable for federal projects  
15 by the United States Department of the Treasury or other surety companies having  
16 positive capital/surplus as determined and approved by the Commonwealth Insurance  
17 Commissioner. The Secretary of the Department of Commerce may, by regulation,  
18 impose such other requirements as the Secretary may find reasonably necessary to  
19 ensure the reliability and capability of such surety. The bond must run for a minimum  
20 term of ~~two years~~ one year, renewable annually, must provide for a minimum of 30  
21 days notice to the Secretary prior to its being cancelled, and must contain such other  
22 terms that the Secretary, by regulation, deems necessary and proper.

23 No matter the type of security used for the deposit, the security shall not be  
24 released until the alien investor provides the Secretary of the Department of  
25 Commerce with a statement from the Department of Finance that all applicable taxes  
26 and financial obligations to the CNMI Government are fully satisfied. The alien  
27 investor must also publish the notice, in at least one daily newspaper distributed  
28 throughout the Commonwealth, once a week for four consecutive weeks, that ~~he~~ the  
29 investor has either ceased operation or has divested ~~himself of his~~ its interest ~~of his~~ in  
30 the business in the Commonwealth and has applied to the Secretary of the  
31 Department of Commerce for release of ~~his~~ the security deposit. Said notice must also

1 contain any details as prescribed by the Secretary of the Department of Commerce by  
2 regulation, but, at a minimum, will apprise the Commonwealth government that the  
3 security deposit shall be released unless a claim is served upon the Secretary of the  
4 Department of Commerce within six months of the last publication of the notice  
5 together with a copy of a complaint showing that a civil action has been filed in a  
6 court of competent jurisdiction in the Commonwealth during said six month period. If  
7 no claim is filed, or if the claim is for less than the entire security deposit, then the  
8 excess shall be refunded to the alien investor. If a claim is filed, then the security  
9 deposit, or remaining balance thereof, shall be transferred to the Clerk of Court and  
10 shall be held by the same until the matter is finally resolved.

11 (b)-(d) Unchanged.”

12 **Section 7. Severability.** If any provision of this Act or the application of any such  
13 provision to any person or circumstance should be held invalid by a court of competent  
14 jurisdiction, the remainder of the Act or the application of its provisions to persons or  
15 circumstances other than those to which it is held invalid shall not be affected thereby.

16 **Section 8. Savings clause.** This Act and any repealer contained herein shall not be  
17 construed as affecting any existing right acquired under contract or acquired under statutes  
18 repealed or under any rule, regulation or order adopted under the statutes. Repealers  
19 contained in this Act shall not affect any proceeding instituted under or pursuant to prior law.  
20 The enactment of the Act shall not have the effect of terminating, or in any way modifying,  
21 any liability, civil or criminal, which shall already be in existence on the date this Act  
22 becomes effective.

23 **Section 9. Effective date.** This Act shall take effect on January 1, 2008, upon its  
24 approval by the Governor or becoming law without such approval. This Act shall have only  
25 prospective application.

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