

A BILL FOR AN ACT

To provide for the regulation of the employment of nonresident workers in the Federated States of Micronesia and for the training and development of resident workers to replace those nonresident workers; to repeal sections 111 through 168 and sections 201 through 207 of title 51 of the Code of the Federated States of Micronesia; and for other purposes.

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

CHAPTER 1

GENERAL PROVISIONS

Section 101. Short title. This act may be cited as the "Employment of Nonresident Workers Act of 1985."

Section 102. Statement of policy. It is the policy of the Congress of the Federated States of Micronesia that it is essential to a balanced and stable economy that citizen workers be given preference in employment in the Federated States of Micronesia, with nonresident workers being utilized in employment only when qualified citizen workers are not available.

Section 103. Statement of intent. It is the intent of the Congress of the Federated States of Micronesia to enact this legislation to regulate the employment of nonresident workers, to train and develop resident workers to assume those positions held by nonresident workers, and to enable resident workers to acquire the degree of skill and competence necessary to enable them to compete for job opportunities on the international labor market.

Section 104. Definitions. For the purpose of this act, unless it is otherwise provided or the context requires a different construction, application, or meaning:

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

(2) "Chief" means the chief of the Division of Labor or the Department of Resources and Development of the National Government of the

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1 Federated States of Micronesia;

2 (3) "Division" means the Division of Labor of the Department
3 of Resources and Development of the National Government of the Federated
4 States of Micronesia;

5 (4) "Employer" means any individual, partnership, associa-
6 tion, or corporation hiring employees in the Federated States of Micro-
7 nesia, but does not include any branch, agency, commission, or other authority
8 of the National Government of the Federated States of Micronesia, the
9 State governments of the Federated States of Micronesia, the Government
10 of the United States of America, or the Government of the Trust Territory
11 of the Pacific Islands;

12 (5) "Employment service office" means one of the branch
13 offices of the Division of Labor;

14 (6) "Employment service officer" means a person in charge of
15 any of the branch offices of the Division of Labor;

16 (7) "Nonresident worker" means any person who is capable of
17 performing services or labor and who is not a citizen of the Federated
18 States of Micronesia, or an immigrant alien admitted to the Federated
19 States of Micronesia for permanent residence pursuant to the applicable
20 laws of the Federated States of Micronesia, including persons acting in
21 a professional, managerial, or executive capacity; and

22 (8) "Resident worker" means any person who is capable of
23 performing services or labor and who is a citizen or national of the
24 Federated States of Micronesia, or any immigrant alien admitted to the
25 Federated States of Micronesia for permanent residence pursuant to

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1 applicable laws of the same.

2 Section 105. Establishment; Division of Labor. There is hereby
3 established a Division of Labor within the Department of Resources and
4 Development of the National Government of the Federated States of Micro-
5 nesia. The division shall be headed by a chief of the Division of
6 Labor, hereinafter referred to as "chief."

7 Section 106. Duties and functions of the division. The division
8 shall be charged with the responsibility of promoting and implementing
9 the provisions of this act and any regulations promulgated thereunder.
10 Toward that end, it shall make periodic review of the laws and all
11 regulations issued thereunder and recommend to the proper authorities any
12 changes which it deems necessary and proper to effect the purpose of this act.

13 Section 107. Establishment; Employment service office. The
14 President of the Federated States of Micronesia is hereby authorized to
15 establish branch offices of the division in each of the States of the
16 Federated States of Micronesia. Each of the employment service offices
17 shall be headed by an employment service officer. The chief may hire
18 other subordinate staff from time to time as may be appropriate, subject
19 to the provisions of applicable laws relating to the budget and the
20 employment ceiling for the Department of Resources and Development.

21 Section 108. Duties and functions of the employment service
22 office. The employment service office is an office of the National
23 Government situated in each of the States of the Federated States of
24 Micronesia created to promote and implement the provisions of this act
25 and any regulations promulgated thereunder. The employment service

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1 officer, acting as the head of the office, shall make monthly reports to
2 the President, through the chief, of matters pertaining to the employment
3 of nonresident workers in his State. He shall make periodic reviews of
4 the laws and all regulations issued thereunder as they relate to the
5 problems of employment of nonresident workers, if any, and recommend to the
6 chief any changes he deems necessary and proper.

7 Section 109. Duties of the chief. It shall be the duty of the
8 chief to see to it that the provisions of this act, and all regulations
9 issued thereunder, are faithfully carried out. Toward that end, his
10 duties shall include, but not be limited to, the following:

11 (1) Planning, developing, and implementing a manpower
12 development program for the Federated States of Micronesia. In
13 discharging this responsibility, the chief shall, through or with the
14 consent of the Department of External Affairs, contact the International
15 Labor Organization and seek technical assistance therefrom with respect
16 to the establishment, implementation, management, and administration of
17 the manpower development program. The purpose of this program shall
18 include, but not be limited to, the following:

19 (a) Training citizens of the Federated States of
20 Micronesia. This training may consist of at least three levels; the
21 primary level, the intermediate level, and the advanced level.

22 (b) Certifying all trainees who have completed the
23 requisite requirements for each training level. In order to be certified
24 under this subsection, one must pass both a practical and a written test
25 administered to all those who aspire to be certified in a given level.

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1 (c) Determining if, in addition to the testing
2 requirement, a trainee has also met the work experience requirements for
3 each level. The test must be a standardized test administered and
4 recognized by the International Labor Organization.

5 In order to be employed in the Federated States of Micronesia in a given
6 certified level, all nonresident workers who aspire to a job in the
7 Federated States of Micronesia shall meet the requirements in subsection
8 (1)(b) and (c).

9 (2) Advising the President of the Federated States of
10 Micronesia on matters related to employment and replacement of
11 nonresident workers;

12 (3) Receiving, reviewing, processing, approving, or
13 disapproving any application submitted by an employer wishing to employ
14 a nonresident worker in the Federated States of Micronesia; PROVIDED,
15 however, that by regulation these duties could be delegated to the
16 employment service officer in charge of each employment service office;

17 (4) Administering, coordinating, and supervising the
18 employment service officers; and

19 (5) Performing such other duties as may be required by law
20 or provided by regulation.

21 Section 110. Duties of the employment service officer. The duties
22 of the employment service officer shall include, but not be limited to,
23 the following:

24 (1) Serving as administrative head of the employment service
25 office;

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1 (5) The State or States in which such workers are desired;
2 and

3 (6) Any other relevant information as may be required by
4 the regulations.

5 Section 202. Publication of vacancies.

6 (1) Upon receipt of an application pursuant to the
7 provisions of section 201, the chief shall cause the existence of the
8 vacancies and other applicable information regarding the job to be
9 publicized. The publication shall include the posting of notices in
10 public places in the States, the use of radio and newspaper publicity,
11 whenever appropriate, and such other means as the chief may determine to
12 be feasible. Such publicity shall be given:

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

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

19 (2) Within 7 days after the expiration of 30 days after the
20 first advertisement, the employment service officer, upon a finding that
21 there are no qualified resident workers available to fill all or some of
22 the vacancies, shall notify the chief of those positions for which no
23 resident workers are available. The employer may appeal these findings
24 or request judicial review thereof in accordance with the Administrative
25 Procedure Act.

1 Section 203. Determination to permit employment of nonresident
2 workers. Upon receipt of notice from the employment service officer of
3 those positions which the employer requires, and for which no resident
4 workers are available, the chief shall determine the terms and
5 conditions under which the employer shall be permitted to hire and the
6 period of time within which the employer shall be allowed to keep the
7 nonresident workers for those positions. Within 7 days after the
8 receipt of notice from the employment service officer, the chief shall
9 notify the employer of his findings.

10 Section 204. Nonresident employment agreements.

11 (1) For those positions for which the chief determined
12 nonresident workers may be hired, he shall require that a nonresident
13 worker's agreement be entered into between the employer and the Govern-
14 ment of the Federated States of Micronesia, which agreement shall
15 authorize the employer to hire nonresident workers.

16 (2) The agreement shall be signed by the chief, as the
17 representative of the Federated States of Micronesia National Government,
18 and by the employer or his authorized representative.

19 (3) The agreement shall contain such provisions with respect
20 to wages, including minimum wages, benefits, and working conditions as
21 the chief shall determine to be necessary and consistent with the policy
22 and purposes of this act. The agreement shall specifically include:

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

25 (b) A statement of the wages the employer is paying or

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1 intends to pay the nonresident workers for each occupational
2 classification he is importing nonresident workers to fill;

3 (c) A statement of the period of time for which the
4 employer will be allowed to fill each position with a nonresident worker
5 before he shall fill the position with a resident worker by filing a new
6 application with the chief or the employment service officer;

7 (d) A statement of the employer's responsibility for
8 return transportation to the place of origin of each nonresident worker
9 at the expiration or revocation of the worker's entry permit, or upon
10 his death;

11 (e) A statement of the employer's responsibility for
12 the expenses of medical evacuation or other extraordinary medical
13 expenses of each nonresident worker; and

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

17 Section 205. Nonresident worker's agreement legally enforceable.

18 The nonresident worker's agreement entered into by the chief and the
19 employer shall be legally enforceable upon action taken by an aggrieved
20 nonresident employee or on his behalf by the chief or his representative.
21 In any such action taken by the chief or his representative on behalf of
22 an aggrieved nonresident employee, the chief or his representative shall
23 be represented by the Office of the Attorney General of the Federated
24 States of Micronesia.

25 Section 206. Nonresident worker's identification certificate. The

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1 chief shall provide each nonresident worker with a copy of the nonresident
2 worker's agreement which authorized his employer to hire him, and a
3 nonresident worker's entry permit. The entry permit, also known as a work
4 permit, shall contain the nonresident worker's name, his employer's name,
5 his job classification, his country of origin or citizenship, and the
6 date of expiration of his entry permit. The nonresident worker shall be
7 required to produce such entry permit as soon as possible after a request
8 to inspect it by the chief or his representative.

9 Section 207. Expiration of nonresident employment agreements for
10 failure of performance. A nonresident employment agreement entered into
11 by the chief with an employer shall expire 90 days from the date thereof,
12 unless the nonresident worker is present and employed in the Federated
13 States of Micronesia within such time.

14 Section 208. Entry requirements. Prior to entry of any nonresident
15 worker into the Federated States of Micronesia for employment under the
16 provisions of this chapter the following requirements shall be met:

17 (1) Each nonresident worker shall present to the chief or his
18 representative a sworn affidavit, executed by him, on a form issued by the
19 Division of Labor, and such other evidence as the chief may require, which
20 indicates:

21 (a) A minimum of 3 years experience in the line of work
22 for which he is being hired;

23 (b) Marital status;

24 (c) If married, the name of the spouse, number and
25 ages of dependent children and the addresses of the spouse and dependent

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1 children; and

2 (d) That he has not been convicted of a felony or
3 other crime involving moral turpitude.

4 (2) The employer of a nonresident worker shall present to
5 the chief or his representative a copy of the nonresident worker's
6 contract of employment, which shall include:

7 (a) A statement of job title;

8 (b) The duration of the contract;

9 (c) Location of work;

10 (d) Weekly hours scheduled;

11 (e) Wage scale for regular and overtime work;

12 (f) Any deductions for living costs; and

13 (g) Such other information or contractual provisions

14 as may be required by the chief.

15 Section 209. Records. On the 10th of each month, or upon demand by
16 the chief or his representative, each employer hiring nonresident
17 employees in the Federated States of Micronesia shall transmit current
18 records to the chief with the following information:

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

21 (2) The classification and wage rate of each of his
22 nonresident employees;

23 (3) Payrolls showing the number of hours worked each week,
24 the compensation earned, and deductions made for each of his nonresident
25 employees;

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1 (4) The educational and experiential background of each of
2 his nonresident employees, to be provided but once for each nonresident
3 employee; and

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

7 Section 210. Confidentiality. All employment records are to be
8 kept confidential and may only be used for legitimate purposes by the
9 Division of Labor.

10 Section 211. Investigations; Hearings; Orders.

11 (1) The chief or his representative is hereby authorized to
12 conduct hearings or investigations as he may deem appropriate and necessary
13 to enforce the provisions of this chapter. In connection with such
14 hearings or investigations, the chief or his representative may subpoena
15 witnesses, records, and documents.

16 (2) Upon the filing of a sworn complaint that any person has
17 violated this chapter or any regulation issued thereunder, the chief or
18 his representative shall investigate the complaint, providing a copy
19 thereof to the person complained against. The chief or his representative
20 shall have the power to schedule a closed or open administrative hearing
21 as deemed appropriate under the circumstances. Adequate notice of the
22 hearing shall be given to all persons involved, and opportunity shall be
23 made available to them to present such evidence as they may desire in
24 person or through counsel of their choice. Upon conclusion of the
25 hearing, the chief or his representative shall have the power to enter an

1 order disposing of the matter, including an order revoking a work permit.

2 Section 212. Appeal. Any person aggrieved by an order of the chief
3 or his representative may appeal said order or request judicial review
4 thereof in accordance with the Administrative Procedure Act. In any such
5 judicial proceeding, the chief or his representative shall be represented
6 by the Office of the Attorney General of the Federated States of
7 Micronesia.

8 Section 213. Deportation. If the chief determines that grounds
9 exist for the deportation of a nonresident worker, he shall refer the
10 matter to the Office of the Attorney General, which may file a lawsuit
11 requesting an order of deportation. Such actions shall have precedence
12 on the Court's docket. No nonresident worker may be involuntarily
13 deported without a court order of deportation.

14 Section 214. Penalties.

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

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

23 Section 215. Other employment by nonresident workers.

24 (1) It shall be unlawful for any nonresident worker to
25 engage in any other employment in the Federated States of Micronesia for

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1 compensation or for profit other than for the employer who has contracted
2 with the chief for the employment of such nonresident worker, unless a
3 written agreement approving the nonresident worker's employment by
4 additional or subsequent employers shall have been approved by the chief.
5 Any such agreement shall be signed by the new employer and the
6 nonresident worker. Upon the signing of such agreement, the chief shall
7 require the new employer to execute a new nonresident worker's agreement
8 in accordance with section 203 of this chapter, and to provide the chief
9 or his representative with a copy of the nonresident worker's new
10 contract of employment in accordance with section 208(2) of this chapter.
11 The nonresident worker shall provide an affidavit to the chief or his
12 representative in accordance with section 208(1) of this chapter.

13 (2) Notwithstanding the provisions of section 104(4) of this
14 act, this section shall apply to nonresident employees of any branch,
15 agency, commission, or authority of the National Government of the
16 Federated States of Micronesia, or the Trust Territory Government.

17 (3) A violation of this section shall constitute grounds
18 for deportation pursuant to section 213 of this chapter, and shall
19 further subject the employer and nonresident employee to the penalties
20 prescribed in section 214 of this chapter.

21 CHAPTER 3

22 NONRESIDENT WORKERS' HEALTH CERTIFICATES

23 Section 301. Statement of policy. It is the policy of the
24 Federated States of Micronesia Government to protect the health of its
25 citizens and prevent the overtaxation of its medical and hospital

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1 facilities and personnel in the care and treatment of nonresident workers.

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

9 Section 303. Physical examination required.

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

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

20 (3) If the chief determines, in consultation with the
21 Director of Health Services of the Federated States of Micronesia or his
22 representative, that the results of any physical examination submitted to
23 him indicate that the continued presence of the person examined will
24 result in substantial danger to the health of the inhabitants of the
25 Federated States of Micronesia, or in a need for prolonged medical care

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1 and treatment for that person while in the Federated States of Micronesia,
2 he may proceed to revoke the entry permit of that person.

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

7 CHAPTER 4

8 ANNUAL REPORT

9 Section 401. Annual report. The President of the Federated States
10 of Micronesia shall, not later than 15 days after the end of each fiscal
11 year, transmit to the Congress of the Federated States of Micronesia a
12 complete report of the activities of the Division of Labor over the
13 previous year, together with such other information as shall be required
14 by this section or other sections of this act. The report shall also
15 contain recommendations for legislation by the Congress of the Federated
16 States of Micronesia, and, in particular, legislation devoted to the
17 development of labor skills of citizens of the Federated States of Micro-
18 nesia and for the reduction of the need for nonresident workers in the
19 Federated States of Micronesia.

20 CHAPTER 5

21 REPEALER

22 Section 501. Repealer. Sections 111 through 168 and sections 201
23 through 207 of title 51 of the Code of the Federated States of Micronesia
24 are hereby repealed in their entirety.

25 CHAPTER 6

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EFFECTIVE DATE

Section 601. Effective date. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 5/21/85

Introduced by: Jack Fritz
PETER CHRISTIAN