

A BILL FOR AN ACT

To further amend title 53 of the Code of the Federated States of Micronesia, as amended, by amending sections 603, 605, 801, 804, 806, 807, 809, 901 and 902 regarding the operation of the Social Security Administration, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Section 603 of title 53 of the Code of the
2 Federated States of Micronesia, as amended by Public Law No. 12-
3 76, is hereby further amended as follows:

4 "Section 603. Definitions. In this chapter, unless the
5 context otherwise requires, the following definitions
6 shall be applicable:

7 (1) 'Application' means the prescribed form or forms
8 provided to individuals by the Social Security
9 Administrator as the exclusive means by which an
10 individual may apply for the payment of any benefit
11 provided for in section 801, 802, 803 or 803A of this
12 act.

13 (2) 'Became disabled' means the first month in which
14 an
15 individual is under a disability.

16 (3) 'Board' means the Federated States of Micronesia
17 Social Security Board provided for by section 701 of
18 this subtitle.

19 (4) 'Child or spouse' means an applicant that the

1 court of the State in which an individual was domiciled
2 at the time of his death has or would find to be the
3 individual's child or spouse in determining the
4 devolution of intestate personal property. 'Child'
5 shall include only the deceased individual's biological
6 children and such adopted children whose confirmed
7 petition for adoption by the wage earner has been
8 presented to the Social Security Administration.

9 (5) 'Contributions' means the tax imposed upon income
10 of covered employees and the tax imposed upon employers
11 on account of wages paid to a covered employee.

12 (6) 'Disability' means inability to engage in any
13 substantial gainful employment by reason of any
14 medically determinable physical or mental impairment
15 which can be expected to result in death or which has
16 lasted or can be expected to last for a continuous
17 period of not less than 12 months.

18 (7) 'Earning test' means that an individual who
19 receives a retirement, disability, or survivor benefit
20 and who works in covered or noncovered employment shall
21 have his quarterly benefit reduced by one dollar for
22 each two dollars earned in a quarter, except there shall
23 be no reduction for the first \$300 earned in a quarter.
24 The reduction shall be applied in one of the subsequent
25 two quarters immediately after the quarter in which the

1 earnings were made, or as soon as possible thereafter.
2 All benefit recipients have an affirmative duty to
3 disclose to the FSM Social Security Administration all
4 earnings from either covered or non-covered employment
5 for any time period during which they received earnings
6 and for which they are receiving or claiming benefits.

7 (8) 'Employee' means:

8 (a) any officer of a corporation; or

9 (b) any individual who, under the usual common
10 law rules applicable in determining the employer-
11 employee relationship, has the status of an employee; or

12 (c) any self-employed person who has at least one
13 employee for whom he is required to report in a given
14 quarter; or

15 (d) any self-employed person who had more than
16 \$10,000 of annual gross revenue in the preceding
17 calendar year.

18 (9) 'Employment, covered' or 'covered employment'
19 means any service by an employee for an employer
20 incorporated or doing business within the Federated
21 States of Micronesia employing him, irrespective of
22 where such employment is performed, except family
23 employment.

24 (10) 'Employment, noncovered' or 'noncovered
25 employment' means any employment engaged in by an

1 employee where coverage is statutorily exempt in the
2 Federated States of Micronesia, family employment, or
3 employment by an employee outside of the Federated
4 States of Micronesia and which is not taxable by the FSM
5 Social Security Administration.

6 [~~(10)~~] (11) 'Family employment' means employment of a worker
7 by

8 a member of the household, a parent or a son or daughter
9 except that the worker may apply to the Board for a
10 determination that such employment is bona fide covered
11 employment subject to this subtitle.

12 [~~(11)~~] (12) 'Insured status' can mean any of the following:

13 (a) 'Currently insured individual' means any
14 individual who has had not less than eight quarters of
15 coverage during the 13-quarter period ending with:

16 (i) the quarter in which he died; or

17 (ii) the quarter in which he became entitled
18 to old age insurance benefits; or

19 (iii) the quarter in which he became disabled,
20 whichever first occurs.

21 (b) 'Fully insured individual' means any
22 individual [~~who has not less than one quarter of~~
23 ~~coverage for each year beginning after June 30, 1968, or~~
24 ~~for each year after attaining the age of 21, whichever~~
25 ~~is later, and up to but excluding the year in which he~~

1 ~~attained retirement age, became disabled, or died,~~
2 ~~whichever first occurred, except that in no case shall~~
3 ~~an individual be a fully insured individual unless he~~
4 ~~has at least 12 quarters of coverage]~~ whose total
5 cumulative quarters of coverage are at least as great as
6 the number of years calculated from the later of the
7 date the worker turned age twenty-one (21) or June 30,
8 1968, to the date the worker attains age sixty (60),
9 dies or becomes disabled. For this purpose, partial
10 years shall be counted as whole years (for example 37.25
11 years would be rounded up to 38 years). However, no
12 more than thirty-eight (38) quarters of coverage are
13 required to be fully insured, except that in no case
14 shall an individual be a fully insured individual unless
15 he has at least 12 quarters of coverage.

16 ~~[(12)]~~ (13) 'Quarter' and 'calendar quarter' mean a period of
17 three calendar months ending on March 31st, June 30th,
18 September 30th, or December 31st. 'Quarter of coverage'
19 means a quarter in which the individual has been paid
20 \$50 or more in wages in covered employment subject to
21 this subtitle.

22 ~~[(13)]~~ (14) 'Wages' means remuneration paid subject to the
23 provisions of this subtitle, including the cash value of
24 all remuneration paid in any medium other than cash and
25 remuneration accruing to a self-employed person.

1 Remuneration accruing to a self-employed person shall be
2 deemed to be twice the amount paid to the highest paid
3 employee reported by the self-employed person in a
4 quarter, with a maximum of \$3,000 per quarter through
5 September 30, 2003 and a maximum of \$5,000 per quarter
6 thereafter. Remuneration accruing to a self-employed
7 person who has no covered employees shall, for each
8 quarter of a year, be deemed to be 2.5 percent of the
9 gross revenue of the business or gross revenue of all
10 businesses for the previous calendar year, subject to a
11 \$3,000 maximum per quarter through September 30, 2003
12 and a maximum of \$5,000 per quarter thereafter.

13 Remuneration paid for any service which is more or less
14 than a whole dollar shall, as may be prescribed by
15 regulations, be computed to the nearest dollar. Wages
16 shall not include:

17 (a) that part of remuneration in excess of \$3,000
18 through September 30, 2003 and in excess of \$5,000
19 thereafter paid in a quarterly reporting period by one
20 employer;

21 (b) any payment on account of sickness or
22 accident disability, or medical or hospitalization
23 expenses made by an employer to or on behalf of an
24 employee;

25 (c) any payment made to or on behalf of an

1 employee or to the employee's beneficiary from a trust
2 or annuity;

3 (d) remuneration paid in any medium other than
4 cash to an employee for service not in the course of the
5 employer's trade or business or for domestic service in
6 a private home of an employer;

7 (e) remuneration paid for casual or intermittent
8 labor not performed in the course of the employer's
9 trade or business when such employment does not exceed
10 employment in more than one week in each calendar month
11 of each quarterly reporting period; and

12 (f) remuneration from family employment subject
13 to the provisions of this subtitle."

14 Section 2. Section 605 of title 53 of the Code of the
15 Federated States of Micronesia is hereby amended to read as
16 follows:

17 "Section 605. Violations - Penalties and interest
18 - Attorney's fees and costs.

19 (1) Any person who knowingly makes any false statement
20 or who falsifies any report to or record of the
21 Federated States of Micronesia Social Security System in
22 an attempt to defraud the system is guilty of a
23 misdemeanor and upon conviction thereof shall be
24 imprisoned for a period of not more than one year, or
25 fined not more than \$2,000 or both.

1 (2) Any person who willfully fails to report wages
2 paid or pay contributions required thereon is guilty of
3 a misdemeanor and, in addition to any other penalty
4 prescribed by law, such a person shall also pay
5 penalties not in excess of 100 percent of the tax due
6 plus interest to the Board as it by regulation shall
7 require.

8 (3) Any person who receives benefits to which he or
9 she is not entitled shall be liable to repay the Social
10 Security Administration those benefits, and in addition
11 to the remedies under Section 808 of this subtitle, may
12 be subject to civil action for recovery of those
13 benefits.

14 ~~(3)~~ (4) Any covered employer who fails to submit the
15 quarterly report and pay the social security tax within
16 ten days after the end of the quarter shall be
17 considered delinquent. The Board or its authorized
18 representatives shall be vested with the authority to
19 levy a penalty of not more than \$1,000 on delinquent
20 employers.

21 ~~(4)~~ (5) If any tax or penalty imposed by this subtitle
22 is not paid on or before the date prescribed for such
23 payment, ~~[there shall be collected]~~ the Board or its
24 authorized representatives shall be vested with the
25 authority to collect, in addition to such tax and

1 penalty, interest on the unpaid balance of the tax
2 principal at the rate of 12 percent per annum from its
3 due date until the date it is paid. [~~In the event that
4 any tax, interest, or penalty due under this subtitle is
5 referred to an attorney or trial counselor for
6 collection, whether or not suit is brought for the
7 collection thereof, the taxpayer shall additionally be
8 liable for reasonable attorney's or trial counselor's
9 fees and costs of collection, including court costs.~~]

10 (6) In the event that any claim for monies due to the
11 Social Security Administration under this subtitle is
12 referred to an attorney or trial counselor for
13 collection, whether or not suit is brought for the
14 collection thereof, the individual or entity shall
15 additionally be liable for reasonable attorney's or
16 trial counselor' fees and costs of collection, including
17 court costs incurred by the Social Security
18 Administration. The Social Security Administration in
19 its discretion may waive part or all of any attorneys
20 fees and costs awardable under this section."

21 Section 3. Section 801 of title 53 of the Code of the
22 Federated States of Micronesia, as amended by Public Law No. 12-
23 76, is hereby further amended to read as follows:

24 "Section 801. Scope of coverage; Verification of
25 employment; Old age benefits.

1 (1) All employees, wherever employed by an employer
2 incorporated or doing business in the Federated States
3 of Micronesia, shall be covered unless both the employer
4 and the employee are currently subject to any other
5 recognized Social Security System. The highest
6 administrator of the Social Security System, or his
7 designees, shall cause at least two unannounced
8 employment site checks to be conducted upon every non-
9 government employee who first begins to contribute to
10 the Social Security System after age 45 to ensure that
11 such non-government employee is actually engaged in an
12 employer-employee relationship that will allow him to be
13 covered and eligible for benefits under this subtitle.
14 The two employment site checks shall not be conducted
15 within one month of each other and both shall be
16 conducted within the first six months of the employee's
17 first contribution payment to the Social Security
18 System. For the purposes of this subtitle, any elected
19 official in any Government unit or body in the Federated
20 States of Micronesia is deemed to be an employee
21 employed by a Federated States of Micronesia employer.
22 The governmental unit or body to which such person is
23 elected is subject to the provisions in this subtitle
24 relating to the duty and obligations of a Federated
25 States of Micronesia employer.

1 (2) Every person who:

2 (a) is fully insured;

3 (b) has attained age 60; and

4 (c) has filed a complete application with the
5 Social Security Administrator for old age insurance
6 shall be entitled to an old age insurance benefit
7 subject to the earnings test as defined in this
8 subtitle.

9 (3) Old age insurance benefit payments shall be paid
10 for each month commencing with the month in which both
11 paragraphs (2) (a) and (2) (b) of this section are
12 satisfied and shall end with the month preceding the
13 month in which the applicant dies.

14 (4) Notwithstanding the provisions of subsections (2)
15 and (3) above, retroactive payments shall be limited to
16 the twelve (12) months immediately preceding the month
17 in which the individual entitled to benefits has
18 submitted an application.

19 (5) In an application for benefits under this section,
20 whether individually or as a dependent, the applicant
21 has the burden to come forward with evidence and to take
22 all steps necessary to file a completed application.
23 The Social Security Administration has the right to deny
24 an application for benefits solely on the basis of non-
25 compliance with the application process, or the failure

1 of the applicant to produce reasonably available
2 documents or information."

3 Section 4. Section 804 of title 53 of the Code of the
4 Federated States of Micronesia is hereby amended to read as
5 follows:

6 "Section 804. Amount of retirement and disability
7 insurance benefits.

8 (1) An insured eligible individual shall be paid a
9 monthly old age benefit for life, except for any month
10 of disqualification as provided by this subtitle, in an
11 amount calculated upon an annual basis of 16.5 percent
12 of the first \$10,000 of cumulative covered earnings,
13 plus 3 percent of cumulative covered earnings in excess
14 of \$10,000 but not in excess of the next \$30,000, plus 2
15 percent of cumulative covered earnings in excess of
16 \$40,000. Earnings for employment after commencement of
17 payments for retirement or disability insurance benefits
18 shall be included in benefit calculations upon
19 subsequent application for benefits, but such earnings
20 shall be applicable for benefits for months after the
21 calendar year in which such earnings occurred. For the
22 purpose of this section cumulative covered earnings
23 includes earnings on which contributions have been paid
24 by the individual to the Trust Territory Social Security
25 System.

1 (2) An insured, eligible individual shall be paid a
2 minimum monthly benefit of fifty dollars if the benefit
3 amount calculated in accordance with subsection (1) of
4 this section is less than fifty dollars monthly.

5 (3) An individual who is fully insured and who has
6 been under a disability for three full calendar months
7 shall be paid a monthly benefit for life or until
8 recovery from the disability, except for any month of
9 disqualification as provided by this subtitle in an
10 amount calculated in accordance with the preceding
11 subsections of this section. Further, the amount of the
12 benefit as so determined shall, if the individual is
13 receiving a periodic workmen's compensation benefit, be
14 reduced each month by the excess of the sum of the
15 workmen's compensation benefit for that month and the
16 benefit payable under this act over eighty percent of
17 one-twelfth of the highest annual covered wages in the
18 period consisting of the year in which the disability
19 occurred and the preceding five years. If a workmen's
20 compensation benefit was payable in periodic benefits
21 but was commuted to a lump sum, for purposes of this
22 subsection it will be considered that the periodic
23 benefit originally available was paid in each month that
24 it would have been paid if the commutation had not
25 occurred."

1 Section 5. Section 806 of title 53 of the Code of the
2 Federated States of Micronesia is hereby amended to read as
3 follows:

4 "Section 806. Amount of survivor insurance benefits.

5 (1) The surviving spouse of a fully insured worker
6 eligible in accordance with section 802 of this chapter
7 shall be paid a monthly benefit or disability in an
8 amount equal to 60 percent of the retirement or
9 disability insurance benefit calculated for the deceased
10 spouse at the date of death.

11 (2) Each eligible child of an insured worker shall be
12 entitled to a monthly benefit of 15 percent of the
13 retirement insurance benefit calculated for the deceased
14 parent at the date of death.

15 (3) If the spouse of the deceased insured worker is
16 eligible for retirement or disability benefits based on
17 his or her own employment coverage, and is also eligible
18 for survivors' benefits, the spouse shall receive
19 whatever benefit pays the largest monthly payment. The
20 surviving spouse shall be able to lump sum the other
21 benefits (either the deceased cumulative covered
22 earnings or his or her own covered earnings) equal to
23 two percent less the sum of all benefits that the
24 deceased spouse had already received.

25 (4) The monthly benefit paid to the surviving

1 child(ren) shall also be the greater of the two benefits
2 that have been earned by the deceased parents if fully
3 insured or currently insured. The surviving child(ren)
4 shall be able to sump sum the other deceased parent
5 cumulative covered earnings equal t two percent, reduced
6 by the sum of all benefits, if any, received by the
7 deceased parent.

8 [(4)] (5) The total survivors' benefit paid to the
9 spouse and children may not exceed the retirement
10 benefit calculated for the decedent as of the date of
11 death, except that if the surviving spouse receives
12 benefits based on his or her own employment coverage,
13 that amount plus the survivors' benefits for the
14 children may exceed the amount of the deceased's
15 retirement benefit. In no event shall the amount paid
16 be less than the minimum established by the Social
17 Security Administration, as set out in section 804 [~~of~~
18 ~~this chapter~~] of title 53 of the Code of the Federated
19 States of Micronesia."

20 Section 6. Section 807 of title 53 of the Code of the
21 Federated States of Micronesia is hereby amended to read as
22 follows:

23 Section 807. Lump sum benefits.

24 (1) When a worker dies and the benefits paid,
25 including survivor benefit, have been less than four

1 percent of his cumulative covered earnings, the
2 survivors, heirs, or the estate of such individual shall
3 be paid a lump sum benefit, after all rights to survivor
4 benefits have terminated, in an amount equal to four
5 percent of the decedent's cumulative covered earnings,
6 reduced by the amount of any benefits paid to the
7 insured worker and his eligible dependents. For the
8 purpose of this section, cumulative covered earnings
9 includes earnings on which contributions have been paid
10 by the individual to the Trust Territory Social Security
11 System.

12 (2) In the absence of a will, survivors shall be paid
13 in the following order:

14 (a) spouse, if living, otherwise children in
15 equal shares or guardian, if such children are minors;

16 (b) parents in equal shares; or

17 (c) duly appointed legal representatives of the
18 deceased or, if none, person or persons determined to be
19 entitled thereto under the laws and customs of the last
20 domicile of the deceased person.

21 (3) Only citizens of the Federated States of
22 Micronesia, Republic of Palau and Republic of the
23 Marshall Islands shall be eligible for benefits under
24 this section."

25 Section 7. Section 809 of title 53 of the Code of the

1 Federated States of Micronesia is hereby amended to read as
2 follows:

3 "Section 809. Payment of benefits to foreign citizens
4 outside Federated States of Micronesia.

5 [~~(1) Notwithstanding any other provision of this~~
6 ~~chapter, no monthly benefits shall be paid under this~~
7 ~~chapter to any individual who is not a citizen or~~
8 ~~national of the Federated States of Micronesia for any~~
9 ~~month which is:~~

10 ~~(a) after the sixth consecutive calendar month~~
11 ~~during all of which the administrator finds, on the~~
12 ~~basis of information furnished to him by the Attorney~~
13 ~~General or information which otherwise comes to his~~
14 ~~attention, that such individual is outside the Republic~~
15 ~~of the Marshall Islands, the Federated States of~~
16 ~~Micronesia, and the Republic of Palau; and~~

17 ~~(b) prior to the first month thereafter for all~~
18 ~~of which such individual has been in the Federated~~
19 ~~States of Micronesia. For purposes of this subsection~~
20 ~~(1), after an individual has been outside the Federated~~
21 ~~States of Micronesia for any period of 30 consecutive~~
22 ~~days he shall be treated as remaining outside the~~
23 ~~Federated States of Micronesia until he has been in the~~
24 ~~Federated States of Micronesia for a period of 30~~
25 ~~consecutive days.~~

1 ~~(2) Subsection (1) of this section shall not apply to~~
2 ~~any individual who is a citizen of a foreign country~~
3 ~~which the Administrator finds has in effect a social~~
4 ~~insurance or pension system which is of general~~
5 ~~application in such country and under which:~~

6 ~~(a) periodic benefits, or the actuarial~~
7 ~~equivalent thereof, are paid on account of old age,~~
8 ~~retirement, or death, and~~

9 ~~(b) individuals who are citizens of the Federated~~
10 ~~States of Micronesia but not citizens of such foreign~~
11 ~~country and who qualify for such benefits are permitted~~
12 ~~to receive such benefits or the actuarial equivalent~~
13 ~~thereof while outside such foreign country without~~
14 ~~regard to the duration of the absence.] Unless modified~~

15 ~~by a totalization or other international agreement,~~
16 ~~benefit payments under this act shall be paid to a~~
17 ~~beneficiary who is not a citizen or national of the~~
18 ~~Federated States of Micronesia and does not reside in~~
19 ~~the Federated States of Micronesia, as follows:~~

20 ~~(a) Payments shall be made to citizens and~~
21 ~~nationals of the Republic of Palau, the Republic of the~~
22 ~~Marshall Islands and the United States as if they were~~
23 ~~citizens or nationals of the Federated States of~~
24 ~~Micronesia as long as the Social Security Administration~~
25 ~~of those nations gives citizens and nationals of the~~

1 Federated States of Micronesia reciprocal treatment.

2 (b) Payments shall be made to citizens and
3 nationals of other nations in a lump sum equal to the
4 total amount contributed to the Social Security
5 Administration by the employee while employed in the
6 Federated States of Micronesia as of the date the
7 individual turned age sixty (60), became disabled or
8 died. However, the lump sum shall be reduced by any
9 payments made by the Social Security Administration to
10 the employee or a surviving spouse or child before the
11 lump sum is awarded.

12 (c) For purpose of this section, an individual
13 resides in the Federated States of Micronesia if they
14 are present in the territory of the Federated States of
15 Micronesia for 180 days out of the last 365 days and
16 have ties to the Federated States of Micronesia that
17 indicate residence such as a home, vehicle, bank
18 accounts or personal property."

19 Section 8. Section 901 of title 53 of the Code of the
20 Federated States of Micronesia is hereby further amended as
21 follows:

22 "Section 901. Employee contributions.

23 There is hereby imposed on every employee a tax equal to
24 the following percentages of wages received by him with
25 respect to covered employment subject to this subtitle:

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