

STANDING COMMITTEE REPORT NO. 13-192

RE: C.B. NO. 13-151/W&M

SUBJECT: BANKRUPTCY ACT

NOVEMBER 05, 2004

The Honorable Peter M. Christian  
Speaker, Thirteenth Congress  
Federated States of Micronesia  
Fourth Regular Session, 2004

Dear Mr. Speaker:

Your Committee on Ways & Means to which was jointly referred C.B. No. 13-151 entitled:

"A BILL FOR AN ACT TO ENACT TITLE 31 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, ENTITLED 'BANKRUPTCY AND INSOLVENCY', TO ESTABLISH A NATIONAL BANKRUPTCY LAW FOR THE FEDERATED STATES OF MICRONESIA, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title.

A previous version of a bankruptcy law, C.B. No. 13-11 was introduced early in the Thirteenth Congress. In July, 2003, your committee held hearings on that bill in the states of Chuuk, Kosrae and Pohnpei. Attendees at those hearings were generally very supportive of the enactment of a bankruptcy law, but voiced numerous concerns about specific provisions of C.B. No. 13-11. As a result of the comments received at the hearings and a general review of the legislation, it was determined that the bill should be substantially redrafted. The new draft, which incorporated a number of suggestions offered at the hearings, was circulated among a number of attorneys in the FSM for their comments. Written comments were received from legal counsel for the Bank of the FSM and the Social Security Board. A number of additional changes were made to the draft bill, based on those comments. The bill, as so revised, was introduced as the subject bill, C.B. No. 13-151. Following introduction, the bill was sent to the states for comment. No comments have been received from any of the states.

At the present time, the FSM has no bankruptcy law. The courts have been left to handle claims against insolvent creditors without the benefit of a uniform, comprehensive set of priorities, exemptions and procedures based upon sound economic and social policy. The resulting risk of inconsistent and unpredictable outcomes is a matter of concern

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to both creditors and debtors. The absence of bankruptcy law also presents the possibility that creditors will engage in an undisciplined competition to get access to the assets of debtors. Insolvent debtors have no ready means to obtain protection from over-zealous creditors and to get a "fresh start", free from unmanageable debt. As a result, Congress has been urged by many parties to adopt a bankruptcy law addressing these problems.

The authority to regulate bankruptcy and insolvency is vested in Congress by Article IX, section 2(g) of the Constitution of the Federated States of Micronesia. C.B. No. 13-151 would enact a new title 31 of the FSM Code to establish a law of bankruptcy. The bankruptcy law, as embodied in C.B. No. 13-151, has two principal purposes: (1) to bring into a single forum all of the claims against an insolvent debtor so that those claims can be resolved in an orderly fashion, treating all creditors fairly and equitably; and (2) to provide relief to debtors who are in serious financial difficulty and could otherwise face a lifetime of insolvency. The bill comprises three chapters. Chapter 1 sets forth provisions of general application to bankruptcy proceedings in the FSM. Chapter 2 governs receivership proceedings in which a debtor's non-exempt assets are distributed to creditors according to priorities set forth in the bill. Chapter 3 provides for reorganization proceedings in which an insolvent corporation with a potential for rehabilitation may continue to operate while seeking to develop a reorganization plan acceptable to creditors.

C.B. No. 13-151 was drafted with a number of objectives in mind: (1) to minimize the costs of bankruptcy proceedings, preserving, to the extent possible, the assets of the debtor for creditors and the debtor; (2) to strike a balance between the rights of creditors and the traditional protections afforded in Micronesia for land rights and the ability of debtors to support their families; and (3) to create a flexible bankruptcy system in which the court has broad powers to manage proceedings in the best interests of debtors and creditors.

Your committee recognizes the difficulties involved in creating and implementing an entirely new bankruptcy law. Neither business, the court nor legal counsel in the FSM have extensive experience with bankruptcy proceedings. Although the effort has been made, in

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drafting C.B. No. 13-151, to learn from the bankruptcy laws of other countries, there is no model that is entirely suitable for the unique circumstances existing in the FSM. C.B. No. 13-151 will not prove to be a perfect bill. Experience will undoubtedly show the need for refinements and possibly even significant changes. Your committee has given particular consideration to the question of whether the adoption of a bankruptcy law should await the passage of a law on secured transactions. Unfortunately, it appears that it will take considerable time before a secured transactions law can be adopted and effectively implemented. Your committee is of the opinion that it is time to institute a bankruptcy law in the FSM and that a secured transactions law is not necessary in order to obtain much of the benefit of a bankruptcy system. Your committee also believes that C.B. No. 13-151 would create a workable and fair bankruptcy system that would serve both the financial interests of the community and our traditional values.

Your committee does recommend a number of technical amendments to C.B. No. 13-151. These changes are designed primarily to achieve consistency in the use of terms and to further clarify the procedures established by the bill. Specifically, your committee recommends the following amendments:

1. Page 1, line 18, delete "entity" and insert "person" in lieu thereof.
2. Page 2, line 6, delete "entity" and insert "person" in lieu thereof.
3. Page 2, line 14, delete "entity" and insert "person" in lieu thereof.
4. Page 3, line 3, following "or" insert "government".
5. Page 3, line 7, delete ", or corporation".
6. Page 8, line 6, following "all", insert "persons and governmental".
7. Page 8, line 14, delete "unit" and insert "entity" in lieu thereof.
8. Page 9, line 25, following "value", insert ", as determined by the court,".
9. Page 12, line 13, following "hereof", insert ", and further provided that no claim against the debtor by a bank or other financial institution shall be setoff against funds or other

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- assets held by the bank or other financial institution on account for the debtor."
10. Page 13, line 14, following "court", insert "and the debtor".
  11. Page 14, line 9, delete ", associate".
  12. Page 14, line 24, delete "chose" and insert "choose" in lieu thereof.
  13. Page 15, delete lines 15 and 16 and insert the following in lieu thereof:

(b) the court finds that the party or parties objecting to the application have failed to establish that it is in the best interests of the debtor and the creditors that the application be dismissed."
  14. Page 17, lines 8 and 9, delete the language beginning with "application" and concluding with "rules" and insert "appointment of a receiver pursuant to this chapter".
  15. Page 19, line 7, following "transfer" insert "to the extent that".
  16. Page 19, line 8, delete "to the extent that".
  17. Page 19, line 11, delete "to the extent that".
  18. Page 19, line 14, delete "to the extent that,".
  19. Page 22, line 10, delete "rule" and insert "chapter" in lieu thereof.
  20. Page 22, line 13, delete "rule" and insert "chapter" in lieu thereof.
  21. Page 24, line 12, following "inconsistent" insert "with".
  22. Page 24, line 13, delete the semi-colon and insert ", and" in lieu thereof.
  23. Page 26, delete lines 13 and 14 and substitute the following in lieu thereof:

"(b) the court finds that the party or parties objecting to the application have failed to establish that it is in the best interest of the creditors and the estate that the application be dismissed."
  24. Page 29, line 3, following "chapter", insert ", provided that the court may, by order, set a time within which the debtor must file a plan."

With these amendments, your Committee on Ways & Means is in accord with the intent and purpose of C.B. No. 13-151 and recommends its passage on First Reading, subject to concurrence by your Committee on Resources and Development, and that it be placed on the Calendar for

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Second and Final Reading in the form attached hereto as C.B. No. 13-151, C.D.1.

Respectfully submitted,

/s/ Sabino S. Asor  
Sabino S. Asor, chairman

/s/ Roosevelt D. Kansou  
Roosevelt D. Kansou, vice  
chairman

/s/ Claude H. Phillip  
Claude H. Phillip, member

Henry C. Asugar, member

/s/ Peter M. Christian  
Peter M. Christian, member

/s/ Dohsis Halbert  
Dohsis Halbert, member

/s/ Isaac V. Figir  
Isaac V. Figir, member  
W/Reservations