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:

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

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

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

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

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

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

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

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

(7) 'Earning test' means that an individual who receives a retirement, disability, or survivor benefit and who works in covered or noncovered employment shall have his quarterly benefit reduced by one dollar for each two dollars earned in a quarter, except there shall be no reduction for the first $300 earned in a quarter. The reduction shall be applied in one of the subsequent two quarters immediately after the quarter in which the
earnings were made, or as soon as possible thereafter.

All benefit recipients have an affirmative duty to
disclose to the FSM Social Security Administration all
earnings from either covered or non-covered employment
for any time period during which they received earnings
and for which they are receiving or claiming benefits.

(8) 'Employee' means:

(a) any officer of a corporation; or

(b) any individual who, under the usual common
law rules applicable in determining the employer-

employee relationship, has the status of an employee; or

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

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

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

(10) 'Employment, noncovered' or 'noncovered
employment' means any employment engaged in by an
employee where coverage is statutorily exempt in the
Federated States of Micronesia, family employment, or
employment by an employee outside of the Federated
States of Micronesia and which is not taxable by the FSM
Social Security Administration.

(11) 'Family employment' means employment of a worker
by
a member of the household, a parent or a son or daughter
except that the worker may apply to the Board for a
determination that such employment is bona fide covered
employment subject to this subtitle.

(12) 'Insured status' can mean any of the following:

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

(i) the quarter in which he died; or

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

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

(b) 'Fully insured individual' means any
individual [who has not less than one quarter of
coverage for each year beginning after June 30, 1968, or
for each year after attaining the age of 21, whichever
is later, and up to but excluding the year in which he
attained retirement age, became disabled, or died, whichever first occurred, except that in no case shall an individual be a fully insured individual unless he has at least 12 quarters of coverage whose total cumulative quarters of coverage are at least as great as the number of years calculated from the later of the date the worker turned age twenty-one (21) or June 30, 1968, to the date the worker attains age sixty (60), dies or becomes disabled. For this purpose, partial years shall be counted as whole years (for example 37.25 years would be rounded up to 38 years). However, no more than thirty-eight (38) quarters of coverage are required to be fully insured, except that in no case shall an individual be a fully insured individual unless he has at least 12 quarters of coverage.

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

[13] (14) 'Wages' means remuneration paid subject to the provisions of this subtitle, including the cash value of all remuneration paid in any medium other than cash and remuneration accruing to a self-employed person.
Remuneration accruing to a self-employed person shall be deemed to be twice the amount paid to the highest paid employee reported by the self-employed person in a quarter, with a maximum of $3,000 per quarter through September 30, 2003 and a maximum of $5,000 per quarter thereafter. Remuneration accruing to a self-employed person who has no covered employees shall, for each quarter of a year, be deemed to be 2.5 percent of the gross revenue of the business or gross revenue of all businesses for the previous calendar year, subject to a $3,000 maximum per quarter through September 30, 2003 and a maximum of $5,000 per quarter thereafter. Remuneration paid for any service which is more or less than a whole dollar shall, as may be prescribed by regulations, be computed to the nearest dollar. Wages shall not include:

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

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

(c) any payment made to or on behalf of an
employee or to the employee's beneficiary from a trust
or annuity;

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

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

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

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

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

(1) Any person who knowingly makes any false statement
or who falsifies any report to or record of the
Federated States of Micronesia Social Security System in
an attempt to defraud the system is guilty of a
misdemeanor and upon conviction thereof shall be
imprisoned for a period of not more than one year, or
fined not more than $2,000 or both.
(2) Any person who willfully fails to report wages paid or pay contributions required thereon is guilty of a misdemeanor and, in addition to any other penalty prescribed by law, such a person shall also pay penalties not in excess of 100 percent of the tax due plus interest to the Board as it by regulation shall require.

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

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

[(5)] (5) If any tax or penalty imposed by this subtitle is not paid on or before the date prescribed for such payment, [there shall be collected] the Board or its authorized representatives shall be vested with the authority to collect, in addition to such tax and
penalty, interest on the unpaid balance of the tax principal at the rate of 12 percent per annum from its due date until the date it is paid. [In the event that any tax, interest, or penalty due under this subtitle is referred to an attorney or trial counselor for collection, whether or not suit is brought for the collection thereof, the taxpayer shall additionally be liable for reasonable attorney's or trial counselor's fees and costs of collection, including court costs.]

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

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

"Section 801. Scope of coverage; Verification of employment; Old age benefits."
(1) All employees, wherever employed by an employer incorporated or doing business in the Federated States of Micronesia, shall be covered unless both the employer and the employee are currently subject to any other recognized Social Security System. The highest administrator of the Social Security System, or his designees, shall cause at least two unannounced employment site checks to be conducted upon every non-government employee who first begins to contribute to the Social Security System after age 45 to ensure that such non-government employee is actually engaged in an employer-employee relationship that will allow him to be covered and eligible for benefits under this subtitle. The two employment site checks shall not be conducted within one month of each other and both shall be conducted within the first six months of the employee's first contribution payment to the Social Security System. For the purposes of this subtitle, any elected official in any Government unit or body in the Federated States of Micronesia is deemed to be an employee employed by a Federated States of Micronesia employer. The governmental unit or body to which such person is elected is subject to the provisions in this subtitle relating to the duty and obligations of a Federated States of Micronesia employer.
(2) Every person who:
   (a) is fully insured;
   (b) has attained age 60; and
   (c) has filed a complete application with the Social Security Administrator for old age insurance shall be entitled to an old age insurance benefit subject to the earnings test as defined in this subtitle.

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

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

(5) In an application for benefits under this section, whether individually or as a dependent, the applicant has the burden to come forward with evidence and to take all steps necessary to file a completed application. The Social Security Administration has the right to deny an application for benefits solely on the basis of non-compliance with the application process, or the failure
of the applicant to produce reasonably available
documents or information."

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

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

(1) An insured eligible individual shall be paid a
monthly old age benefit for life, except for any month
of disqualification as provided by this subtitle, in an
amount calculated upon an annual basis of 16.5 percent
of the first $10,000 of cumulative covered earnings,
plus 3 percent of cumulative covered earnings in excess
of $10,000 but not in excess of the next $30,000, plus 2
percent of cumulative covered earnings in excess of
$40,000. Earnings for employment after commencement of
payments for retirement or disability insurance benefits
shall be included in benefit calculations upon
subsequent application for benefits, but such earnings
shall be applicable for benefits for months after the
calendar year in which such earnings occurred. For the
purpose of this section cumulative covered earnings
includes earnings on which contributions have been paid
by the individual to the Trust Territory Social Security
System.
(2) An insured, eligible individual shall be paid a minimum monthly benefit of fifty dollars if the benefit amount calculated in accordance with subsection (1) of this section is less than fifty dollars monthly.

(3) An individual who is fully insured and who has been under a disability for three full calendar months shall be paid a monthly benefit for life or until recovery from the disability, except for any month of disqualification as provided by this subtitle in an amount calculated in accordance with the preceding subsections of this section. Further, the amount of the benefit as so determined shall, if the individual is receiving a periodic workmen's compensation benefit, be reduced each month by the excess of the sum of the workmen's compensation benefit for that month and the benefit payable under this act over eighty percent of one-twelfth of the highest annual covered wages in the period consisting of the year in which the disability occurred and the preceding five years. If a workmen's compensation benefit was payable in periodic benefits but was commuted to a lump sum, for purposes of this subsection it will be considered that the periodic benefit originally available was paid in each month that it would have been paid if the commutation had not occurred."
Section 5. Section 806 of title 53 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 806. Amount of survivor insurance benefits.

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

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

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

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

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

Section 807. Lump sum benefits.

(1) When a worker dies and the benefits paid, including survivor benefit, have been less than four
percent of his cumulative covered earnings, the
survivors, heirs, or the estate of such individual shall
be paid a lump sum benefit, after all rights to survivor
benefits have terminated, in an amount equal to four
percent of the decedent's cumulative covered earnings,
reduced by the amount of any benefits paid to the
insured worker and his eligible dependents. For the
purpose of this section, cumulative covered earnings
includes earnings on which contributions have been paid
by the individual to the Trust Territory Social Security
System.

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

(a) spouse, if living, otherwise children in
equal shares or guardian, if such children are minors;
(b) parents in equal shares; or
(c) duly appointed legal representatives of the
deceased or, if none, person or persons determined to be
entitled thereto under the laws and customs of the last
domicile of the deceased person.

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

Section 7. Section 809 of title 53 of the Code of the
Federated States of Micronesia is hereby amended to read as follows:

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

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

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

(b) prior to the first month thereafter for all of which such individual has been in the Federated States of Micronesia. For purposes of this subsection (1), after an individual has been outside the Federated States of Micronesia for any period of 30 consecutive days he shall be treated as remaining outside the Federated States of Micronesia until he has been in the Federated States of Micronesia for a period of 30 consecutive days."
(2) Subsection (1) of this section shall not apply to any individual who is a citizen of a foreign country which the Administrator finds has in effect a social insurance or pension system which is of general application in such country and under which:

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

(b) individuals who are citizens of the Federated States of Micronesia but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.] Unless modified by a totalization or other international agreement, benefit payments under this act shall be paid to a beneficiary who is not a citizen or national of the Federated States of Micronesia and does not reside in the Federated States of Micronesia, as follows:

(a) Payments shall be made to citizens and nationals of the Republic of Palau, the Republic of the Marshall Islands and the United States as if they were citizens or nationals of the Federated States of Micronesia as long as the Social Security Administration of those nations gives citizens and nationals of the
(b) Payments shall be made to citizens and
nationals of other nations in a lump sum equal to the
total amount contributed to the Social Security
Administration by the employee while employed in the
Federated States of Micronesia as of the date the
individual turned age sixty (60), became disabled or
died. However, the lump sum shall be reduced by any
payments made by the Social Security Administration to
the employee or a surviving spouse or child before the
lump sum is awarded.

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

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

"Section 901. Employee contributions.
There is hereby imposed on every employee a tax equal to
the following percentages of wages received by him with
respect to covered employment subject to this subtitle:
(1) with respect to wages paid from the effective date of this act through June 30, 1985, the rate shall be two percent;
(2) with respect to wages paid from July 1, 1985, through June 30, 1990, the rate shall be three percent;
(3) with respect to wages paid from July 1, 1990, through June 30, 1995, the rate shall be four percent;
(4) with respect to wages paid from July 1, 1995, through June 30, 2000, the rate shall be five percent;
(5) with respect to wages paid after June 30, 2000, the rate shall be six percent."

Section 10. Notwithstanding the provisions hereof, nothing contained in this act shall operate to reduce or otherwise impair the benefits being paid to beneficiaries who are already receiving benefits prior to the effective date hereof.

Section 11. This act shall become effective immediately upon this act becoming law. 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: 9/13/05

Introduced by: /s/ Simiram Sipenuk
Simiram Sipenuk
(by request)