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1 NITIJELA OF THE MARSHALL ISLANDS

2 28TH CONSTITUTIONAL REGULAR SESSION, 2007

BILL NO: 16IND1

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P.L. 2007-97

AN ACT

10 to amend the Births, Deaths and Marriages Registration Act, 1988 (the Act) by
11 inserting new provisions to provide for the registration of death in the case of
12 missing persons, who are presumed deceased; and for consequential amendments to
13 the Probate Code, and matters related thereto.
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BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:

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18 Section 1. Short Title.

19 This Act may be cited as the Births, Deaths and Marriages (and Missing Persons
20 Amendment) Act, 2007.

21 Section 2. Amendment.

22 1. The Act is hereby amended by inserting a New Part as follows:

23

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PART III(A) –REGISTRATION OF DEATH – MISSING PERSONS.

25

§427(A). Missing Persons to be Presumed Dead After Five years.

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27 A person who is missing for a continuous period of five years, during which, after
28 diligent search, he or she has not been seen or heard of or from, and whose absence is not
29 satisfactorily explained, may be presumed, to have died five years after the date such
unexplained absence commenced.

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1 **§427(B). Missing Persons Exposed to a Specific Peril of Death or**
2 **Catastrophic Accident.**

3 (1) A person who, after being exposed to a specific peril of death or catastrophic
4 accident, is subsequently missing, and has not been seen or found after a diligence search,
5 may, at any time after the exposure to such specific peril of death or catastrophic
6 accident, be presumed to have died on the date of, or any time after, exposure to such
7 specific peril of death or catastrophic accident.

8 (2) “specific peril of death” or “catastrophic accident” refer generically to
9 circumstances that expose a person to imminent danger, and includes:

10 (a) terrorist activities;

11 (b) any criminal activities;

12 (c) accidents involving aircrafts;

13 (d) accidents involving ships, sailboats and other types of watercrafts at
14 sea;

15 (e) danger posed by typhoons, hurricanes, tsunamis or any other form of
16 natural phenomena;

17 (f) fire;

1 (g) any other circumstances that the Court, in its discretion, may
2 characterize as constituting a "specific peril of death" or a "catastrophic accident".
3 based on the evidence before it.

4 **§427(C). Authority to Issue Declaration of presumption of Death.**

5 (1) The authority to issue a declaration that the presumption of the death of a
6 person missing under the circumstances set forth in Sections 427(A) and 427(B) herein
7 above is established, is hereby vested in the competence of the High Court.

8 (2) Accordingly, the Registrar shall not register the death of a person whose death
9 is presumed under Sections 427(A) or 427(B) herein-above, except upon the Order of the
10 High Court.

11 **§427(D). Petition for Declaration of Death.**

12 (1) Where a person is missing in the circumstances set forth under Section
13 427(A) above, any interested person may petition the High Court, at any time
14 after the expiration of the fifth year of the said person's absence, for an Order
15 declaring that the missing person is presumed dead, for all purposes under the
16 law.

17 (2) Where a missing in the circumstances set forth under Section 427(B)
18 above, any interested person may petition the High Court, at any time after the
19 exposure of the missing person to the specific peril of death or catastrophic
20 accident, for an Order declaring that the missing person is presumed to have died

1 on the date of, or after, exposure to such specific peril of death or catastrophic
2 accident.

3 **§427(E). Hearing and Order.**

4 (1) The burden of proof shall lie with the interested person, who shall set
5 forth all the facts that are necessary to establish the presumption that the missing
6 person is dead.

7 (2) The High Court shall, upon the hearing of the petition, and if
8 satisfied that the presumption has been established on the balance of
9 probabilities:

10 (a) issue an Order declaring that the missing person is for all
11 purposes under the law, presumed dead; and

12 (b) direct the Registrar to so register the death of the said
13 person, and to issue a certificate attesting to that fact, under his hand,
14 to the interested person.

15 (3) The High Court may, in its Order, make a determination, based on
16 the evidence, as to the date of death.

17 (4) "Interested person" as used herein means, the spouse of the
18 missing person, any one of the children of the missing person, any sibling or
19 parent of the missing person, any other person related by consanguinity to the

1 missing person, a person entitled to share in the estate of the missing person
2 under the laws of the Republic, any creditor, or any other person determined
3 by the court to be competent to file a petition.

4 (5) "High Court" as used herein means the High Court of the
5 Republic.

6 **§427(F). Competency of Witnesses**

7 No person shall be disqualified to testify in support of a petition under this
8 Part by reason of relationship as the surviving spouse, or by reason of an interest
9 in the missing person's property.

10 **§427(G). Registration and Issuance of Certificate.**

11 (1) Upon issuance of the Order from the High Court, the Registrar shall
12 proceed to register the death of the person presumed dead in the register and issue a
13 certificate attesting to that fact, under his hand, to the interested person.

14 (2) A certificate issued by the Registrar under this Section shall constitute
15 conclusive proof of the presumption of death of any such person, for all purposes
16 under the laws of the Republic.

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1 **§427(H). Vacation of Order declaring the Presumption of Death.**

2 The High Court, at any time after the issuance of the Order under Section
3 427(E), and upon satisfactory proof that the person who was presumed dead is in fact
4 alive, shall vacate the Order establishing the presumption of his death.

5 **2. Consequential Amendments to the Probate Code.**

6 **The Probate Code is hereby amended by inserting the following**
7 **provisions:**

8 **§120A. Procedure After Order declaring the Presumption of Death is**
9 **Vacated.**

10 (1) Upon the vacation of an Order declaring the presumption of death of a
11 missing person under the provisions of the Births, Deaths and Marriages Act, Births,
12 Deaths and Marriages Registration Act 1988, all the powers of the executor or
13 administrator of the presumed decedent's estate shall cease, but all proceedings
14 taken with respect to the administration of the estate of the presumed decedent prior
15 to the vacating of such Order shall remain valid.

16 (2) The executor or administrator of the estate of such presumed decedent
17 shall settle his account of his administration of the estate up to the date the Order was
18 vacated, shall transfer all assets remaining in his hands to the person for whose estate
19 he or she was appointed executor or administrator.

1 (3) Upon the vacation of the Order declaring the presumption of death of a
2 missing person, pursuant to the provisions of the Births, Deaths and Marriages Act, 1988,
3 any property, money, right, or interest, or the fair value thereof if the same shall have
4 been sold or otherwise disposed of, may be recovered from a surviving spouse, next of
5 kin, heir, legatee, devisee, co-owner with right of survivorship or other beneficiary who
6 received benefits from the estate of the person who was presumed dead.

7 (4) In any action against a beneficiary under Subsection (3) herein, for the
8 recovery of property or the value thereof, the beneficiary may set off as against such
9 claim:

10 (a) an allowance for services rendered in maintaining or preserving the
11 property; and

12 (b) any moneys or other considerations made or given by the beneficiary
13 for the preservation, care, or maintenance of the property during the period of
14 absence of the person erroneously presumed to be dead; and

15 (c). the reasonable value of any part of the property used for support by
16 those whom the person erroneously presumed to be dead had a legal obligation to
17 support during his absence.

18 **§120B. Substituting the presumed decedent as plaintiff or defendant.**

19 (1) After vacation of the Order of presumption of death pursuant to the
20 provisions of the Births, Deaths and Marriages Act, Births, Deaths and Marriages

1 Registration Act 1988, the person erroneously presumed to be dead may, on
2 motion request the Court to be substituted as plaintiff or petitioner in all actions or
3 proceedings brought by the executor or administrator, whether prosecuted to
4 judgment or decree or otherwise.

5 (2) Such person may, in all actions or proceedings previously brought against the
6 executor or administrator, be substituted as defendant or respondent.

7 (3) Judgments recovered against the executor or administrator, before the vacation
8 of the Order, may be opened for review or appeal on application made by the person
9 erroneously presumed to be dead, within three months after the issuance of the Order
10 vacating the presumption of death.

11 Section 3. **Effective Date**

12 This Act shall take effect on the date of certification in accordance with
13 the Constitution and the Rules of Procedures of the Nitijela.

14
15 **CERTIFICATE**

16 **I hereby certify:**

17 (1) That Nitijela Bill No: 161 N.D.1 was passed by the Nitijela of the Marshall
18 Islands on the 27th day of September, 2007; and

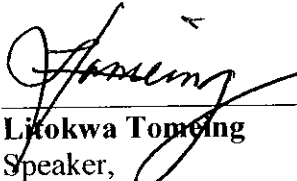
19 (2) That I am satisfied that Nitijela Bill No: 161 N.D.1 was passed in accordance
20 with the relevant provisions of the Constitution of the Republic of the Marshall Islands
21 and the Rules of Procedures of the Nitijela.

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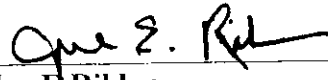
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I hereby place my signature before the Clerk this 29th day of October, 2007.

Attest:



Likwa Tomling
Speaker,
Nitijela of the Marshall Islands



Joe E. Riklon
Clerk,
Nitijela of the Marshall Islands