

A BILL FOR AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by amending section 801, 901, and 902 to specify the disposition of revenues from fines, penalties, and forfeitures, and for other purposes.

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

1 Section 1. Section 801 of title 12 of the Code of the
2 Federated States of Micronesia, as enacted by Public Law No. 12-
3 34, is hereby amended to read as follows:

4 "Section 801. Forfeiture of property.

5 (1) Any fishing vessel, including its fishing gear,
6 furniture, appurtenances, stores and cargo used in or
7 connected with the commission of any act prohibited by
8 this subtitle, within the territorial sea or internal
9 waters of the Federated States of Micronesia, shall be
10 subject to forfeiture to the Government of the Federated
11 States of Micronesia pursuant to a civil proceeding
12 under this section.

13 (2) Any fishing vessel, including its fishing gear,
14 furniture, appurtenances or stores used in or connected
15 with the commission of any act prohibited by this
16 subtitle, within the exclusive economic zone outside the
17 territorial seas of the Federated States of Micronesia,
18 shall be released upon the posting of a bond or other
19 surety.

1 (3) Any vehicle or aircraft, all or any part of any
2 fish or fish product and the proceeds of the sale of any
3 fish seized in connection with a violation of this
4 subtitle, shall be subject to forfeiture to the
5 Government of the Federated States of Micronesia
6 pursuant to a civil proceeding under this section.

7 (4) The Supreme Court of the Federated States of
8 Micronesia shall have jurisdiction, upon application by
9 the Secretary of the Department of Justice on behalf of
10 the Federated States of Micronesia, to order any
11 forfeiture authorized under subsection (1) of this
12 section.

13 (5) If a judgment is entered for the Government of the
14 Federated States of Micronesia in a civil forfeiture
15 proceeding under this section, the Secretary of the
16 Department of Justice shall seize any property or other
17 interest declared forfeited to the Government of the
18 Federated States of Micronesia, which has not previously
19 been seized pursuant to this subtitle.

20 (6) The forfeited item or items shall be sold and the
21 proceeds deposited into the General Fund of the
22 Federated States of Micronesia and distributed in
23 accordance with subsection [~~6~~](7) of this section.

24 (7) Fifty percent of the net revenues from fines and
25 forfeitures shall be distributed to [~~an~~]the FSM

1 State(s) [~~which may be~~] affected by the [~~situation which~~
2 ~~has given~~] violation(s) giving rise to the fine and/or
3 forfeiture, PROVIDED that such violation(s) occurred
4 within 12 miles of appropriate baselines of such
5 State(s).

6 (8) Pending completion of the civil forfeiture
7 proceeding, the item or items subject to forfeiture, or
8 any part thereof, may be released at the discretion of
9 the Court upon deposit with the Court of a satisfactory
10 bond, surety or other security at least equal to the
11 fair market value of the seized property. Exoneration
12 of such bond, surety or other security shall be
13 conditional upon return of the released property to the
14 appropriate court upon order, without any impairment of
15 its value, or by paying the monetary value of the
16 released property to the General Fund of the Federated
17 States of Micronesia upon order of the Court. Such
18 bond, surety or other security shall be forfeited in the
19 event that any condition is breached as shall be
20 determined by the Court, and judgment shall be
21 recoverable by the Court against the principal of any
22 surety for any such breach.

23 (9) In the event there is an appeal from an order for
24 forfeiture, the Court may continue any such bond, surety
25 or other security deposited in accordance with

1 subsection (6) of this section during the pendency of
2 the appeal and any retrial or rehearing on remand or may
3 require additional security to be deposited with the
4 Court."

5 Section 2. Section 901 of title 24 of the Code of the
6 Federated States of Micronesia, as enacted by Public Law No. 12-
7 34, is hereby amended to read as follows:

8 "Section 901. Civil Penalties.

9 (1) Any person who is found by the Supreme Court of
10 the Federated States of Micronesia in a civil proceeding
11 to have committed an act prohibited by this subtitle
12 shall be liable to the Federated States of Micronesia
13 for a civil penalty.

14 (2) Each day of a continuing violation shall
15 constitute a separate offense, for which a separate
16 penalty shall be assessed.

17 (3) In determining the amount of the penalty, the
18 Supreme Court of the Federated States of Micronesia
19 shall take into account the nature, circumstances,
20 extent and gravity of the prohibited acts committed and,
21 with respect to the violator, the degree of culpability,
22 any history of prior offenses, whether there are
23 multiple violations which together constitute a serious
24 disregard of conservation and management measures and
25 such other matters as justice may require.

1 (4) The Secretary is authorized to initiate all
2 proceedings under this section and to recover the amount
3 assessed as a civil penalty.

4 (5) The proceeds of civil penalties shall be deposited
5 into the General Fund of the Federated States of
6 Micronesia. Fifty percent of the net proceeds from
7 civil penalties shall then be distributed to ~~[any]~~the
8 FSM State(s) ~~[which may be]~~ affected by the ~~[situation~~
9 ~~which has given rise]~~violation(s) giving rise to ~~[this~~
10 ~~action]~~the penalties, PROVIDED that such violation(s)
11 occurred within 12 miles of appropriate baselines of
12 such State(s)."

13 Section 3. Section 902 of title 24 of the Code of the
14 Federated States of Micronesia, as enacted by Public Law No. 12-
15 34, is hereby amended to read as follows:

16 "Section 902. Criminal penalties.

17 (1) Any person who commits an act prohibited by this
18 subtitle is subject to criminal prosecution.

19 (2) The Captain and any crew member of a fishing
20 vessel, who is subject to criminal charges solely for
21 violations of this subtitle occurring outside the
22 territorial waters but within the exclusive economic
23 zone of the Federated States of Micronesia shall be
24 released upon posting of reasonable bond or other
25 surety.

1 (3) Unless otherwise provided, all maximum penalties
2 described in this subtitle shall be applicable in both
3 civil and criminal proceedings in respect to the same
4 prohibited acts. In addition to any fine, any criminal
5 violation shall also be punishable by imprisonment for
6 not more than ten (10) years, if in the commission of
7 any such offense the person:

8 (a) uses a dangerous weapon;

9 (b) engages in conduct that causes bodily injury
10 to any authorized officer or authorized observer or
11 other officer authorized to enforce the provisions of
12 this subtitle; or

13 (c) threatens any such person with bodily injury.

14 (4) Each day of a continuing violation shall be
15 considered a separate offense, for which a separate
16 penalty shall be assessed.

17 (5) Fines shall be deposited into the General Fund of
18 the Federated States of Micronesia. Fifty percent of
19 the net proceeds from criminal fines shall be
20 distributed to ~~[any]~~the FSM State(s) ~~[which may be]~~
21 affected by the ~~[situation which has given]~~violation(s)
22 giving rise to the [action] criminal fines, PROVIDED that
23 such violation(s) occurred within 12 miles of
24 appropriate baselines of such State(s).

25 (6) Criminal penalties shall be imposed without regard

1 to whether the person committing the prohibited act is
2 also subject to civil proceedings for the same
3 violation, and without regard to the amount of any civil
4 penalty imposed or which may be imposed in such civil
5 proceedings.

6 (7) Nothing in this subtitle shall be interpreted to
7 allow the abatement of a criminal prosecution upon the
8 late satisfaction of a civil judgment or payment of a
9 fine or other determination pursuant to administrative
10 proceedings under this subtitle."

11 Section 4. This act shall become law upon approval by the
12 President of the Federated States of Micronesia or upon its
13 becoming law without such approval.

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15 Date: 10/23/02

Introduced by: /s/ Dohsis Halbert
Dohsis Halbert

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