

A BILL FOR AN ACT

To further amend title 41 of the code of the Federated States of Micronesia (Annotated), as amended, by creating a new chapter 12 entitled: "Tobacco Control Act" to regulate the manufacturing, labeling, promotion, distribution, sale, use of tobacco products, and to implement the provisions of the World Health Organization Framework Convention on Tobacco Control, and for other purposes.

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

1 Section 1. Title 41 of the Code of the Federated
2 States of Micronesia (Annotated), as amended, is hereby
3 further amended by creating a new chapter 12 to be
4 entitled "Tobacco Control Act".

5 Section 2. Title 41 of the Code of the Federated
6 States of Micronesia (Annotated), as amended, is hereby
7 further amended by inserting a new section 1201 under
8 chapter 12 to read as follows:

9 "Section 1201. Short Title. This chapter is
10 known and may be cited as the "Federated States
11 of Micronesia Tobacco Control Act."

12 Section 3. Title 41 of the Code of the Federated
13 States of Micronesia (Annotated), as amended, is hereby
14 further amended by inserting a new section 1102 under
15 chapter 12 to read as follows:

16 "Section 1202. Definitions. The following
17 terms shall have the following meanings for the

1 purposes of this Act:

2 (1) 'Advertisement' means any commercial
3 communication through any media or means, that
4 is intended to have, or is likely to have, the
5 direct, indirect, or incidental effect of the
6 following:

7 (a) creating an awareness of a tobacco
8 product, brand manufacturer, or seller;

9 (b) promoting the purchase or use of a
10 tobacco product or brand of a tobacco
11 advertisement includes, but is not limited to,
12 words, names, messages, mottos, slogans,
13 letters, numbers, pictures, images, colors and
14 other graphics, sounds, and any other auditory,
15 visual, or sensory matter, in whole or part,
16 that is or are:

17 (i) commonly identified or
18 associated with a tobacco product, brand,
19 manufacturer, or seller;

20 (ii) otherwise an indicia of
21 product, brand, manufacturer, or seller
22 identification;

23 (2) 'Brand' means a brand of tobacco product;

24 (3) 'Brand variant' means a tobacco product
25 distinguishable from another tobacco product by

1 any means, including the following:

2 (a) the tobacco product is sold under
3 different brand names;

4 (b) the tobacco is sold under the same
5 brand name, but differs in one or more of the
6 following ways:

7 (i) containing or not containing
8 menthol;

9 (ii) being otherwise different
10 flavored;

11 (iii) producing different quantities
12 of tar, nicotine, carbon-monoxide or other
13 constituents;

14 (iv) allegedly differing in mildness;

15 (v) having or not having filter tips
16 or cork tips;

17 (vi) being sold in retail packages
18 containing number of pieces;

19 (vii) being of different length or mass;

20 (4) 'Body corporate' means an association,
21 corporation, corporate body, corporate identity
22 company, person, government agency or
23 institution identified by a particular name;

24 (5) 'Class' in relation to tobacco product,
25 means a class of tobacco product, and includes

1 manufactured cigarettes, cigarettes tobacco,
2 pipe tobacco, cigars, cigarillos, bidis or
3 anything containing tobacco products.

4 (6) 'Convention' means the World Health
5 Organization Framework Convention on Tobacco
6 Control.

7 (7) 'Distributor' means a person who
8 engages in business of selling tobacco
9 products, and includes a wholesaler, importer
10 or exporter, but does not include a retailer
11 who engages in the business of selling tobacco
12 products by retail only.

13 (8) 'Designated smoking area' means any
14 area not prohibited pursuant to Chapter 8 of
15 title 41 of the Code of the Federated States of
16 Micronesia.

17 (9) 'Exporter' means any person who sends
18 tobacco products outside the Federated States
19 of Micronesia for sale or supply in another
20 country.

21 (10) 'Inspector' means a person or class of
22 person designated as an inspector under section
23 1110 of this Act.

24 (11) 'Manufacturer' means any person that
25 manufactures, fabricates, produces, processes,

1 packs and/or labels tobacco products for the
2 purpose of sale or distribution, and includes
3 all entities inter alia that is associated with
4 the manufacturer, including an entity that
5 controls or is controlled by the manufacturer,
6 or that is controlled by the same entity that
7 controls the manufacturer.

8 (12) 'Manufacturing' means fabricating,
9 producing, processing, packing and/or labeling
10 tobacco products for the purpose of sale or
11 distribution.

12 (13) 'minor' means a person under the age of
13 eighteen.

14 (14) 'Package' means any pack, carton,
15 wrapping or other container in which tobacco
16 products are customarily sold at retail.

17 (15) 'Public place' means any place, fixed
18 or mobile, accessible to the general public or
19 place for collective use, regardless of
20 ownership or right of access, whether by
21 expressed or implied invitation. An enclosed
22 public place is a partially or fully completed
23 building or structure, including a mine or
24 tunnel, that is separated from the outdoors, or
25 areas enclosed by a roof or similar over-head

1 covering; and/or at least 2 or more partial or
2 full walls.

3 (16) 'Retailer' means a person who engages
4 in the retail selling of tobacco products.

5 (17) 'Secretary' means the Secretary of
6 Health and Social Affairs or his/her designee.

7 (18) 'Seller' means any person who supplies
8 any tobacco product for a fee or other
9 consideration, and includes any manufacturer,
10 distributor, wholesaler, importer, exporter,
11 and retailer.

12 (19) 'Smoking' means inhaling and expelling
13 of smoke of cigarettes, cigars, or tobacco
14 products in any form whatsoever, and includes
15 the act of handling a lighted tobacco product.

16 (20) 'Smoke-free' means free of any direct
17 or indirect exposure resulting from smoking.

18 (21) 'Tobacco' means any preparation of
19 dried leaves of the nicotiana tobacum plant of
20 the nightshade family.

21 (22) 'Tobacco industry' means tobacco
22 manufacturers, wholesale distributors, and
23 importers.

24 (23) 'Tobacco product' means any product
25 containing tobacco in any form that is intended

1 for human use. A tobacco product includes all
2 parts and materials inter alia, such as papers,
3 filters and filter wrappers, over-wrappers,
4 rods, portion pouches, cigars, cigarettes,
5 smokeless tobacco, pipe tobacco and roll your
6 own tobacco, and similar matter, as applicable,
7 even if sold separately.

8 (24) 'Tobacco use' means any form of
9 consuming tobacco including smoking, chewing,
10 or otherwise inhaling or ingesting.

11 (25) 'Toxic constituent' means any substance
12 prescribed by regulations to be a toxic
13 constituent, and includes any substance found
14 in a tobacco product or in its smoke.

15 (26) 'Work place' means any place in which
16 persons perform duties of paid or unpaid
17 employment or work including private offices,
18 common areas and any other area including work
19 vehicles which generally is used during the
20 course of employment or work. Workplaces shall
21 not include private residences except to the
22 extent that they are used for commercial
23 purposes.

24 (27) Terms and expressions used and not
25 defined in this Act shall, unless the context

1 otherwise requires, have the same meaning as in
2 the Convention."

3 Section 4. Title 41 of the Code of the Federated
4 States of Micronesia (Annotated), as amended, is hereby
5 further amended by inserting a new section 1203 under
6 chapter 12 to read as follows:

7 "Section 1203. Product Regulation

8 (1) No person shall manufacture, sell, or
9 import a tobacco product except in compliance
10 with this Act and any regulations made under
11 this Act.

12 (2) Every manufacturer and importer of a
13 tobacco product shall provide the Secretary, in
14 the prescribed manner and within the prescribed
15 time, information about the product and its
16 emissions as required by Regulations
17 promulgated under this Act.

18 (3) The Secretary may make regulations:

19 (a) establishing standards for the
20 manufacture of tobacco products, including:

21 (i) prescribing the amount of
22 substances that may be contained in the product
23 or its emission;

24 (ii) prescribing substances that may
25 not be added to tobacco products;

1 (iii) prescribing product design
2 standards to reduce the harmful effects of
3 tobacco products and to reduce their appeal to
4 minor; and

5 (b) prescribing test methods, including
6 methods to assess conformity with the
7 standards;

8 (c) prescribing information that
9 manufacturers must provide to the Minister and
10 or the public about tobacco products and their
11 emission, including sales data and information
12 on product composition, ingredients, hazardous
13 properties and brand elements; and

14 (d) generally as needed to carry out
15 this part of the Act.”

16 Section 5. Title 41 of the Code of the Federated
17 States of Micronesia (Annotated), as amended, is hereby
18 further amended by inserting a new section 1104 under
19 chapter 12 to read as follows:

20 “Section 1204. Prohibition of Tobacco Product
21 Promotion, Advertisement, Sponsorship and Sale.

22 (1) No person shall promote or cause to
23 promote by any other person, a tobacco product
24 or a tobacco product-related brand element
25 through direct or indirect means, including

1 through sponsorship of an organization,
2 service, physical establishment or vehicle of
3 any kind, or event.

4 (2) No person shall sell, promote,
5 distribute or cause to be sold, promoted or
6 distributed, any item other than a tobacco
7 product which bears the brand name (alone or in
8 conjunction with any other word), trade-mark,
9 trade-name, distinguishing guise, logo, graphic
10 arrangement, design, slogan, symbol, motto,
11 selling message, recognizable color or pattern
12 of colors, or any other indicia of product
13 identification identical or similar to, or
14 identifiable with, those used for any brand of
15 tobacco product.

16 (3) No person shall promote or cause to
17 promote by any other person, a tobacco product
18 or a tobacco product-related brand element,
19 except as prescribed by this Act or its
20 regulation.

21 (4) Notwithstanding any regulation made
22 under this Act, no person shall promote or
23 cause to promote tobacco products or brand
24 elements:

25 (a) in a manner that allows a consumer

1 or purchaser of tobacco products to be deceived
2 or misled concerning its character, properties,
3 toxicity, composition, merit or safety;

4 (b) that does not display, in the
5 prescribed form and manner, the information
6 required in accordance with this Act or any
7 regulations about the product and its
8 emissions, health hazards and effects arising
9 from the use of the product or from its
10 emissions and other health-related messages
11 such as advice on how to quit smoking;

12 (c) through means of promotion that can
13 be viewed from outdoors;

14 (d) utilizing any item other than a
15 tobacco product, or a physical establishment or
16 vehicle of any kind, which bears the brand name
17 (alone or in conjunction with any other word),
18 trade-mark, trade-name, distinguishing guise,
19 logo, graphic arrangement, design, slogan,
20 symbol, motto, selling messages, recognizable
21 color or pattern of colors, or any other
22 indicia of product identification identical or
23 similar to, or identifiable with, those used
24 for any brand of tobacco product;

25 (e) utilizing any athletic, musical,

1 artistic or any other social or cultural event,
2 or any entry or team in any event, in the brand
3 name (alone or in conjunction with any other
4 word), trade-mark, trade-name, distinguishing
5 guise, logo, graphic arrangement, design,
6 slogan, symbol, motto, selling message,
7 recognizable color or pattern of colors, or any
8 other indicia of product identification
9 identical or similar to, or identifiable with,
10 those used for any brand of tobacco product;

11 (5) No person or entity shall offer or
12 provide any consideration, direct or indirect,
13 for the purchase of a tobacco product,
14 including a gift to a retailer, purchaser or a
15 third party, bonus, premium, cash rebate or
16 right to participate in a game, lottery or
17 contest, or distribute a tobacco product
18 without monetary consideration, or in
19 consideration of the purchase of a product or
20 service or the performance of a service,
21 whether requiring the purchase of a tobacco
22 product or not.

23 (6) No person or entity shall directly
24 target individuals with promotional, including
25 informational material, such as direct mail,

1 telemarketing, "consumer survey", or "research"
2 or person- to- person conversation by a
3 business in the tobacco industry or person
4 acting to further its interests.

5 (7) No person shall advertise, arrange for,
6 or participate in the advertising of any
7 tobacco product, brand, manufacturer or seller,
8 directly or indirectly. This prohibition shall
9 apply to advertising in, as well as to
10 advertising transmitted into or out of the
11 Federated States of Micronesia;

12 (8) No person shall:
13 (a) display, exhibit, announce,
14 broadcast or telecast, or cause or permit to be
15 displayed, exhibited, announced, broadcast or
16 telecast, or authorize the display, exhibition,
17 announcement, broadcast or telecast to the
18 public of a tobacco product advertisement;

19 (b) whether or not for payment or other
20 consideration, publish, broadcast or
21 disseminate on behalf of another person a
22 tobacco product advertisement or arrange for a
23 tobacco product advertisement to be published,
24 broadcast, or disseminated;

25 (c) print or publish, or cause or

1 permits to be printed or published, or
2 authorize the printing or publication of a
3 tobacco product advertisement in any printed
4 publication, book, magazine, leaflet, handbill,
5 newspaper or other printed matter intended for
6 the public.

7 (9) Subsections(1),(2),(3),(4),(5),(6),
8 (7), and (8)does not apply to the following:

9 (a) a tobacco product advertisement that
10 is an accidental or incidental accompaniment to
11 a film or video;

12 (b) any tobacco product advertisement
13 included in any book, magazine, or newspaper
14 printed outside FSM, or in any radio or
15 television transmission originating outside
16 FSM, or any film, video recording or visual
17 disk originating outside FSM, unless:

18 (i) the principal purpose of the
19 book, magazine, newspaper, broadcast, telecast,
20 film, video recording or visual disk is the
21 promotion of the use of a tobacco product or
22 smoking; or

23 (ii) the book, magazine, newspaper,
24 broadcast, telecast, film, video recording or
25 visual disk is intended for sale, distribution,

1 or exhibition in the FSM; or
2 (iii) in the case of, a tobacco
3 product advertisement in any radio, television,
4 electronic transmission or data message, the
5 advertisement is targeted primarily at an
6 audience in the FSM.

7 (10) For the purpose of monitoring
8 compliance with this Section, tobacco
9 manufacturers, wholesale distributors, and
10 importers, and any other sellers as may be
11 prescribed in regulations, shall provide
12 reports as required by this sub-section to the
13 Department of Health and Social Affairs on a
14 periodic basis, which shall be at least
15 annually, and upon request, as prescribed as to
16 content, format, periodicity, and all other
17 details specified in regulations. Reports shall
18 contain information in total and by brand on
19 any tobacco advertising, promotion, or
20 sponsorship including any donations, whether
21 publicly acknowledged or not, undertaken during
22 the reporting period, including, but not
23 limited to:

24 (a) the kind of advertising, promotion
25 or sponsorship, including its content, form,

1 and the medium used;

2 (b) the placement and extent or
3 frequency of the advertising, promotion, or
4 sponsorship;

5 (c) the identity of all persons and
6 entities involved in the advertising, promotion
7 or sponsorship, including advertising and
8 production companies;

9 (d) the amount of financial and/or other
10 resources used for the tobacco advertising,
11 promotion or sponsorship; and

12 (e) other information as may be required
13 by the Department of Health and Social Affairs.

14 (11) The Department shall make information
15 from the reports required in this Article
16 readily available to the public, subject to any
17 precautions necessary for preventing misleading
18 or promotional information, if any, from
19 becoming public.

20 (12) Government shall not participate in,
21 support, endorse, or accept:

22 (a) any legal or policy measure drafted
23 by or in collaboration with the tobacco
24 industry, or any offer of assistance with
25 drafting such measures from the tobacco

1 industry;

2 (b) any education, instruction, or
3 training on any tobacco control policy matter
4 provided by or with any kind of contribution
5 from the tobacco industry;

6 (c) any partnership of any kind with the
7 tobacco industry;

8 (d) any non-binding or non-enforceable
9 agreement or tobacco industry code of conduct
10 in the place of legally enforceable tobacco
11 control measures; or

12 (e) any tobacco industry involvement in
13 any manner in any initiative, campaign,
14 program, or activity directly or indirectly
15 related to tobacco control or public health,
16 including but not limited to, any youth access
17 or education program, public education
18 campaign, or other tobacco control or public
19 health initiative."

20 Section 6. Title 41 of the Code of the Federated
21 States of Micronesia (Annotated), as amended, is hereby
22 further amended by inserting a new section 1205 under
23 chapter 12 to read as follows:

24 "Section 1205. Restrictions or Limitations on
25 Distribution and Sale of Tobacco Products.

1 (1) No person shall sell or offer to sell
2 tobacco to a person who is less than eighteen
3 years of age.

4 (2) No person shall purchase a tobacco
5 product for the use of a person under the age
6 of eighteen years of age.

7 (3) No person shall allow a person under
8 the age of eighteen to purchase or sell a
9 tobacco product on premises occupied by the
10 aforementioned person.

11 (4) It shall not be a defense to section 5
12 of this chapter that the person appeared to be
13 eighteen years old or older.

14 (5) No person shall, for the purpose of
15 political gain, offer, give, or distribute to
16 any person a tobacco product.

17 (6) No person shall, for the purpose of
18 inducing or promoting the sale of any tobacco
19 product, offer, give or distribute to any
20 person a free sample of the tobacco product.

21 (7) A retailer of tobacco products shall
22 display clearly for the public a notice to the
23 effect that the sale of any tobacco product to
24 a minor is prohibited.

25 (8) It is not a defense for a person

1 charged under subsection (6) that the person
2 believed that the person to whom the tobacco
3 product was sold, given or provided was over
4 the age of eighteen years at the time of the
5 offense is alleged to have been committed,
6 unless the accused took all reasonable steps to
7 ascertain the age of the person to whom the
8 tobacco product was sold, given, or provided.

9 (9) A person who contravenes subsections
10 (1), (2), (3), (4), (5), (6), and (7), commits an
11 offense.

12 (10) It is a defense to a prosecution under
13 this section if a person proves that he/she:

14 (a) had reasonable cause to believe that
15 the person purchasing the tobacco product, or
16 for whom the tobacco product was purchased, or
17 to whom the tobacco product was supplied, was
18 not under the age of eighteenth years; or

19 (b) had taken all reasonable precautions
20 to ensure that the purchaser presented a
21 prescribed form of identification showing his
22 or her age and that there was no apparent
23 reason to doubt the authenticity of the
24 document or that it was issued to the person
25 producing it.

1 (11) No person shall sell or offer to sell
2 tobacco products:

3 (a) by means of a display that permits a
4 person to handle the tobacco product before
5 paying for it;

6 (b) through a vending machine;

7 (c) through the mail or the internet;

8 (d) at a retail store unless signs
9 bearing health warnings and other information
10 are posted at the place in accordance with this
11 Act and its regulations.

12 (12) No person shall offer tobacco products
13 for sale (whether by retail or wholesale) and
14 allow any part of a tobacco product, tobacco
15 package, or tobacco carton to be visible from:

16 (a) outside the place; or

17 (b) an area inside the place visible to
18 the public.”

19 Section 7. Title 41 of the Code of the Federated
20 States of Micronesia (Annotated), as amended, is hereby
21 further amended by inserting a new section 1206 under
22 chapter 12 to read as follows:

23 “Section 1206. Restrictions or Limitations on
24 Packaging and labeling of Tobacco Products

25 (1) No person shall sell or offer to sell

1 tobacco products in any of the following
2 manners:

3 (a) loose cigarette sticks or
4 cigarette roll; or

5 (b) loose tobacco in an unopened
6 package that contains less than thirty-four
7 point two (34.2) grams of tobacco; or

8 (c) cigarettes in an unopened package
9 that contains fewer than 20 cigarettes being no
10 less than 84mm in length and weighing no less
11 than 0.8grams.

12 (2) No person shall sell tobacco products
13 except in a package containing the quantities
14 or number of units prescribed by this Act or
15 regulations under this Act.

16 (3) No person shall sell, distribute, or
17 display for sale or distribution, import, or
18 export any tobacco products in a package, or
19 with a label in a manner that allows a consumer
20 or purchaser of tobacco products to be deceived
21 or misled concerning its characteristics,
22 properties, toxicity, composition, merit or
23 safety.

24 (4) No person shall sell or offer to sell
25 tobacco products in a place other than those

1 prescribed by regulations under this Act.

2 (5) No person shall sell or offer for sale
3 a tobacco product unless:

4 (a) the package containing the product
5 conforms with prescribed requirements;

6 (b) the package containing the product
7 displays in accordance with this Act and its
8 regulations with the following:

9 (i) a graphical health message;

10 (ii) a list of the harmful
11 constituents of the product;

12 (iii) the emissions of the product
13 (if any); and

14 (iv) in the case of a tobacco
15 product intended for smoking, a list of the
16 harmful constituents and their respective
17 quantities present in the smoke.

18 (6) Prescribed regulations under this Act
19 may provide that every unit packet and package
20 of tobacco sold in FSM must carry messages that
21 are in the form of, or include, pictures or
22 pictograms.

23 (7) All tobacco products imported for sale or
24 sold in FSM must carry a clear statement that
25 the product is intended or made for sale in

1 FSM.

2 (8) No manufacturer, distributor, importer,
3 or retailer of a tobacco product shall
4 distribute or supply any tobacco product in
5 contravention of subsection 2 and 3 of this
6 section.

7 (9) Any requirements arising from
8 subsections 6 and 7 do not relieve a
9 manufacturer, importer, or retailer of tobacco
10 products of other obligations or liabilities
11 arising from other requirements to warn
12 consumers of the risks of using tobacco
13 products.”

14 Section 8. Title 41 of the Code of the Federated
15 States of Micronesia (Annotated), as amended, is hereby
16 further amended by inserting a new section 1207 under
17 chapter 12 to read as follows:

18 “Section 1207. Control of Tobacco Use Indoors
19 and Protection from Second-hand Smoke.

20 (1) The employer or a person in charge of a
21 private or public workplace including but not
22 limited to bars, restaurants, cafes and hotels
23 shall ensure that no person shall use, smoke,
24 or chew tobacco in any indoor part of the
25 workplace.

- 1 (2) For the purpose of this Act, private or
2 public work places and public places
3 include inter alia the following:
- 4 (a) offices and office buildings
5 including public areas, corridors, lounges,
6 eating areas, reception areas, elevators,
7 escalators, foyers, stairwells, restrooms
8 amenity areas, laundry rooms and individual
9 offices;
- 10 (b) health institutions;
- 11 (c) educational institutions of all
12 levels;
- 13 (d) any premises in which children are
14 cared for;
- 15 (e) any means of transportation used
16 for commercial, public or professional purposes
17 and used by more than one person;
- 18 (f) public transportation terminals;
- 19 (g) retail establishments including
20 shopping malls;
- 21 (h) cinemas;
- 22 (i) concert halls;
- 23 (j) sports stadia;
- 24 (k) bars and restaurants;
- 25 (l) pool and bingo halls;

1 (m) publicly owned facilities rented
2 out for events;

3 (n) any other facilities accessible to
4 the public;

5 (o) any other facilities that employ
6 paid or unpaid personnel; and

7 (p) any other facilities or areas
8 designated in regulations under this Act.

9 (3) An employer may designate a tobacco use
10 area in a workplace not less than four weeks
11 after its first year certification of
12 operation.

13 (4) An area designated under subsection
14 (3):

15 (a) shall be an outdoor area of the
16 workplace where no work is normally undertaken;
17 and

18 (b) shall not be located within 25
19 feet of any doorway, operable window, or air
20 intake mechanism or in a place where smoke may
21 then readily drift back into the indoor part of
22 the workplace.

23 (5) Persons responsible for premises
24 specified in section 1107 shall have a
25 continuous duty to:

1 (a) prominently post "no smoking"
2 signs as prescribed by the Department of Health
3 and Social Affairs with regard to format,
4 content, design, size, display, location, and
5 all other details;

6 (b) remove all ashtrays from all
7 indoor areas of the premises and any outdoor
8 areas where smoking is prohibited;

9 (c) supervise observance of the
10 smoking ban;

11 (d) take reasonable steps to
12 discourage and stop any person from chewing
13 and/or smoking where it is prohibited,
14 including asking the person not to smoke,
15 discontinuing service, asking the person to
16 leave the premises or public transport vehicle
17 when it is safe to do so, and contacting law
18 enforcement or other appropriate authority; and

19 (e) investigate complaints and take
20 any necessary action to ensure compliance, and
21 do so without any explicit or implicit threat
22 or act of retaliation against the complainant.

23 (6) A person who contravenes this section
24 in relation to a workplace or public place,
25 commits an offense."

1 Section 9. Title 41 of the Code of the Federated
2 States of Micronesia (Annotated), as amended, is hereby
3 further amended by inserting a new section 1208 under
4 chapter 12 to read as follows:

5 “Section 1208. Licensing and Measures to
6 Combat Smuggling

7 (1) Manufacturing of tobacco products is
8 prohibited in FSM.

9 (2) No importer, or person, partnership,
10 corporation or other entity shall conduct on
11 any premises the business of importation, of
12 tobacco products without first obtaining a
13 tobacco importer license upon payment of the
14 fee specified pursuant to this Act.

15 (3) No distributor or wholesaler, or person
16 partnership, corporation or other entity shall
17 conduct on any premises the business of
18 distributing or whole selling tobacco products
19 without first obtaining a tobacco distributor
20 or wholesaler license upon payment of the fee
21 specified pursuant to the laws and regulations
22 of the FSM or its four states where applicable.

23 (4) No retailer or person partnership,
24 corporation or other entity shall conduct on
25 any premises the business of selling in retail

1 tobacco products without first obtaining a
2 tobacco retail license upon payment of the fee
3 specified pursuant to the laws and regulations
4 of the FSM or its four states where applicable.

5 (5) For the purpose of this Act, the FSM
6 Department of Finance and Administration shall
7 serve as the licensing authority and shall have
8 the authority to prescribe the requirements
9 pursuant to this Act and its prescribed
10 regulations for the grant of new, renewal of a
11 license or revocation of license, and determine
12 the valid period of the license.”

13 Section 10. Title 41 of the Code of the Federated
14 States of Micronesia (Annotated), as amended, is hereby
15 further amended by inserting a new section 1209 under
16 chapter 12 to read as follows:

17 “Section 1209. Testing and Reporting of
18 Constituents, Additives, and Certain Business
19 Information:

20 (1) Every importer, distributor, and
21 exporter of tobacco products shall submit to
22 the Department of Health and Social Affairs on
23 at least an annual basis, unless otherwise
24 prescribed, reports and returns containing the
25 information specified in this Act and

1 regulations under this Act.

2 (2) For the purpose of this Act, the tests
3 for the harmful constituents of brands of
4 manufactured cigarettes and other tobacco
5 products, and the respective quantities of
6 those constituents present in the smoke, every
7 importer of a tobacco product shall:

8 (a) Test all tobacco products annually
9 per brand variant at a laboratory that is a
10 part of the WHO Tobacco Laboratory Network
11 (TobLabNet) and nominated by the FSM Secretary
12 of Health and Social Affairs

13 (b) Test results shall be cleared by
14 the FSM Department of Health and Social Affairs
15 and submitted to the FSM Department of Finance
16 and Administration at the time of registration
17 or licensing in the form of the testing report
18 and return form as may be prescribed under this
19 Act or its regulation;

20 (3) Every importer or distributor of a
21 tobacco product who fails:

22 (a) to submit any return required by
23 subsection 1; or

24 (b) publish any report required by
25 subsection 2, commits an offense."

1 Section 11. Title 41 of the Code of the Federated
2 States of Micronesia (Annotated), as amended, is hereby
3 further amended by inserting a new section 1210 under
4 chapter 12 to read as follows:

5 “Section 1210. Inspection

6 (1) For the purpose of this Act, the FSM
7 Secretary of Health and Social Affairs may
8 appoint any qualified person or designate any
9 class of persons to perform the duties of
10 inspector or analyst at the FSM National
11 Government. The responsibilities of an
12 inspector shall be specified in the act of
13 appointment.

14 (2) No tobacco control inspector may be
15 assigned to duties involving any business or
16 operation or articles in which he or she, or
17 his or her parents, children or siblings, has
18 any pecuniary interest whatsoever.

19 (3) Every person authorized as an inspector
20 or analyst under subsection 1 of this section,
21 may, at any reasonable time, to ascertain
22 compliance with this Act and the regulation
23 under it, enter and inspect any of the
24 following places:

25 (a) referred to in section 7

1 subsection 2;

2 (b) where tobacco is tested, stored,
3 packaged, labeled or sold;

4 (c) where anything used in the
5 manufacture, storage, packing, promotion, sale
6 or testing of tobacco is to be found;

7 (d) where information relating to the
8 manufacture, storage, packaging, labeling,
9 promotion, sale or testing of tobacco is to be
10 found.

11 (4) Authorized inspectors and analysts
12 shall have the following powers, which no
13 person shall deny, obstruct, or hinder:

14 (a) Enter any port of entry where
15 articles subject to this chapter are being
16 received, shipped or prepared for export, and
17 examine and take samples of articles, and
18 examine anything which appears capable of being
19 used for such preparation, packaging, storage,
20 sale or conveyance;

21 (b) Detain and search any vehicle at
22 any port of entry which is conveying any
23 article subject to this chapter, and examine
24 and take samples of any such article;

25 (c) Open and inspect any package which

1 contains any article subject to this chapter;

2 (d) Examine any books, accounts,
3 documents, or other records that could contain
4 any relevant information about articles subject
5 to this chapter and make copies of them;

6 (e) Destroy or dispose of tobacco
7 products, which has been imported which is
8 decayed or putrefied or otherwise a danger to
9 the public health, with prior notice to the
10 owner;

11 (f) Call a member of the local or
12 national police force for necessary
13 assistance. Any member of the national police
14 force shall aid the inspector as required;

15 (g) Question any person to determine
16 compliance with this chapter.

17 (5) After any inspection, the tobacco
18 control inspector shall give to the owner or
19 person in charge a written report noting any
20 violation of this chapter or the regulations.
21 A copy of this report shall be given to the
22 Secretary of Health.

23 (6) Any person aggrieved by any of these
24 actions has a right to a heard in front of a
25 panel which shall be conducted according to

1 regulations promulgated by the Secretary of
2 Health and Social Affairs.”

3 Section 12. Title 41 of the Code of the Federated
4 States of Micronesia (Annotated), as amended, is hereby
5 further amended by inserting a new section 1211 under
6 chapter 12 to read as follows:

7 “Section 1211. Enforcement, Offences, and
8 Penalties.

9 (1) Any person found guilty of violating
10 any provision under section 1103 of this Act
11 shall be liable for a fine of:

12 (a) in the case of an individual, not
13 less than \$500 and not more than \$5,000 for the
14 first offense, and of not less than \$1,000 and
15 not more than \$10,000 for subsequent offences;
16 and

17 (b) in the case of a manufacturer, not
18 less than \$1,000 and not more than \$10,000 for
19 the first offense, and of not less than \$2,000
20 and not more than \$20,000 for subsequent
21 offences.

22 (2) Any person found guilty of violating
23 any provision under section 1104 of this Act
24 shall be liable for a fine of:

25 (a) in the case of an individual, not

1 less than \$500 and not more than \$5,000 for the
2 first offence, and of not less than \$1,000 and
3 not more than \$10,000 for subsequent offences;
4 and

5 (b) in the case of a manufacturer, not
6 less than \$1,000 and not more than \$10,000 for
7 the first offence, and of not less than \$2,000
8 and not more than \$20,000 for subsequent
9 offences.

10 (3) Any person found guilty of violating
11 any provision under section 1105 of this Act
12 shall be liable for a fine of:

13 (a) in the case of an individual, not
14 less than \$500 and not more than \$5,000 for the
15 first offence, and of not less than \$1,000 and
16 not more than \$10,000 for subsequent offences;
17 and

18 (b) in the case of a manufacturer, not
19 less than \$1,000 and not more than \$10,000 for
20 the first offence, and of not less than \$2,000
21 and not more than \$20,000 for subsequent
22 offences.

23 (4) Any person found guilty of violating
24 any provision under section 1106 of this Act
25 shall be liable for a fine of:

1 (a) in the case of an individual, not
2 less than \$500 and not more than \$5,000 for the
3 first offence, and of not less than \$1,000 and
4 not more than \$10,000 for subsequent offences;

5 (b) in the case of the proprietor of a
6 retail establishment, not less than \$1,000 and
7 not more than \$10,000 for the first offence,
8 and of not less than \$2,000 and nor more than
9 \$20,000 for subsequent offences; and

10 (c) in the case of a manufacturer, not
11 less than \$1,500 and not more than \$10,000 for
12 the first offence, and of not less than \$2,500
13 and not more than \$20,000 for subsequent
14 offences.

15 (5) Any proprietor, owner or manager of any
16 premises listed under section 1106 of this Act
17 found guilty of failing to enforce the smoke-
18 free policy applicable to the facility under
19 his or her responsibility, including the
20 posting of prescribed signs and ensuring that
21 any designated smoking areas meet the
22 requirements of the Act and its regulations,
23 shall be liable for a fine of not less than
24 \$500 and not more than \$5,000 for the first
25 offence, and of not less than \$1,000 and not

1 more than \$10,000 for subsequent offences.

2 (6) Any person found guilty of smoking in a
3 place or area where smoking is prohibited under
4 section 1106 of this Act and Title 41, Section
5 801 shall be liable for a fine of not less than
6 \$500 and not more than \$1,000 for the first
7 offence, and of not less than \$1,000 and not
8 more than \$2,500 for subsequent offences.

9 (7) Any person found guilty of violating
10 any provision under section 1107 and 1108 of
11 this Act shall be liable for a fine of:

12 (a) in the case of an individual, not
13 less than \$2,500 and not more than \$10,000 for
14 the first offence, and of not less than \$5,000
15 and not more than \$20,000 for the subsequent
16 offences;

17 (b) in the case of a proprietor of a
18 retail establishment, not less than \$3,000 and
19 not more than \$10,000 for the first offence,
20 and of not less than \$6,000 and not more than
21 \$20,000 for the subsequent offences;

22 (c) in the case of a wholesale
23 distributor, not less than \$3,500 and not more
24 than \$10,000 for the first offence, and of not
25 less than \$7,000 and not more than \$20,000 for

1 subsequent offences;

2 (d) in the case of a manufacturer, not
3 less than \$4,000 and not more than \$10,000 for
4 the first offence, and of not less than \$8,000
5 and not more than \$20,000 for subsequent
6 offences;

7 (8) In addition to any fines imposed, any
8 person found guilty of violating any provision
9 under section 1709 of this Act shall be liable
10 for a penalty equivalent to the proceeds from
11 the distribution of illegal tobacco products as
12 well as taxes and duties owed on those
13 products.

14 (9) Nothing in this Act shall preclude the
15 criminal enforcement of its provisions in a
16 Court of competent jurisdiction.

17 (10) Where a person is found guilty of an
18 offence under any section of this Act other
19 than section 1709, the Court may impose an
20 additional fine in addition to any other
21 penalty, following an application by the
22 prosecuting party appended to the statement of
23 offence, equal to the amount of monetary
24 benefit gained by the person as a result of the
25 offence, even if the maximum fine is imposed

1 under another provision.

2 (11) A person who commits or continues an
3 offence under this Act on more than one day is
4 liable to be convicted for a separate offence
5 for each day on which the offence is committed
6 or continued.

7 (12) Any person found to have violated any
8 requirement under this Act or implementing
9 regulations may be ordered to pay the
10 reasonable costs associated with any
11 inspection, investigation, and enforcement
12 action brought about by the non-compliance."

13 Section 13. This act shall become law upon approval
14 by the President of the Federated States of Micronesia or
15 upon its becoming law without such approval.

16

17 Date: 2/13/16

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper

(by request)

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