

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:

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.

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