

A BILL FOR AN ACT

To enact title 31 of the Code of the Federated States of Micronesia, Bankruptcy and Insolvency, to establish a National bankruptcy receivership law for the Federated States of Micronesia, and for other purposes.

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

1           Section 1. Section 101 of title 31 of the Code of the Federated  
2 States of Micronesia is hereby enacted to read as follows:

3           "Section 101. Authority; title. This statute is enacted  
4           pursuant to the power of Congress to regulate bankruptcy and  
5           insolvency under article IX, section 2(q) of the Constitution  
6           of the Federated States of Micronesia. This act may be cited  
7           as the 'Bankruptcy Receivership Act of 2001'."

8           Section 2. Section 102 of title 31 of the Code of the Federated  
9 States of Micronesia is hereby enacted to read as follows:

10           "Section 102. Definitions.

11           (1) 'Affiliate' means:

12           (a) an entity that directly or indirectly owns,  
13           controls, or has the power to vote, twenty percent or more of  
14           the outstanding voting securities of the debtor;

15           (b) a corporation twenty percent or more of whose  
16           outstanding voting securities are directly or indirectly  
17           controlled, or held with power to vote, by the debtor, or by  
18           an entity that directly or indirectly owns, controls, or  
19           holds with power to vote, twenty percent or more of the

1 outstanding voting securities of the debtor;

2 (c) a person whose business is operated under a lease  
3 or operating agreement by the debtor, or a person  
4 substantially all of whose property is operated under an  
5 operating agreement with the debtor;

6 (d) an entity that operates the business of, or all or  
7 substantially all of the property of the debtor under a lease  
8 or operating agreement.

9 (2) 'Claim' means:

10 (a) a right to payment, whether or not such right is  
11 reduced to judgment, liquidated, unliquidated, fixed,  
12 contingent, matured, unmatured, disputed, undisputed, legal,  
13 equitable, secured, or unsecured; or

14 (b) a right to an equitable remedy for breach of  
15 performance if such breach gives rise to a right to payment,  
16 whether or not such right is reduced to judgment, liquidated,  
17 unliquidated, fixed, contingent, matured, unmatured,  
18 disputed, undisputed, legal, equitable, secured, or  
19 unsecured.

20 (3) 'Creditor' means a person or entity that has a claim  
21 against the debtor that arose at the time of or before the  
22 order for relief concerning the debtor.

23 (4) 'Debt' means liability on a claim.

24 (5) 'Debtor' means a person, corporation or municipality  
25 with regard to which a case under this title has been

1 commenced.

2 (6) 'Governmental entity' means the Federated States of  
3 Micronesia, a state, a foreign state, a municipality, or an  
4 agency, instrumentality or department of any of the  
5 foregoing.

6 (7) 'Insider' means:

7 (a) if the debtor is an individual:

8 (i) a relative of the debtor, or of a general  
9 partner of the debtor;

10 (ii) a partnership in which the debtor is a  
11 general partner;

12 (iii) a general partner of the debtor; or

13 (iv) a corporation of which the debtor is a  
14 director, officer, or person in control.

15 (b) if the debtor is a corporation:

16 (i) a director, officer or person in control of  
17 the debtor;

18 (ii) a partnership in which the debtor is a  
19 general partner, or a general partner of the debtor;

20 (iii) a relative of a general partner, director,  
21 officer or person in control of the debtor.

22 (c) if the debtor is a partnership:

23 (i) a general partner in the debtor;

24 (ii) a relative of a general partner, a general  
25 partner of, or a person in control of the debtor;

1                   (iii) a partnership in which the debtor is a  
2 general partner;

3                   (iv) a general partner of the debtor; or

4                   (v) a person in control of the debtor.

5                   (d) if the debtor is a municipality:

6                   (i) an elected official or relative of an elected  
7 official of the debtor.

8                   (8) 'Municipality' means a political subdivision of a  
9 state.

10                   (9) 'Person' as used in this chapter means an individual,  
11 partnership or corporation, but does not include governmental  
12 entities.

13                   (10) 'Relative' means an individual related by blood,  
14 marriage within the third degree as determined by common law,  
15 persons who are considered close relatives under applicable  
16 Micronesian custom, or a step or adoptive relationship within  
17 such third degree.

18                   (11) 'State' means a State of the Federated States of  
19 Micronesia."

20           Section 3. Section 103 of title 31 of the Code of the Federated  
21 States of Micronesia is hereby enacted to read as follows:

22           "Section 103. Application for appointment of receiver.

23                   (1) An application for the appointment of a receiver may be  
24 made:

25                   (a) by any debtor; or

1                   (b) by three or more creditors whose combined claims  
2                   are in excess of \$7,500, provided each creditor's claim is at  
3                   least \$1,000.

4                   (2) The application shall allege that the debtor resides or  
5                   has a domicile, a place of business, or property in the  
6                   Federated States of Micronesia.

7                   (3) When the receivership is sought by creditors, the  
8                   application shall also allege:

9                   (a) that the claims held by such creditors amount in  
10                   the aggregate to at least \$7,500; and

11                   (b) that the debtor is generally not paying its debts  
12                   as they become due."

13           Section 4. Section 104 of title 31 of the Code of the Federated  
14 States of Micronesia is hereby enacted to read as follows:

15           "Section 104. Approval of application; Suspension or  
16           dismissal of pending receivership.

17           (1) The court shall appoint a receiver within such time as  
18           the court shall prescribe if:

19                   (a) there is no objection by an interested party or

20                   (b) if the court finds that the allegations in the  
21           application are true.

22           (2) Notwithstanding subsection (1) of this section, the  
23           court may deny the application, dismiss a pending  
24           receivership, or suspend a pending receivership if it finds  
25           that such denial, dismissal or suspension is in the best

1 interest of the debtor and its creditors.

2 (3) The court shall have the authority to fix the  
3 compensation of the receiver, however it shall be  
4 specifically prohibited from fixing compensation based solely  
5 on time referenced billing. When fixing compensation of the  
6 receiver the court shall take into consideration:

7 (a) the complexity of the case;

8 (b) the skill and reputation of the receiver;

9 (c) the benefit to the receivership estate of all work  
10 provided by the receiver;

11 (d) any other relevant criteria which the court in its  
12 discretion may chose to employ."

13 Section 5. Section 105 of title 31 of the Code of the Federated  
14 States of Micronesia is hereby enacted to read as follows:

15 "Section 105. Filing of application.

16 (1) An application for appointment of a receiver under this  
17 act shall be filed with the Trial Division of the FSM Supreme  
18 Court located in a State of the Federated States of  
19 Micronesia where the debtor resides or has domicile, a place  
20 of business, or property.

21 (2) The court approving the application for appointment  
22 shall supervise the receivership unless the court, in its  
23 discretion, determines that the receivership may be more  
24 efficiently supervised by the FSM Supreme Court Trial  
25 Division located in another State of the Federated States of

1           Micronesia.

2           (3) The application must be in the form specified by the  
3           court, accompanied by such filing fee as the court may set,  
4           and must contain a statement of financial condition of the  
5           debtor, as well as schedules of debts, assets and exemptions  
6           of the debtor. All applications must be sworn under penalty  
7           of perjury by the debtor, or members of the applying  
8           creditors group."

9           Section 6. Section 106 of title 31 of the Code of the Federated  
10 States of Micronesia is hereby enacted to read as follows:

11           "Section 106. Stay of proceedings.

12           (1) Except as provided in subsection (2) of this section,  
13           an application for a receiver operates throughout the  
14           Federated States of Micronesia and every State thereof, as a  
15           stay, applicable to all entities, of the commencement or  
16           continuation of all legal proceedings against the debtor,  
17           against the property of the debtor, and against property held  
18           by the receiver.

19           (2) An application for a receiver does not operate as a  
20           stay of:

21                   (a) criminal proceedings against the debtor; or

22                   (b) the commencement or continuation of legal  
23           proceedings by a governmental unit to enforce a police or  
24           regulatory power.

25           (3) The stay authorized by subsection (1) of this section

1 shall continue until the receivership is terminated,  
2 suspended or dismissed, or the party affected obtains relief  
3 from the stay pursuant to subsection (4) of this section.

4 (4) Upon the application of a party affected by the stay,  
5 the court, for cause shown, shall either:

6 (a) grant relief from stay; or

7 (b) grant such other relief as will provide adequate  
8 protection for the party requesting relief from stay."

9 Section 7. Section 107 of title 31 of the Code of the Federated  
10 States of Micronesia is hereby enacted to read as follows:

11 "Section 107. Eligibility and qualification of a receiver.

12 (1) A person may serve as a receiver only if such person  
13 is:

14 (a) competent to perform the duties of a receiver;

15 (b) resides or has an office in the Federated States  
16 of Micronesia;

17 (c) admitted to practice before the Supreme Court of  
18 the Federated States of Micronesia;

19 (d) or holds other relevant professional  
20 qualifications as determined by the FSM Supreme Court; and

21 (e) has never been convicted of a crime of moral  
22 turpitude, fraud, theft, deceit or other act which involves  
23 dishonesty.

24 (2) Nothing in this act will preclude the FSM Supreme Court  
25 from removing a receiver in any case for good cause shown.

1           (3) No relative, associate, affiliate or other such insider  
2           of the debtor shall be appointed to serve as a receiver."

3           Section 8. Section 108 of title 31 of the Code of the Federated  
4 States of Micronesia is hereby enacted to read as follows:

5           "Section 108. Powers of the receiver.

6           (1) The powers of the receiver include, but are not limited  
7           to:

8                   (a) the power to use, sell and lease property of the  
9                   receivership estate;

10                   (b) the power to obtain credit on behalf of the  
11                   receivership estate;

12                   (c) the power to assume and reject executory contracts  
13                   and leases of the debtor;

14                   (d) the power to abandon or disregard property of  
15                   inconsequential value of the receivership estate; and

16                   (e) the power to avoid preferences and  
17                   fraudulent conveyances as provided in sections 111, 112 and  
18                   113 of this act.

19           (2) Court approval is required for actions taken pursuant  
20           to subsection (1)(a) and (1)(b) of this section unless the  
21           activity occurs in the ordinary course of business. Court  
22           approval is also required for actions taken pursuant to  
23           subsection (1)(c), (1)(d) and (1)(e) of this section."

24           Section 9. Section 109 of title 31 of the Code of the Federated  
25 States of Micronesia is hereby enacted to read as follows:

1           "Section 109. Property to be administered by the receiver.

2           (1) The application for a receiver pursuant to these rules  
3           creates a receivership estate. The estate shall consist of  
4           the following:

5                   (a) subject to the exemptions contained in section 116  
6           of this act, all property owned by the debtor on the date of  
7           the application;

8                   (b) all property acquired by the debtor through  
9           bequest, devise, or inheritance, or as beneficiary of a life-  
10           insurance policy in the 180 days after such application; and

11                   (c) all property acquired by the receivership estate  
12           after the date of application.

13           (2) The receivership estate shall be administered in  
14           accordance with these rules."

15           Section 10. Section 110 of title 31 of the Code of the Federated  
16 States of Micronesia is hereby enacted to read as follows:

17           "Section 110. Claims of creditors.

18                   (1) Any creditor may file a sworn claim with the receiver  
19           within such time limits as the court shall prescribe.

20                   (2) Each claim shall be allowed except to the extent that:

21                           (a) such claim is unenforceable for any reason other  
22           than because such claim is contingent or unmatured;

23                           (b) such claim is for unmatured interest;

24                           (c) such claim is for punitive damages and is not  
25           compensation for actual pecuniary loss; or

1           (d) such claim has not been filed within the time  
2           limit prescribed by the court.

3           (3) An allowed claim of a creditor is a secured claim to  
4           the extent of the value of the collateral, provided all  
5           criteria under applicable law for perfecting security  
6           interests have been complied with, an allowed claim is an  
7           unsecured claim to the extent that the value of the  
8           collateral offered by the debtor as security against that  
9           claim is less than the amount of the claim.

10           (4) The holder of an allowed secured claim is entitled to  
11           the approved value in the collateral or its equivalent.

12           (5) Assets shall be distributed to the holder of an allowed  
13           unsecured claim in accordance with the provisions of this  
14           act."

15           Section 11. Section 111 of title 31 of the Code of the Federated  
16 States of Micronesia is hereby enacted to read as follows:

17           "Section 111. Distribution of the receivership estate.

18           (1) Assets of the receivership estate shall, following the  
19           satisfaction of secured claims pursuant to section 110(4) of  
20           this act, be distributed in the following order:

21           (a) all necessary administrative expenses of the  
22           receivership, including compensating the receiver and  
23           applicable attorneys fees;

24           (b) all allowed claims of the National Government or  
25           any State or local government of the Federated States of

1 Micronesia, or any entity or public corporation of any such  
2 government;

3 (c) all allowed claims;

4 (d) to the debtor."

5 Section 12. Section 112 of title 31 of the Code of the Federated  
6 States of Micronesia is hereby enacted to read as follows:

7 "Section 112. Preference.

8 (1) Except as provided in subsection (2) of this section,  
9 the receiver may avoid any transfer of an interest of the  
10 debtor in property:

11 (a) to or for the benefit of a creditor;

12 (b) for or on account of an antecedent debt;

13 (c) made while the debtor was insolvent;

14 (d) made on or within 90 days, or within one year if  
15 the creditor was an insider, affiliate or relative of the  
16 debtor, before the date of the application for the  
17 receivership; and

18 (e) that enables such creditor to receive more than  
19 such creditor would have if:

20 (i) the transfer had not been made;

21 (ii) such creditor had received payment in  
22 accordance with the provisions of this act.

23 (2) The receiver may not avoid under subsection (1) of this  
24 section a transfer:

25 (a) to the extent that such transfer was intended to

1 be, and in fact was, a contemporaneous exchange for new  
2 value;

3 (b) to the extent that such transfer was a payment of  
4 debt in the ordinary course of business of both the debtor  
5 and the transferee; or

6 (c) to the extent that, after such transfer, such  
7 creditor advanced new value to or for the benefit of the  
8 debtor.

9 (3) The receiver has the burden of proving the avoidability  
10 of a transfer under subsection (2) of this section. The  
11 receiver is entitled to the benefit of a rebuttable  
12 presumption that the debtor was insolvent during the 90 day  
13 period specified in subsection (1)(d) of this section."

14 Section 13. Section 113 of title 31 of the Code of the Federated  
15 States of Micronesia is hereby enacted to read as follows:

16 "Section 113. Fraudulent transfers.

17 (1) The receiver may avoid any transfer of an interest of  
18 the debtor in property if:

19 (a) such transfer is made within one year before the  
20 application for the receivership; and

21 (i) the debtor actually intended to hinder, delay  
22 or defraud a creditor or creditors; or

23 (ii) the debtor was insolvent.

24 (2) Except to the extent that transfer is also voidable  
25 pursuant to subsection (1) of this section, a good faith

1           transferee for value is entitled to a lien on the transferred  
2           property to the extent of such value."

3           Section 14. Section 114 of title 31 of the Code of the Federated  
4 States of Micronesia is hereby enacted to read as follows:

5           "Section 114. Transferee liability.

6           (1) To the extent that a transfer is avoided under either  
7           section 112 or 113 of this act, the receiver is entitled to  
8           recover the property transferred or, in appropriate cases,  
9           its value from:

10           (a) the initial transferee of such transference or the  
11           entity for whose benefit such transfer was made; or

12           (b) subsequent transferees of the initial transferees.

13           (2) The receiver may not recover under section 113(1)(a) of  
14           this act from a good faith transferee for value or a  
15           subsequent transferee of such a good faith transferee.

16           (3) The receiver is entitled to only a single satisfaction  
17           under section 113(1) of this act."

18           Section 15. Section 115 of title 31 of the Code of the Federated  
19 States of Micronesia is hereby enacted to read as follows:

20           "Section 115. Discharge.

21           (1) A debtor who is the subject of receivership proceedings  
22           is entitled to a discharge from the claims of all creditors,  
23           unless:

24           (a) the debtor is not an individual; or

25           (b) the debtor has:

1                   (i) transferred property in violation of section  
2                   113(1) of this act; or

3                   (ii) with intent to defraud has concealed,  
4                   transferred or damaged property of the receivership estate  
5                   after the date of the application; or

6                   (c) the debtor has been granted a discharge pursuant  
7                   to this rule in a receivership commenced within seven years  
8                   before the commencement of the pending receivership.

9                   (2) A discharge granted pursuant to this rule does not  
10                   discharge the debtor from any debt:

11                   (a) for money, property and the like obtained by  
12                   actual fraud;

13                   (b) to a spouse, former spouse, child or other person  
14                   for support or maintenance; or

15                   (c) to the extent that such debt is subject to  
16                   disallowance pursuant to section 110(2)(c) of this act.

17                   (3) A discharge may be revoked for cause at any time prior  
18                   to the termination of the receivership proceeding.

19                   (4) A discharge operates as an injunction against the  
20                   commencement or continuation of any act or action to collect  
21                   a debt as a personal liability of the debtor."

22                   Section 16. Section 116 of title 31 of the Code of the Federated  
23 States of Micronesia is hereby enacted to read as follows:

24                   "Section 116. Exempt property. The following property is  
25                   exempt from inclusion in the receivership estate:

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1           (1) Personal and household goods. All necessary household  
2           furniture, cooking and eating utensils, and all necessary  
3           wearing apparel, bedding and provisions for household use  
4           sufficient for six months.

5           (2) Necessities for trade or occupation. All tools,  
6           implements, utensils, two work animals and equipment  
7           necessary to enable the person against whom the receivership  
8           estate is commenced to carry on his usual occupation. This  
9           section does not apply to corporate filings, or individual  
10           filings where the debt is primarily of a business nature.

11           (3) Land and interests in land. All interests in land,  
12           including crops on such land, however, any interest owned  
13           solely by a judgment debtor, in his own right, may be ordered  
14           sold, transferred or subdivided by the receiver if the court  
15           making the order deems that justice so requires and finds as  
16           a fact that after the sale or transfer, the debtor will have  
17           sufficient land and crops remaining to support himself and  
18           those persons directly dependent on him according to  
19           recognized local custom.

20           (4) Vehicles. A motor vehicle, not to exceed \$1,500 in  
21           value.

22           (5) Boats. A boat and motor with a combined value not in  
23           excess of \$2,500.

24           (6) Cash. Cash on hand in any checking or savings account  
25           not to exceed \$400.00.

1           (7) Retirement. Debtors interest in a retirement plan, to  
2           the extent that the debtor cannot exercise control or benefit  
3           from the plan until retirement.

4           (8) Others. Other personal or household goods not  
5           previously exempted not to exceed \$1,200 in the aggregate or  
6           \$200 per item."

7           Section 17. This act shall become law upon approval by the  
8           President of the Federated States of Micronesia or upon its becoming  
9           law without such approval.

11   Date: \_\_\_\_\_

          Introduced by: \_\_\_\_\_

  Joseph J. Urusemal  
  (by request)

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