
A BILL FOR AN ACT

To provide for the regulation of nonresident labor; to repeal Title 49 of the Trust Territory Code; and for other purposes.

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

1 CHAPTER 1. GENERAL PROVISIONS

2 Section 101. Nonresident Labor Act. Title 49 of the Trust
3 Territory Code is hereby repealed in its entirety and there is hereby
4 adopted a Nonresident Labor Act.

5 Section 102. Definitions. For purposes of this act, unless it
6 is otherwise provided or the context requires a different construction,
7 application, or meaning:

8 (1) "Available" means able to be in the Federated States of
9 Micronesia on the date the employer states the worker or workers
10 are needed.

11 (2) "Chief" means the chief of the Division of Immigration
12 and Labor within the Department of Resources and Development.

13 (3) "Employer" means any individual, partnership, association,
14 or corporation hiring employees in the Federated States of Micronesia,
15 but does not include any branch, agency, commission, or authority of
16 the National Government of the Federated States of Micronesia, the
17 State governments of the Federated States of Micronesia, or the Trust
18 Territory Government.

19 (4) "Labor officer" means the official who heads the labor
20 branch within the Division of Immigration and Labor.

21 (5) "Nonresident worker" means any person who is capable of
22 performing services on labor and who;

23 (a) Prior to the termination of the Trusteeship for
24 the Trust Territory of the Pacific Islands is not a Trust
25 Territory citizen or an immigrant, alien admitted to the Trust

1 Territory; or

2 (b) Subsequent to the termination of the Trustee-
3 ship is neither a citizen nor national of the Federated States of
4 Micronesia nor an immigrant alien admitted to the Federated States of
5 Micronesia.

6 (6) "Resident worker" means any person who is capable
7 of performing services or labor and who is not included in the definition
8 of "nonresident worker" contained in this act.

9 Section 103. Chief - functions and duties. The chief shall
10 generally implement and enforce the provisions of this act and
11 regulations promulgated thereunder.

12 Section 104. Labor branch.

13 (1) There is hereby established a labor branch in the
14 Division of Immigration and Labor of the National Government of the
15 Federated States of Micronesia.

16 (2) The labor branch shall be headed by the labor
17 officer who shall report directly to the chief.

18 Section 105. Labor officer - functions and duties. The labor
19 officer shall assist the chief in implementing and enforcing the
20 provisions of this act and regulations promulgated thereunder, which
21 duties shall, without limitation, include the following:

22 (1) Oversee, monitor, and review the use of nonresident
23 workers and all matters related thereto, including compliance with
24 agreements entered into between the chief and employers concerning the
25 employment of nonresident workers;

1 (2) When desirable, establish by regulation occupational
2 categories to which chapter 2 of this act is not applicable;

3 (3) When desirable, establish by regulation occupational
4 categories for which nonresident workers shall not be imported;

5 (4) When desirable, establish by regulation minimum
6 standards of qualification for workers in certain occupational
7 categories, and perform certification functions relating thereto;

8 (5) In conjunction with the National Planning Office,
9 conduct continuing surveys of manpower needs and resources, assist in
10 preparing training programs, and recommend other measures for increasing
11 employment of resident workers and for reducing the need for nonresident
12 workers.

13 Section 106. Regulations. The President of the Federated
14 States of Micronesia is authorized to issue regulations in accordance
15 with law as necessary to implement the provisions of this act.

16 CHAPTER 2. NONRESIDENT WORKERS

17 Section 201. Statement of policy. The Congress of the Federated
18 States of Micronesia finds and declares it is essential to a balanced
19 and stable economy that qualified resident workers be given preference
20 in all private employment opportunities in the Federated States of
21 Micronesia, and that the public interest requires that the employment
22 of nonresident workers not impair the wages and working conditions of
23 resident workers.

24 Section 202. Preference. Resident workers shall be given
25 preference in all private employment opportunities throughout the

1 Federated States of Micronesia for which such workers are qualified
2 and available. No employer may be permitted to employ a nonresident
3 worker except in strict accordance with the provisions of this chapter
4 and regulations issued thereunder, except that the provisions of this
5 chapter shall not apply to temporary employees who are brought into
6 the Federated States of Micronesia for a period not to exceed 90 days.
7 If the employer bringing in temporary employees finds that their
8 services are needed for a period of time exceeding 90 days, he may
9 apply to the chief for an extension of the exemption, and the chief
10 may grant such extension for an additional period of time not to exceed
11 90 days, if he finds the extension to be reasonable. The chief may
12 grant more than one extension, but the total time period, including
13 any extension, such temporary employee may remain in the Federated
14 States of Micronesia under temporary employment status shall not
15 exceed 180 days. An employee may not serve under temporary employment
16 again after he has served the maximum period of 180 days.

17 Section 203. Importation of nonresident workers - procedures
18 and requirements.

19 (1) Any employer who desires to import nonresident workers
20 for employment in the Federated States of Micronesia shall file an
21 application with the labor officer stating the place and nature of the
22 employer's business, the number of workers desired and occupational
23 qualifications of such workers, the wages to be paid such workers,
24 the date on which such workers are desired, the State or States in
25 which such workers are desired, and any other relevant information

1 the labor officer may require or which the employer may deem
2 appropriate.

3 (2) Upon receipt of an application pursuant to the
4 provisions of subsection (1) of this section, the labor officer shall
5 cause the existence of the vacancies and other applicable information
6 regarding the job to be publicized. The publication shall include
7 posting of notice in public places in the States, the use of radio
8 and newspaper media when appropriate, and such other means as the labor
9 officer may determine to be feasible. Such publicity shall be given:

10 (a) For a period of 30 days, in the State or
11 States where such employment is to take place, and

12 (b) For a period of 15 days, beginning with the
13 16th day after the first day on which the first advertisement was made
14 in the State or States in which employment is to take place, in all the
15 other States of the Federated States of Micronesia.

16 (3) Within seven days after the expiration of 30 days
17 after the first advertisement the labor officer, upon a finding that
18 there are no occupationally qualified resident workers available to
19 fill all or some of the vacancies applied for, shall notify the chief
20 of those positions for which no resident workers are available. The
21 employer may appeal these findings or request judicial review thereof
22 in accordance with the Administrative Procedure Act.

23 (4) Upon receipt of notice from the labor officer of
24 those positions which the employer requires, and for which no resident
25 workers are available, the chief shall determine the period of time

1 and conditions under which employers should be authorized to hire
2 nonresident workers for those positions. Within seven days after the
3 receipt of notice from the labor officer, the chief shall notify the
4 employer of his findings. The employer may appeal those findings or
5 request judicial review thereof in accordance with the Administrative
6 Procedure Act. For those positions for which he has determined
7 nonresident workers may be hired, he shall require that a nonresident
8 worker's agreement be entered into between the employer and the Government
9 of the Federated States of Micronesia, which agreement shall authorize
10 the employer to hire nonresident workers. The agreement shall be
11 signed by the chief, as representative of the Federated States of
12 Micronesia Government, and by the employer or his authorized
13 representative. The agreement shall contain such provisions with
14 respect to wages, including minimum wages, benefits, and working
15 conditions as the chief shall determine to be necessary and consistent
16 with the policy and purposes of this act. The agreement shall
17 specifically include:

18 (a) A statement that the employer requires such
19 nonresident workers for immediate employment;

20 (b) A statement of the wages the employer is
21 paying or intends to pay the nonresident workers for each occupational
22 classification he is importing nonresident workers to fill;

23 (c) A statement of the period of time for which the
24 employer will be allowed to fill each position with a nonresident
25 worker before he must attempt to fill the position with a resident

1 by filing a new application with the labor officer;

2 (d) A statement of the employer's responsibility
3 for return transportation to the place of origin of each nonresident
4 worker at the expiration or revocation of the worker's entry permit, or
5 upon his death;

6 (e) A statement of the employer's responsibility
7 for the expenses of medical evacuation or other extraordinary medical
8 expenses of each nonresident worker; and

9 (f) A statement of the employer's responsibility for
10 the training of resident workers in the occupational categories for which
11 he is hiring nonresident workers.

12 (5) The nonresident worker's agreement entered into by the chief
13 and the employer shall be legally enforceable upon action taken by an aggrieved
14 nonresident employee or on his behalf by the chief or his representative. In
15 any such action taken by the chief or his representative on behalf of an
16 aggrieved nonresident employee, the chief or his representative shall be
17 represented by the Office of the Attorney General of the Federated States of
18 Micronesia.

19 (6) The chief shall provide each nonresident worker with a copy of
20 the nonresident worker's agreement which authorized his employer to hire him,
21 and a nonresident worker's entry permit. The entry permit, also known as a
22 work permit, shall contain the nonresident worker's name, his employer's
23 name, his job classification, his country of origin or citizenship, and the date
24 of expiration of his entry permit. The nonresident worker shall be required to
25 produce such entry permit as soon as possible after a request to inspect it by

1 the chief or his representative.

2 (7) A nonresident employment agreement entered into by the
3 chief with an employer shall expire 90 days from the date thereof,
4 unless the nonresident worker is present and employed in the Federated
5 States of Micronesia within such time.

6 (8) Prior to entry of any nonresident worker into the
7 Federated States of Micronesia for employment under the provisions of
8 this chapter the following requirements shall be met:

9 (a) Each nonresident worker shall present to the
10 chief or his representative a sworn affidavit, executed by him, on a
11 form issued by the Division of Immigration and Labor, and such other
12 evidence as the chief may require, which indicates: a minimum of
13 two years experience in the line of work for which he is being hired;
14 marital status, and if married, the name of the spouse, number and
15 ages of dependent children and the addresses of the spouse and dependent
16 children; and that he has not been convicted of a felony or other
17 crime involving moral turpitude; and

18 (b) The employer of a nonresident worker shall
19 present to the chief or his representative a copy of the nonresident
20 worker's contract of employment, which shall include a statement of
21 job title, the duration of the contract, location of work, weekly
22 hours scheduled, wage scale for regular and overtime work, any
23 deductions for living cost, and such other information or contractual
24 provisions as may be required by the chief.

25 Section 204. Records. On the 10th of each month following

1 a quarter, or upon demand of the chief or his representative, each
2 employer hiring nonresident employees in the Federated States of Micronesia
3 shall transmit current records to the chief with the following
4 information:

5 (1) The name, address, age, and legal residence of
6 each of his nonresident employees;

7 (2) The classification and wage rate of each of his
8 nonresident employees;

9 (3) Payrolls showing the number of hours worked each
10 week, the compensation earned, and deductions made for each of his non-
11 resident employees;

12 (4) The educational and experiential background of
13 each of his nonresident employees, to be provided but once for each
14 nonresident employee;

15 (5) The number of employment-related accidents of
16 each nonresident employee, name of the injured, and disposition by
17 the employer of the injured employee.

18 Section 205. Confidentiality. All employment records are
19 to be kept confidential and may only be used for legitimate purposes
20 of the Division of Immigration and Labor.

21 Section 206. Investigations - hearings - orders.

22 (1) The chief or his representative is hereby
23 authorized to conduct hearings or investigations as he may deem
24 appropriate and necessary to enforce the provisions of this chapter.
25 In connection with such hearings or investigations, the chief or his

1 representative may subpoena witnesses, records, and documents.

2 (2) Upon the filing of a sworn complaint that any
3 person has violated this chapter or any regulation issued thereunder,
4 the chief or his representative shall investigate the complaint,
5 providing a copy thereof to the person complained against. The chief
6 or his representative shall have power to schedule a closed or open
7 administrative hearing as deemed appropriate under the circumstances.
8 Adequate notice of the hearing shall be given to all persons involved,
9 and opportunity shall be made available to them to present such
10 evidence as they may desire in person or through counsel of their
11 choice. Upon conclusion of the hearing, the chief or his representa-
12 tive shall have power to enter an order disposing of the matter,
13 including an order revoking a work permit.

14 Section 207. Appeal. Any person aggrieved by an order of
15 the chief or his representative may appeal said order or request
16 judicial review thereof in accordance with the Administrative Procedure
17 Act. In any such judicial proceeding, the chief or his representative
18 shall be represented by the Office of the Attorney General of the Federated
19 States of Micronesia.

20 Section 208. Deportation. If the chief determines that
21 grounds exist for the deportation of a nonresident worker, he shall
22 refer the matter to the Office of the Attorney General, which may file
23 a lawsuit requesting an order of deportation. Such actions shall have
24 precedence on the court's docket. No nonresident worker may be
25 involuntarily deported without a court order of deportation.

1 Section 209. Penalties.

2 (1) Any employer who willfully violates any of the
3 provisions of this chapter or any of the regulations issued thereunder
4 shall, upon conviction thereof, be fined not more than \$10,000 or
5 imprisoned not more than two years or both.

6 (2) Subject to the provisions of section 14 of Public
7 Law No. 1-130, any nonresident employee who willfully violates any of
8 the provisions of this chapter or any of the regulations issued
9 thereunder shall, upon conviction thereof, be fined not more than \$250.

10 Section 210. Other employment by nonresident worker.

11 (1) It shall be unlawful for any nonresident worker
12 to engage in any other employment in the Federated States of Micronesia
13 for compensation or for profit other than for the employer who has
14 contracted with the chief for the employment of such nonresident worker,
15 unless a written agreement approving the nonresident worker's employ-
16 ment by additional or subsequent employers shall have been approved by
17 the chief. Any such agreement shall be signed by the new employer
18 and the nonresident worker. Upon the signing of such agreement, the
19 chief shall require the new employer to execute a new nonresident
20 worker's agreement in accordance with section 203(4) of this chapter, and
21 to provide the chief or his representative with a copy of the nonresident
22 worker's new contract of employment in accordance with section 203(8)(b)
23 of this chapter. The nonresident worker shall provide an affidavit to
24 the chief or his representative in accordance with section 203(8)(a)
25 of this chapter.

1 (2) Notwithstanding the provisions of section 102(3)
2 of this act, this section shall apply to nonresident employees of any
3 branch, agency, commission, or authority of the National Government
4 of the Federated States of Micronesia, the State governments of the
5 Federated States of Micronesia, or the Trust Territory Government.

6 (3) A violation of this section shall constitute
7 grounds for deportation pursuant to section 208 of this chapter, and
8 shall further subject the employer and nonresident employee to the
9 penalties prescribed in section 209 of this chapter.

10 Section 211. Injunctions. The Attorney General may bring
11 legal action to enjoin violations of the provisions of this act or any
12 of the regulations issued thereunder.

13 Section 212. Discrimination prohibited. It shall be unlawful
14 for an employer to discriminate against resident workers with respect
15 to wages, benefits, and working conditions. Equal work shall be
16 entitled to equal wages, benefits, and working conditions; PROVIDED,
17 HOWEVER, that an employer shall not be required to provide lodging,
18 lodging expenses, meals, or room and board to a resident employee who
19 maintains his principal place of residence within normal commuting
20 distance. An aggrieved resident employee may bring a civil action for
21 damages or injunctive relief in the event of a violation of this
22 section.

23 CHAPTER 3. NONRESIDENT WORKER'S HEALTH CERTIFICATES

24 Section 301. Statement of policy. It is the policy of the
25 Federated States of Micronesia Government to protect the health of its

1 citizens and prevent the overtaxation of its medical and hospital
2 facilities and personnel in the care and treatment of nonresident workers.

3 Section 302. Health certification required. Every person
4 admitted for employment under chapter 2 of this act and every person
5 admitted as a dependent of such person shall have in his possession
6 a certificate of freedom from communicable disease signed by a
7 physician licensed to practice medicine in the country of origin of that
8 person. The date of issuance of said certificate shall not be more than
9 30 days prior to the entry of such person into the Federated States of
10 Micronesia.

11 Section 303. Physical examination required.

12 (1) Within 10 days after his entry into the Federated
13 States of Micronesia, or as soon thereafter as a physician is available,
14 each nonresident worker admitted for employment under chapter 2 of this
15 act and every person admitted as a dependent of such nonresident worker
16 shall obtain a physical examination conducted by a physician licensed
17 in the Federated States of Micronesia. The cost of the physical
18 examination shall be borne by the employer.

19 (2) The nonresident worker and his dependents shall
20 provide the results of their physical examinations to the employer who
21 caused their importation, who shall provide a copy of said results to
22 the chief within 10 days after his receipt thereof.

23 (3) If the chief determines, in consultation with the
24 director of Health of the Federated States of Micronesia or his
25 representative, that the results of any physical examination submitted

1 to him indicate that the continued presence of the person examined will
2 result in substantial danger to the health of the inhabitants of
3 the Federated States of Micronesia, or in a need for prolonged medical
4 care and treatment for that person while in the Federated States of
5 Micronesia, he may proceed to revoke the entry permit of that person.

6 Section 304. Penalties. The failure of any person to
7 obtain the physical examination required by this chapter shall be
8 grounds for revocation of his entry permit, and in addition is
9 punishable by a fine not to exceed \$250.

10 CHAPTER 4. LABOR DEVELOPMENT

11 Section 401. United States Department of Labor funds and programs.

12 The labor officer shall develop and maintain a list of all programs and
13 services offered by the United States Department of Labor which may
14 be applicable to the Federated States of Micronesia. He shall
15 transmit a copy of the list to the President of the Federated States
16 of Micronesia, together with a statement as to the advisability of
17 each program or service to the Federated States of Micronesia and a
18 statement of the current eligibility of the Federated States of
19 Micronesia for participation in the programs and services. The
20 President shall transmit a copy of such list along with the labor officer's
21 statement as part of the annual report required by section 403 of this
22 chapter.

23 Section 402. Apprenticeship training program. No later than
24 November 15, 1981, the labor officer shall submit to the Congress of
25 the Federated States of Micronesia a program for an apprenticeship.

1 training program, whereby employers would be reimbursed for a portion
2 of the salary of an apprentice by the Federated States of Micronesia
3 Government until these apprentices have been fully qualified in their
4 trade. This program shall be limited to trades which the labor officer
5 believes essential to the future development needs of the Federated
6 States of Micronesia. This program shall include a statement of the
7 funds necessary to implement the program.

8 Section 403. Annual report. The President of the Federated
9 States of Micronesia shall, not later than 15 days after the end of
10 each fiscal year, transmit to the Congress of the Federated States of
11 Micronesia a complete report of the activities of the labor branch
12 over the previous year, together with such other information as shall
13 be required by this or other sections of this act. The report shall also
14 contain recommendations for legislation by the Congress of the Federated
15 States of Micronesia and, in particular, legislation devoted to the
16 development of labor skills of citizens of the Federated States of
17 Micronesia and for the reduction of the need for nonresident workers
18 in the Federated States of Micronesia.

19 CHAPTER 5. EFFECTIVE DATE

20 Section 501. Effective date. This act shall become law upon
21 approval by the President of the Federated States of Micronesia or upon
22 its becoming law without such approval.

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24 Date: May 26, 1981 Introduced by: Sasao H. Goulund
25