

SECOND CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 1981

C.B. No. 2-103

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A BILL FOR AN ACT

To provide for the protection of resident workers; 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. Short title. This act shall be known and may be cited as  
3 the "Protection of Private Resident Workers Act of 1981."

4 Section 102. Statement of policy. The Congress of the Federated States  
5 of Micronesia finds and declares that the public interest requires its resident  
6 workers to be protected from exploitation in any employment opportunity in  
7 the Federated States of Micronesia; that there shall be equitable treatment  
8 of resident and nonresident workers with respect to benefits, rights, and privi-  
9 leges granted by employers; and that the employment of nonresident workers shall  
10 only be permissible to supplement the local labor force.

11 Section 103. Definitions. For purposes of this act, unless it is other-  
12 wise provided or the context requires a different construction, application, or  
13 meaning;

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

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

18 (3) "Employer" means any individual, partnership, association, or  
19 corporation hiring employees in the Federated States of Micronesia, but does not  
20 include any branch, agency, commission, or authority of the National Government  
21 of the Federated States of Micronesia, the State governments of the Federated  
22 States of Micronesia, the Government of the United States, or the Trust Territory  
23 administration.

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

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1 (5) "Nonresident worker" means any person who is capable of perform-  
2 ing services of labor and who:

3 (a) Prior to the termination of the trusteeship for the Trust  
4 Territory of the Pacific Islands is not a Trust Territory citizen; or

5 (b) Subsequent to the termination of the trusteeship is neither  
6 a citizen nor national of the Federated States of Micronesia nor an immigrant  
7 alien admitted to the Federated States of Micronesia.

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

11 Section 104. Chief-functions and duties. The chief shall generally imple-  
12 ment and enforce the provisions of this act and regulations promulgated there-  
13 under.

14 Section 105. Labor branch.

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

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

20 Section 106. Labor officer-functions and duties. The labor officer shall  
21 assist the chief in implementing the provisions of this act and regulations  
22 promulgated thereunder, which duties shall include, but not be limited to, the  
23 following:

24 (1) Control the employment of nonresident workers by facilitating,  
25 upon consultation with the States, the employment of qualified resident workers

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1 throughout the Federated States of Micronesia;

2 (2) Provide protection for workers from arbitrary and nonhumanitar-  
3 ian treatment by employers throughout the Federated States of Micronesia;

4 (3) Develop and recommend appropriate labor legislation as may be  
5 requested by the States;

6 (4) Provide assistance in settling labor disputes as may be desired  
7 by the States;

8 (5) Gather raw data on employment from each State's employment office  
9 for National planning purposes;

10 (6) Establish occupational categories for which this act is appli-  
11 cable, and, when desirable, establish minimum qualifications and wage requirements  
12 for certain occupational categories; and

13 (7) In conjunction with the National Planning Office, conduct continu-  
14 ing surveys of manpower needs and resources for the private sector, assist in  
15 preparing training programs, and recommend other measures for increasing employ-  
16 ment of resident workers and for reducing the need for nonresident workers.

17 Section 107. Regulations. The chief, subject to approval by the President,  
18 shall promulgate regulations necessary or appropriate to effectuate the provi-  
19 sions of this act which regulations shall have the force and effect of law.

20 CHAPTER 2. MEASURES FOR PROTECTING RESIDENT WORKERS

21 Section 201. Preference. Resident workers shall be given preference in  
22 all employment opportunities throughout the Federated States of Micronesia for  
23 which such workers are qualified and available.

24 Section 202. Discrimination prohibited. No employer shall unlawfully dis-  
25 criminate against resident workers with respect to working conditions, wages, &

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1 benefits, including, but not limited to, any insurance benefits. An aggrieved  
2 resident worker may file a written complaint with the chief for enforcement of  
3 this section.

4 Section 203. Public advertisement of job opportunities required.

5 (1) Any employer who desires to hire a nonresident worker shall sub-  
6 mit to the chief or his representative for public advertisement a letter with  
7 the following information:

8 (a) Description of duties;

9 (b) Wages to be paid;

10 (c) Place of employment; and

11 (d) Minimum qualification requirements in terms of educational  
12 background and work experience.

13 (2) Upon receipt of any letter from an employer concerning job adver-  
14 tisement, the labor officer shall cause public announcements of the job opportu-  
15 nities and other applicable information. The publication shall include posting  
16 of notice in public places in the States, the use of radio, television, and news-  
17 paper media when appropriate, and such other means as the labor officer may  
18 determine to be feasible. Such publicity shall be given:

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

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

25 (3) Within 21 days after the 30-day advertisement period, the

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1 labor officer shall make a determination as to the availability or nonavailability  
2 of qualified resident workers to fill all or some of the vacancies. If qualified  
3 resident workers are available, the labor officer shall forthwith transmit the  
4 list of qualified workers to the chief for referral and placement by employers.  
5 Upon request by an employer, the chief may authorize the labor officer to assist  
6 employers in the interviewing and screening of applicants before final selection  
7 by the employer.

8 Section 204. Other required documents for employment.

9 (1) Each full-time resident worker shall provide a sworn affidavit,  
10 executed by him, which indicates his educational background, work experience,  
11 marital status, name of spouse, number and ages of children (if any), and a copy  
12 of the physical examination as required by Section 406 of this act.

13 (2) Each employer of full-time resident workers shall provide a copy  
14 of the employment contract which shall include a statement of job title, duration  
15 of work, location of work, weekly hours schedule, wage scale for regular and  
16 overtime work, and such other information as may be required by the employer.

17 CHAPTER 3. NONRESIDENT WORKERS

18 Section 301. Importation of nonresident workers-procedures and requirements.

19 (1) If the determination is made pursuant to Section 203(3) of this  
20 act that no qualified resident workers are available, the labor officer shall  
21 notify the chief of those positions for which no resident workers are available.

22 (2) Upon receipt of notice from the labor officer of those positions  
23 which the employer requires, and for which no resident workers are available, the  
24 chief shall determine the period of time and conditions under which employers  
25 should be authorized to hire nonresident workers. The chief may contact any State



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1 economic development board and/or the National Planning Office for advice on  
2 the economic feasibility of hiring any nonresident workers. Within seven days  
3 after the receipt of notice from the labor officer, the chief shall notify the  
4 employer of his findings. For those positions for which the chief has deter-  
5 mined nonresident workers may be hired, he shall require that a nonresident  
6 worker's agreement be entered into between the employer and the National Govern-  
7 ment of the Federated States of Micronesia, which agreement shall authorize the  
8 employer to hire nonresident workers. The agreement shall be signed by the chief,  
9 as representative of the National Government of the Federated States of Micronesia,  
10 and by the employer or his authorized representative. The agreement shall contain  
11 such provisions with respect to wages, including minimum wages, benefits, and  
12 working conditions as the chief shall determine to be necessary and consistent  
13 with the policy and purposes of this act. The agreement shall specifically  
14 include:

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

17 (b) A statement of wages the employer is paying or intends to pay the  
18 nonresident workers for each occupational classification he is importing non-  
19 resident workers to fill;

20 (c) A statement of the period of time for which the employer will be  
21 allowed to fill each position with a nonresident worker before he must attempt  
22 to fill the position with a resident worker by filing a new application with the  
23 labor officer;

24 (d) A statement of the employer's responsibility for return transpor-  
25 tation to the point of recruitment of each nonresident worker at the expiration

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1 or revocation of the worker's entry or work permit / or upon his death;

2 (e) A statement of the employer's responsibility for the  
3 expenses of medical evacuation or other extraordinary medical expenses of each  
4 nonresident worker; and

5 (f) A statement of the extent of the employer's responsibility  
6 for training of resident workers in the occupational categories for which he  
7 is hiring nonresident workers.

8 (3) The chief shall provide each nonresident worker with a copy of  
9 the nonresident worker's agreement which authorized his employer to hire him,  
10 a work permit, and an entry permit. The work permit shall contain the nonresi-  
11 dent worker's name, his employer's name, his job classification, his country  
12 of origin or citizenship, and the date of expiration of his work permit. The  
13 nonresident worker shall be required to produce such entry permit as soon as  
14 possible after a request to inspect it by the chief or his representative.

15 (4) A nonresident employment agreement entered into by the chief  
16 with an employer shall expire 90 days from the date thereof, unless the nonresi-  
17 dent worker is present and employed in the Federated States of Micronesia within  
18 such time.

19 (5) No nonresident worker shall be permitted to work in the Federated  
20 States of Micronesia unless prior to the entry of such worker under the provi-  
21 sions of this act the following requirements shall have been met:

22 (a) Each nonresident worker shall present to the labor officer  
23 a sworn affidavit, executed by him, on a form issued by the Division of Immigra-  
24 tion and Labor, and such other evidence as the chief may require, which indicates  
25 A minimum of two years experience in the line of work for which he is being hired

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1 marital status, and if married, the name of the spouse and dependent children  
2 and the addresses of the spouse and dependent children; and that he has not been  
3 convicted of a felony or other crime involving moral turpitude; and

4 (b) The employer of a nonresident worker shall present to the  
5 labor officer a copy of the nonresident worker's contract of employment, which  
6 shall include a statement of job title, the duration of the contract, location  
7 of work, weekly hours schedule, wage scale for regular and overtime work, any  
8 deductions for living cost, and such other information or contractual informa-  
9 tion as may be required by the chief.

10 Section 302. Health certification required. Every nonresident worker and  
11 every person admitted as a dependent of such person shall submit to the labor  
12 officer a certificate of freedom from communicable disease signed by a physician  
13 licensed to practice medicine in the country of origin of that person. The date  
14 of issuance of said certificate shall not be more than 60 days prior to the entry  
15 of such person into the Federated States of Micronesia.

16 Section 303. Temporary Employment Restricted. Temporary employment is  
17 restricted to bona fide emergency purposes only, which must be justified in  
18 writing by the employer to the satisfaction of the Division of Immigration and  
19 Labor. This provision is applicable only to nonresident workers who are brought  
20 into the Federated States of Micronesia for a period not to exceed 90 days. If  
21 an employer finds the need for extending any temporary employment beyond 90 days,  
22 he may do so by applying to the chief for such extension, and the chief may grant  
23 such extension for an additional period of time not to exceed 90 days, if he  
24 finds the extension request to be reasonable. The chief may grant more than one  
25 extension, but the total time period such nonresident worker may remain in the



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1 Federated States of Micronesia shall not exceed 180 days. A nonresident worker  
2 shall not serve under temporary employment again after he has served the maxi-  
3 mum period of 180 days; and any nonresident worker who has served such maximum  
4 period under temporary employment may not be converted to regular employment  
5 unless he departs the Federated States of Micronesia prior to such conversion.  
6 Nonresident workers temporarily employed under this section shall be exempt  
7 from the requirements of section 203 of this act, except that the employer shall  
8 be required to provide the chief or his representative with the information listed  
9 under section 203(1) of this act.

10 Section 304. Other employment by nonresident workers.

11 (1) It shall be unlawful for any nonresident worker to engage in any  
12 other full-time employment in the Federated States of Micronesia for compensation  
13 or for profit other than for the employer who has contracted with the chief for  
14 employment of such worker, unless a written transfer agreement between the losing  
15 and the gaining employers is first approved by the chief. Any such agreement  
16 shall be signed by the employee, by both the losing and gaining employers, and  
17 the approval of the chief shall be affixed to the agreement. Upon the signing  
18 of such agreement, the chief shall ensure that the requirements of this act have  
19 been met. Notwithstanding the provisions of this subsection, simultaneous part-  
20 time employment for compensation or profit is permissible for nonresident workers  
21 for the purpose of educational instruction at established educational institu-  
22 tions within the Federated States of Micronesia as approved in writing by the  
23 chief, employer, and nonresident worker.

24 (2) Notwithstanding the provisions of section 103(3) of this act, sub-  
25 section (1) of this section shall apply to any full-time nonresident employees of

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1 any branch, agency, commission, or authority of the National Government of the  
2 Federated States of Micronesia, the State governments of the Federated States  
3 of Micronesia, the Government of the United States, or the Trust Territory  
4 Government.

5 (3) A violation of this section shall constitute grounds for deporta-  
6 tion pursuant to section 306, and shall further subject the employer and non-  
7 resident worker to the penalties prescribed in section 405.

8 Section 305. Injunctions. The Attorney General may bring legal action to  
9 enjoin violations of the provisions of this act or any of the regulations issued  
10 thereunder.

11 Section 306. Deportation. If the chief determines that grounds exist for  
12 the deportation of a nonresident worker, he shall refer the matter to the Office  
13 of the Attorney General, which may file a lawsuit requesting an order for depor-  
14 tation.

15 CHAPTER 4. OTHER PROVISIONS FOR UNIFORM APPLICATION

16 Section 401. Records. On the 10th of each month following a quarter, or  
17 upon demand of the chief or his representative, each employer hiring workers  
18 in the Federated States of Micronesia shall transmit current records to the chief  
19 with the following information:

- 20 (1) The name, address, age, and legal residence of each of his workers;  
21 (2) The classification and wage rate of each of his workers;  
22 (3) Payrolls showing the number of hours worked each week, the compen-  
23 sation earned, and deductions made for each of his workers;  
24 (4) The educational and experiential background of each of his workers  
25 to be provided but once for each worker; and

1 (5) The number of employment-related accidents of each worker, name  
2 of the injured, and disposition by the employer of the injured worker.

3 Section 402. Confidentiality. All employment records are to be kept con-  
4 fidential and may only be used for legitimate purposes of the Division of  
5 Immigration and Labor or as ordered by a court of competent jurisdiction.

6 Section 403. Investigations-hearings-orders.

7 (1) The chief or his representative is hereby authorized to conduct  
8 hearings or investigations as he may deem appropriate and necessary to enforce  
9 the provisions of this act. In connection with such hearings or investigations,  
10 the chief or his representative may subpoena witnesses, records, and documents.

11 (2) Upon the filing of a sworn complaint that any person has violated  
12 the provisions of this act or any regulations issued thereunder, the chief or his  
13 representative shall investigate the complaint, providing a copy thereof to the  
14 person complained against. The chief or his representative shall have the power  
15 to schedule a closed administrative hearing (if requested by both the employer  
16 and employee) or an open administrative hearing as deemed appropriate under the  
17 circumstances. Adequate notice of the hearing shall be given to all persons  
18 involved, an opportunity shall be made available to them to present such evidence  
19 as they may desire in person or through counsel of their choice. Upon conclusion  
20 of the hearing, the chief or his representative shall have the power to enter an  
21 order disposing of the matter, including an order revoking the work permit.

22 Section 404. Appeal. Any person aggrieved by an order of the chief or his  
23 representative may appeal said order or request judicial review thereof in accor-  
24 dance with the Administrative Procedure Act. In any such judicial proceedings, th  
25 chief or his representative shall be represented by the Office of the Attorney

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1 General of the Federated States of Micronesia.

2 Section 405. Penalties.

3 (1) Any employer who violates any of the provisions of this act or  
4 any of the regulations issued thereunder shall, upon conviction thereof, be  
5 fined not more than \$10,000 or imprisoned not more than two years, or both.  
6 Any worker who violates any of the provisions of this act or any of the regula-  
7 tions issued thereunder shall, upon conviction thereof, be fined not more than  
8 \$500.

9 Section 406. Physical examination required.

10 (1) Within 10 days after the entry into the Federated States of  
11 Micronesia, each nonresident worker admitted for employment and every person  
12 admitted as a dependent of such nonresident worker shall obtain a physical  
13 examination conducted by a physician licensed in the Federated States of Microne-  
14 sia.

15 (2) Ten days prior to employment, each full-time resident worker shall  
16 obtain a physical examination conducted by a physician licensed in the Federated  
17 States of Micronesia.

18 (3) Each nonresident worker and his dependents or each full-time  
19 resident worker shall provide the results of his physical examinations to the  
20 employer, who shall in turn provide a copy of said results to the chief within  
21 10 days of his receipt thereof.

22 (4) Results of physical examinations as determined by the chief of  
23 the Health Services Division of the Federated States of Micronesia National  
24 Government or his representative may be a determining factor in the continuation  
5 or termination of the employment of any worker.

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1 (5) The cost of physical examinations shall be borne by each worker.

2 Section 407. Annual report. The chief shall, not later than 15 days after  
3 the end of each fiscal year, transmit to the President and the Congress of the  
4 Federated States of Micronesia a complete report of the activities of the labor  
5 branch over the previous year, together with such other information as shall be  
6 required by this act. The report shall also contain recommendations for legis-  
7 lation by the Congress of the Federated States of Micronesia and, in particular,  
8 legislation devoted to the development of labor skills of citizens of the  
9 Federated States of Micronesia and for the reduction of the need for nonresident  
10 workers in the Federated States of Micronesia.

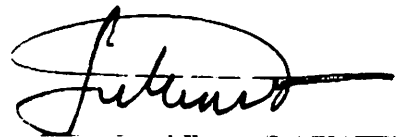
11 Section 408. Repealer. Insofar as it affects the Federated States of  
12 Micronesia, Title 49 of the Trust Territory Code is hereby repealed in its  
13 entirety.

14 Section 409. Effective date. This act shall become law upon approval by  
15 the President of the Federated States of Micronesia or upon its becoming law  
16 without such approval.

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18 Date: 7/17/81

Introduced by:



Luke M. Tman  
(By request)

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