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A BILL FOR AN ACT

To further amend title 53 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 12-76, 14-37, 14-86, 15-73, and 16-10, by amending sections 603, and 804, to revise the procedures for calculating benefits, and for other purposes.

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

1           Section 1. Section 603 of title 53 of the Code of the  
2 Federated States of Micronesia, as amended by Public Laws Nos.  
3 12-76, 14-37, 14-86, 15-73, and 16-10 is hereby further amended  
4 to read as follows:

5           "Section 603. Definitions. [of title 53 of the Code  
6 of the Federated States of Micronesia, as amended, is  
7 hereby further amended to read as follows]. In this  
8 chapter unless the context otherwise requires, the  
9 following definitions shall be applicable:

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

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

18           (3) 'Board' means the Federated States of  
19 Micronesia Social Security Board provided for by

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1 section 701 of this subtitle.

2 (4) 'Child or spouse' means an applicant that the  
3 court of the State in which an individual was  
4 domiciled at the time of his death has or would find  
5 to be the individual's child or spouse in determining  
6 the devolution of intestate personal property.

7 'Child' shall include only the deceased individual's  
8 biological children and such adopted children whose  
9 confirmed petition for adoption by the wage earner  
10 has been presented to the Social Security  
11 Administration and who were adopted by the wage  
12 earner on or prior to the wage earner's 55<sup>th</sup> birthday  
13 of the adopting parent, shall be a 'child' for the  
14 purposes of this title unless, the Social Security  
15 Administrator makes a determination that, due to  
16 exceptional circumstances, the person shall be so  
17 entitled. In reaching a determination that  
18 exceptional circumstances apply, the Social Security  
19 Administrator shall satisfy himself or herself that  
20 future eligibility for social security benefits was  
21 not a significant factor in the decision to adopt and  
22 may consider any available, relevant information  
23 including, but not limited to:

24 (a) whether the adopted child's biological  
25 mother, and/or biological father were alive at the

1           time the adoption took place;

2                   (b) if one or both biological parents were  
3           alive at the time of adoption, whether one or both  
4           parents were acting or were capable of acting as a  
5           primary caregiver at that time;

6                   (c) whether the adopting parent is a relative  
7           of the adopted child;

8                   (d) whether, at the time the adoption took  
9           place, there were relatives, not including the  
10          adopting parents, who would have been appropriate  
11          guardians for the adopted child;

12                   (e) whether the adopting parent was a primary  
13          caregiver for the adopted child at the time of  
14          adoption and continued in that role after the  
15          adoption took place;

16                   (f) any other factor the Social Security  
17          Administrator considers relevant.

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

22                   (6) 'Disability' means inability to engage in any  
23          substantial gainful employment by reason of any  
24          medically determinable physical or mental impairment  
25          which can be expected to result in death or which has

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1           lasted or can be expected to last for a continuous  
2           period of not less than 12 months.

3           ~~[(7) 'Earning test' means that an individual who  
4           receives a retirement, disability, or survivor  
5           benefit and who works in covered or non covered  
6           employment shall have his quarterly benefit reduced  
7           by one dollar for each two dollars earned in a  
8           quarter, except there shall be no reduction for the  
9           first \$300 earned in a quarter. The reduction shall  
10          be applied in one of the subsequent two quarters  
11          immediately after the quarter in which the earnings  
12          were made, or as soon as possible thereafter. All  
13          benefit recipients have an affirmative duty to  
14          disclose to the FSM Social Security Administration  
15          all earnings from either covered or non covered  
16          employment for which time they are receiving or  
17          claiming benefits. Under certain circumstances as  
18          defined in section 804, the earnings test may not  
19          apply to old age benefits received by an individual  
20          between the ages of 60 and 64 who turns 60, after  
21          January 1, 2011.]~~

22          ([8]7) 'Employee' means:

- 23                   (a) any officer of a corporation; or  
24                   (b) any individual who, under the usual common  
25          law rules applicable in determining the employer-

1           employee relationship, has the status of an employee;  
2           or

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

6                   (d) any self-employed person who had more than  
7           \$10,000 of annual gross revenue in the preceding  
8           calendar year.

9           ([9]8) 'Employer' means:

10                   (a) For purposes of this act, employer means  
11           the person, business organization or other  
12           organization, or national or state or municipal  
13           government or agency, that pursuant to common law  
14           rules of employment is the actual person or  
15           organization responsible for the formation and  
16           continuation of the working relationship with  
17           employee.

18                   (b) The Social Security Administration has the  
19           right to determine the actual employer of employees  
20           for purposes of implementing this act, and need not  
21           rely on the characterization provided.

22                   (c) Employer may be an individual,  
23           partnership, corporation or other type of business  
24           venture or non-business organization, national or  
25           municipal or state organization or agencies thereof,

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1           and which in certain circumstances may be more than  
2           one, that is responsible for the payment of all  
3           Social Security taxes. For partnerships, the  
4           liability shall be joint and several among all  
5           partners. For other types of business or non-  
6           business organizations that are not corporations, the  
7           liability shall be joint and several as if the  
8           organization was a common law partnership. For  
9           corporations, if the corporation fails to meet its  
10          tax obligations when due, the liability shall be  
11          joint and several between the president of the  
12          corporation, and all shareholders with greater than a  
13          30% interest in the corporation.

14          Under this definition all such persons are jointly  
15          defined as the employer, for all purposes including  
16          the implementation of criminal penalties.

17          (~~10~~9) 'Employment, covered' or 'covered employment'  
18          means any service by an employee for an employer  
19          incorporated or doing business within the Federated  
20          States of Micronesia employing him, irrespective of  
21          where such employment is performed, except family  
22          employment.

23          (~~11~~10) 'Employment, non-covered' or 'non-covered  
24          employment' means any employment engaged in by an  
25          employee where coverage is statutorily exempt in the

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1 Federated States of Micronesia, family employment, or  
2 employment by an employee outside of the Federated  
3 States of Micronesia and which is not taxable by the  
4 FSM Social Security Administration.

5 (~~12~~11) 'Family employment' means employment of a  
6 worker by a member of the household, a parent or a  
7 son or daughter except that the worker may apply to  
8 the Board for a determination that such employment is  
9 bona fide covered employment subject to this  
10 subtitle.

11 (~~13~~12) 'Insured status' can mean any of the  
12 following:

13 (a) 'Currently insured individual' means any  
14 individual who has had not less than 20 quarters of  
15 coverage during the 25 quarter period ending with:

16 (i) the quarter in which he died; or

17 (ii) the quarter in which he became  
18 entitled to old age insurance benefits at age sixty  
19 (60);

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

22 (b) For individuals who qualified as a  
23 currently insured person prior to December 31, 2006,  
24 the number of quarters to qualify as a currently  
25 insured person was not less than eight quarters of

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1 coverage during the thirteen quarter period ending  
2 with:

3 (i) the quarter in which he died; or

4 (ii) the quarter in which he became  
5 entitled to old age insurance benefits at age sixty  
6 (60);

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

9 (c) 'Fully insured individual' means any  
10 individual whose total cumulative quarters of  
11 coverage are at least as great as the number of years  
12 calculated from the later of the date the worker  
13 turned age twenty-one (21), or June 30, 1968, to the  
14 date the worker attains age sixty (60), dies or  
15 becomes disabled. For this purpose, partial years  
16 shall be counted as whole years (for example 37.25  
17 years would be rounded up to 38 years). In no case  
18 shall an individual be a fully insured individual  
19 unless he has at least 12 quarters of coverage:

20 (i) For individuals who attain age sixty  
21 (60), die or become disabled on or before December  
22 31, 2006, no more than thirty-eight (38) quarters of  
23 coverage are required to be fully insured and there  
24 is no minimum amount required for employee  
25 contributions to the Social Security System.

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1                   (ii) For individuals who turn sixty (60)  
2                   or die after December 31, 2006, no more than fifty  
3                   (50) quarters of coverage and employee contributions  
4                   to the Social Security System of at least \$2,500 are  
5                   required to be fully insured. Should an individual's  
6                   employee contributions total less than \$2,500 as of  
7                   the date of termination of employment or death, the  
8                   individual or their surviving spouse may pay the  
9                   difference to the FSM Social Security Administration  
10                  in a single sum payment in order to become fully  
11                  insured. The surviving children will be eligible for  
12                  benefits so long as the individual was currently  
13                  insured at the time of the individual's death.

14                  (iii) For individuals who become disabled  
15                  after December 31, 2006, no more than 45 quarters of  
16                  coverage and employee contributions to the Social  
17                  Security System of at least \$1,500 are required to be  
18                  fully insured. Should an individual's employee  
19                  contributions total less than \$1,500 as of the date  
20                  of termination from employment, the individual may  
21                  pay the difference to the FSM Social Security  
22                  Administration in a single sum payment in order to  
23                  become fully insured:

24                  (d) 'Fully insured status' means:

25                         (i) For individuals who turn sixty (60)

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1 or die after January 01, 2010, shall have total  
2 cumulative quarters of coverage equaling fifty (50)  
3 quarters of coverage or greater, and employee  
4 contributions to the Social Security System of at  
5 least \$2,500 are required to be fully insured.  
6 Employee contributions are the contributions defined  
7 in section 901 only. Should an individual's employee  
8 contributions total less than \$2,500 as of the date  
9 of qualification as a fully insured individual, the  
10 individual or their surviving spouse may pay the  
11 difference to the FSM Social Security Administration  
12 in a single sum payment in order to be fully insured.  
13 If the individual or the surviving spouse is unable  
14 to pay the difference on the minimum contribution,  
15 the individual or surviving spouse can opt for lump  
16 sum payment equal to the total employee contribution.

17 (ii) 'Fully insured' means for individuals  
18 who become disabled on or after January 1, 2010, at  
19 least forty-five (45) quarters of coverage are needed  
20 to be defined as fully insured, and they must also  
21 meet the definition of currently insured at the time  
22 of the onset of their disability. Additionally,  
23 employee's contributions to the Social Security  
24 System of at least \$1,500 are required to be fully  
25 insured. Should an individual's employee

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1 contribution total less than \$1,500 as of the date of  
2 disability, the individual may pay the difference to  
3 the FSM Social Security Administration in a single  
4 lump sum payment in order to be fully insured.

5 (~~14~~13) 'Quarter' and 'calendar quarter' mean a  
6 period of three calendar months ending on March 31st,  
7 June 30th, September 30th, or December 31st. 'Quarter  
8 of coverage' means a quarter in which the individual  
9 has been paid \$300 or more in wages in covered  
10 employment subject to this subtitle.

11 (~~15~~14) 'Wages' means remuneration paid subject to  
12 the provisions of this subtitle, including the cash  
13 value of all remuneration paid in any medium other  
14 than cash and remuneration accruing to a self-  
15 employed person. Remuneration accruing to a self-  
16 employed person shall be deemed to be twice the  
17 amount paid to the highest paid employee reported by  
18 the self-employed person in a quarter, with a maximum  
19 of \$3,000 per quarter through September 30, 2003 and  
20 a maximum of \$5,000 per quarter beginning October 1,  
21 2003. This maximum quarterly amount shall increase  
22 to \$6,000 on January 1, 2008, \$7,000 on January 1,  
23 2013, \$8,000 on January 1, 2018, \$9,000 on January 1,  
24 2023, and \$10,000 on January 1, 2028. Remuneration  
25 accruing to a self-employed person who has no covered

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1 employees shall, for each quarter of a year, be  
2 deemed to be five (5) percent of the gross revenue of  
3 the business or gross revenue of all businesses for  
4 the previous calendar year, subject to a \$3,000  
5 maximum per quarter through September 30, 2003 and a  
6 maximum of \$5,000 per quarter beginning October 1,  
7 2003. This maximum quarterly amount shall increase to  
8 \$6,000 on January 1, 2008, \$7,000 on January 1, 2013,  
9 \$8,000 on January 1, 2018, \$9,000 on January 1, 2023,  
10 and \$10,000 on October 1, 2028. Remuneration paid  
11 for any service, which is more or less than a whole  
12 dollar shall, as may be prescribed by regulations, be  
13 computed to the nearest dollar. Wages shall not  
14 include:

15 (a) that part of remuneration in excess of  
16 \$3,000 through September 30, 2003 and in excess of  
17 \$5,000 beginning October 1, 2003, in excess of  
18 \$6,000 beginning January 1, 2008, in excess of \$7,000  
19 beginning January 1, 2013, in excess of \$8,000  
20 beginning January 1, 2018, in excess of \$9,000  
21 beginning on January 1, 2023, and in excess of  
22 \$10,000 beginning on January 1, 2028, paid in a  
23 quarterly reporting period by one employer;

24 (b) any payment on account of sickness or  
25 accident disability, or medical or hospitalization

1 expenses made by an employer to or on behalf of an  
2 employee;

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

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

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

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

18 Section 2. Section 804 of title 53 of the Code of the  
19 Federated States of Micronesia, as amended by Public Laws Nos.  
20 14-37, 14-86, 15-73, and 16-10 is hereby further amended as  
21 follows:

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

24 (1) An insured eligible individual shall be paid a  
25 monthly old age benefit for life, except for any

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1 month of disqualification as provided by this  
2 subtitle, in an amount calculated upon an annual  
3 basis as follows:

4 (a) For benefit payments that begin prior to  
5 January 1, 2007; 16.5 percent of the first \$10,000 of  
6 cumulative covered earnings, plus three percent of  
7 cumulative covered earnings in excess of \$10,000 but  
8 not in excess of the next \$30,000, plus two percent  
9 of cumulative covered earnings in excess of \$40,000.

10 (b) For benefit payments that begin on or  
11 after January 1, 2007 but before January 01, 2011;  
12 16.5 percent of the first \$10,000 of cumulative  
13 covered earnings, plus three percent of cumulative  
14 covered earnings in excess of \$10,000 but not in  
15 excess of the next \$30,000, plus two percent of  
16 cumulative covered earnings in excess of \$40,000 but  
17 not in excess of the next \$262,500, plus one percent  
18 of cumulative covered earnings in excess of \$302,500.

19 (c) For benefit payments that begin on or  
20 after January 1, 2011:

21 (i) For individuals who are 65 and over;  
22 16.5% of the first \$10,000 of cumulative covered  
23 earnings, plus 3 percent of cumulative covered  
24 earnings in excess of \$10,000 but not in excess of  
25 the next \$30,000.00, plus 2% of the cumulative

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1 covered earnings in excess of \$40,000 but not in  
2 excess of the next \$262,500, plus one percent of  
3 cumulative covered earnings in excess of \$302,500.

4 (ii) For individuals who turn 60 after  
5 January 1, 2011, such individual from ages 60 to 64  
6 will receive fifty percent (50%) of the total of all  
7 the described benefits in this subsection, 16.5% of  
8 the first \$10,000 of cumulative covered earnings,  
9 plus 3 percent of cumulative covered earnings in  
10 excess of \$10,000 but not in excess of the next  
11 \$30,000, plus 2% of the cumulative covered earnings  
12 in excess of \$40,000 but not in excess of the next  
13 \$262,500, plus one percent of cumulative covered  
14 earnings in excess of \$302,500. These payments in  
15 this subsection only, shall be made without reduction  
16 pursuant to the earnings test in section 603(7).

17 (iii) For individuals under age 60, benefit  
18 payments would be calculated the same as subsection  
19 (i).

20 (d) Earnings for covered employment after  
21 commencement of payments for retirement or disability  
22 insurance benefits shall not be included in benefit  
23 calculations upon subsequent application for  
24 benefits, [~~but~~] and such earnings shall not be  
25 applicable for benefits for months after the calendar

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1 year in which such earnings occurred. For the purpose  
2 of this section cumulative covered earnings includes  
3 earnings on which contributions have been paid by the  
4 individual to the Trust Territory Social Security  
5 System.

6 (e) In the event, benefits have been received  
7 under section 804(1)(c)(ii), such benefits shall be  
8 automatically adjusted when the individual reaches  
9 age 65.

10 (f) For purposes of interpreting this section  
11 "benefit payments begin on" is defined to mean the  
12 date, whether retroactive or current when a benefit  
13 payment is paid for a specific month. A benefit  
14 payment may begin prior to the application date,  
15 subject to retroactive payment limitations defined in  
16 this act.

17 (2) An insured, eligible individual shall be paid a  
18 minimum monthly benefit of seventy five dollars if  
19 the benefit amount calculated in accordance with  
20 subsection (1) of this section is less than seventy  
21 five dollars monthly. Effective on January 1, 2011,  
22 the minimum monthly benefit shall be \$100. The  
23 minimum monthly benefit is calculated per insured  
24 worker, not per recipient.

25 (3) An individual who is currently and fully

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1           insured and who has been under a disability for three  
2           full calendar months and the onset of disability  
3           occurred on\_or after January 01, 2011, or an  
4           individual who was fully insured and the onset of  
5           disability occurred prior to this bill becoming law  
6           shall be paid a monthly benefit for life or until  
7           recovery from the disability, except for any month of  
8           disqualification as provided by this subtitle in an  
9           amount calculated in accordance with the preceding  
10          subsections of this section, and for an individual  
11          with an onset of disability on or after January 1,  
12          2011, he or she will receive benefits as if he or she  
13          retired at age 65, but with existing quarters of  
14          coverage. Further, the amount of the benefit as so  
15          determined shall, if the individual is receiving a  
16          periodic workmen's compensation benefit, be reduced  
17          each month by the excess of the sum of the workmen's  
18          compensation benefit for that month, and the benefit  
19          payable under this act over eighty percent of one-  
20          twelfth of the highest annual covered wages in the  
21          period consisting of the year in which the disability  
22          occurred and the preceding five years. If a  
23          workmen's compensation benefit was payable in  
24          periodic benefits but was commuted to a lump sum, for  
25          purposes of this subsection it will be considered

