FOURTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

THIRD REGULAR SESSION, 2006 C.B. NO. 14-144

A BILL FOR AN ACT

To further amend Title 34 of the Code of the Federated States of Micronesia, as amended, by amending sections 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 202, 203, 207, 301, 302, 303, 304, 305, and 306 to update references to the Trust Territory, High Court and Attorney General, to limit the scope of consumer protection to transactions in foreign and interstate commerce, to apply the definitions in Chapter 2 to the entire usury and disclosures, to clarify the terms of disclosures and the calculation of interest, charges, and to make other necessary changes.

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

Section 1. Section 102 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 102. Definitions.

(1) "*Person*" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) "*Trade*" and "*commerce*" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the [~~Trust Territory~~] Federated States of Micronesia.

(3) "Secretary" means the Secretary of Justice of the Federated States of Micronesia."

Section 2. Section 103 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 103. Unlawful acts or practices. The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any foreign or interstate trade or commerce are hereby declared to be unlawful:

(1) passing off goods or services as those of another;

(2) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of fact;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(13) engaging in any act or practice which is unfair or deceptive to the consumer."

Section 3. Section 104 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 104. Exemptions. Nothing in this chapter shall apply to:

(1) actions or transactions carried out by the [~~Trust Territory Government~~] national, state or municipal government, any branch thereof, or any other governmental agency; or

(2) acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised product or service."

Section 4. Section 105 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 105. Restraint of prohibited acts.

(1) Whenever the [~~Attorney General~~] Secretary has reason to believe that any person is using, has used, or is about to use any method, act, or practice declared in section 103 of this chapter to be unlawful, and that proceedings would be in the public interest, he may bring a civil action in the name of the [~~Trust Territory~~] Federated States of Micronesia against such

person to restrain by temporary or permanent injunction the use of such method, act, or practice.

(2) The notice must state generally the relief sought and must be served at least three days before the hearing of the action.

(3) The action may be brought in the [~~High Court~~] Trial Division of the Supreme Court of the Federated States of Micronesia in the district in which such person resides or has his principal place of business.

(4) The Court is authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

(5) The Court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful."

Section 5. Section 106 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 106. Private and class actions.

(1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of

money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by section 103 of this chapter, may bring an action under the rules of civil procedure in the [~~High Court~~] Supreme Court of the Federated States of Micronesia in the district in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or $100, whichever is greater. The Court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(2) Any person entitled to bring an action under subsection (1) of this section may, if the unlawful method, act, or practice has caused similar injury to numerous other persons similarly situated and if they adequately represent such similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in subsection (1) of this section. In any action brought under this section, the Court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(3) Upon commencement of any action brought under subsection (1) of this section, the Clerk of Courts

shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the [~~Attorney General~~] Secretary.

(4) In any action brought by a person under this section, the Court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(5) Any permanent injunction, judgment, or order of the Court made under section 105 of this chapter shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by section 103 of this title."

Section 6. Section 108 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 108. Assurances of voluntary compliance.

(1) In the administration of this chapter, the [~~Attorney General~~] Secretary may accept an assurance of voluntary compliance with respect to any method, act, or practice deemed to be violative of the chapter from any person who has engaged in or is about to engage in such method, act, or practice.

(2) Any such assurance shall be in writing and shall be filed with and subject to the approval of the [~~High Court~~] Trial Division of the Supreme Court of the Federated States of Micronesia in the district in which the alleged violator resides or has his principal place of business.

(3) Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the [~~Attorney General~~] Secretary for further proceedings in the public interest, pursuant to section 105 of this chapter."

Section 7. Section 109 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

Section 109. Investigation authorized.

(1) When it appears to the [~~Attorney General~~] Secretary that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this chapter, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in such act or practice, he may execute in writing and cause to be served upon any person who is believed to

have information, documentary material, or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify, or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the [~~High Court~~] Trial Division of the Supreme Court of the Federated States of Micronesia in the district where the person served with the demand resides or has his principal place of business."

Section 8. Section 110 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 110. Authority of [~~Attorney General~~] Secretary to issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations.

(1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the [~~Attorney General~~] Secretary, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms, and promulgate such rules and regulations as may be necessary, which rules and regulations upon approval of the [~~High Commissioner~~] Secretary shall have the force of law.

(2) None of the powers conferred by this chapter shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture.

(3) Information obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed by the [~~Attorney General~~] Secretary or his employees beyond the extent necessary for law enforcement purposes in the public interest."

Section 9. Section 111 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 111. Service of notices, demands, or subpoenas. Service of any notice, demand, or subpoena under this chapter shall be made personally within the [~~Trust Territory~~] Federated States of Mironesia, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) personal service thereof without the [~~Trust Territory~~] Federated States of Micronesia; or

(2) the mailing thereof by registered or certified mail to the last known place of business, residence, or abode within or without the [~~Trust Territory~~] Federated States of Micronesia of such person for whom the same is intended; or

(3) as to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding had been filed; or

(4) such service as the [~~High Court~~] Supreme Court of the Federated States of Micronesia may direct in lieu of personal service within the [~~Trust Territory~~] Federated States of Micronesia."

Section 10. Section 112 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 112. Orders for enforcement of subpoenas or investigative demands.

(1) If any person fails or refuses to file any statement or report, to or obey any subpoena or investigative demand issued by the [~~Attorney General~~] Secretary, the [~~Attorney General~~] Secretary may, after notice, apply to the [~~High Court~~] Trial Division of the Supreme Court of the Federated States of Micronesia in the district in which the person resides or has his principal place of business, and, after hearing thereon, request an order;

(a) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(b) vacating, annulling the statement or report, or obeys the subpoena or investigative demand.

(2) Any disobedience of any final order entered under this Section by any Court shall be punished as a contempt thereof."

Section 11. Section 113 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 113. Civil and criminal penalties.

(1) Any person who violates the terms of an injunction issued under section 105 of this chapter shall forfeit and pay to the [Trust Territory] Federated States of

Micronesia a civil penalty of not more than $10,000 per violation. For the purposes of this section, the [~~High Court~~] Trial Division of the Federated States of Micronesia issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the [~~Attorney General~~] Secretary, acting in the name of the [~~Trust Territory~~] Federated States of Micronesia, may petition for recovery of civil penalties.

(2) In any action brought under section 105 of this chapter, if the Court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by section 103 of this chapter, the [~~Attorney General~~] Secretary, upon petition to the Court, may recover, on behalf of the [~~Trust Territory~~] Federated States of Micronesia, a civil penalty of not exceeding $1,000 per violation.

(3) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 103 of this chapter."

Section 12. Section 114 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 114. Forfeiture of corporate franchise.

Upon petition by the [~~Attorney General~~] Secretary, the [~~High Court~~] Trial Division of the Supreme Court of the Federated States of Micronesia in the district in which the alleged violator has its principal place of business may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 105 of this chapter."

Section 13. Section 202 of title 34 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 2-33, 7-135 and 10-52, is hereby amended to read as follows:

"Section 202. Definitions. As used in this [~~Chapter~~] title, unless it is otherwise provided or the context requires a different construction, application, or meaning:

(1) "Annual percentage rate" means the annual percentage rate of interest. This rate shall be computed in the manner prescribed in the Truth in Lending Act, 15 U.S.C. section 1601 et seq., and regulations promulgated thereunder, 12 C.F.R. section 226.1 et seq.

(2) "Cardholder" means any person to which a credit card is issued.

(3) "Card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(4) "Commercial credit" means credit extended to a person in which the money, property, or service which is the subject of the transaction is primarily for business purposes.

(5) "Consumer credit" means credit extended to a natural person in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes.

(6) "Credit" means the right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(7) "Creditor" means a person who in the ordinary course of business regularly extends credit.

(8) "Credit card" is any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(9) "Customer" means:

(a) a person to whom credit is extended, and includes a comaker, endorser, guarantor, or surety for such person who is or may be obligated to repay the extension of credit; or

(b) a cardholder.

(10) "Financial institution" means a bank, savings and loan association or a credit union"

-[~~(10)~~](11) "Interest" is any and all compensation paid or agreed to be paid by regarding the use, forbearance, or detention of money or the extension of credit.

[~~(11)~~](12) "Person" includes individuals, corporations, partnerships, incorporated associations, as well as banks, savings and loan associations, credit unions, and other institutional lending organizations.

[~~(12)~~] (13) "Prime rate" means the rate of interest charged on loans by a bank to its prime customer(s).

[~~(13)~~] (14) "Usury" is the exacting, taking, or receiving of an interest charge in an amount or at a rate in excess of that allowed by law for the use of money or extension of credit."

Section 14. Section 203 of title 34 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 2-33, 7-135 and 10-52, is hereby amended to read as follows:

"Section 203. Consumer credit transactions.

(1) In consumer credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of fifteen percent.

(2) Nothing contained in this section shall prevent a creditor from charging and receiving:

(a) [~~in addition to interest permitted by this section, a processing fee with respect to the transaction~~] for processing a loan, not to exceed $25, provided the fee is charged regardless of whether the loan is made or not; or

(b) a late charge on all or any portion of any payment due on a consumer credit transaction which is unpaid after fifteen days from the due date of the payment, provided that such late charge shall not exceed five dollars or five percent of the amount overdue, whichever is less, on any payment.

(3) With respect to credit extended after October 31, 1998, the fifteen percent annual percentage rate in subsection (1) of this section shall be automatically changed to a twenty-four percent annual percentage rate."

Section 15. Section 207 of title 34 of the Code of the Federated States of Micronesia, is hereby amended to read as follows:

"Section 207. Current interest rates.

(1) Every [~~bank~~] financial institution shall post in a public place within each of its branches located in the Federated States of Micronesia the current rate of

interest paid on deposits held, including demand deposits, savings deposits, and certificates of deposit, by such [~~bank~~] financial institution and the prime rate currently in effect for loans. In any loan in which an adjustable rate is used, the lender shall notify the borrower by mail of any changes in the rate of interest applicable to the loan, at least 10 days in advance of such changes taking effect."

Section 16. Chapter 3 of Title 34 of the Code of the Federated States of Micronesia is hereby renamed "Financial Institution Disclosures."

Section 17. Section 301 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 301. Savings disclosure. Each [~~commercial bank~~] financial institution shall, upon opening a savings account of whatever nature or issuing a certificate of deposit, inform the customer in simple and clear written language about the manner in which interest is calculated, the periods for which and circumstances under which interest is and is not payable, the rate of interest, fees and penalties and forfeitures, if any."

Section 18. Section 302 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 302. Checking-account disclosure. Each [~~commercial bank~~] financial institution shall, upon opening a checking account, inform the customer in simple and clear language about all fees which may be charged."

Section 19. Section 303 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 303. Loan disclosure. Each [~~commercial bank~~] financial institution shall, prior to entering into a loan agreement, or extending a line of credit including a credit card, inform the customer in simple and clear written language about the rate of interest, [~~and~~] the dollar amount of interest which will be payable if the loan is repaid according to the contractual terms, and the manner in which interest is calculated. If the rate of interest is based upon the prime interest rate, only the method of interest computation need be disclosed. In customer of any financial institution shall inform the customer of any penalties and forfeitures, if any applicable, where the loan is not repaid according to contractual terms."

Section 20. Section 304 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 304. Shipping document fees disclosure. Each [~~commercial bank~~] financial institution, upon receipt of shipping documents relating to the release of cargo, shall notify the cargo purchaser in simple and clear written language about all fees and interests it may charge for holding or processing the documents."

Section 21. Section 305 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 305 Form and copies of disclosure statements. Each written statement required by this Chapter shall be written and provided to the customer both in English and the primary vernacular language of the district in which the bank is located. The statement by the customer. A [~~bank~~] financial institution shall furnish a copy of any such statement to any person upon request."

Section 22. Section 306 of title 34 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 306. Civil penalty; Punitive damages; Right to bring action; Attorney's fees and costs.

(1) A [~~bank~~] financial institution which violates any provision of this chapter shall be subject to a civil penalty of $250 for each willful violation and $150 for each unwillful violation. The Court may, in its discretion, award punitive damages for each willful violation and may provide such equitable relief as it deems necessary or proper.

(2) The [~~Attorney General~~] Secretary, or any person whose rights as established by this chapter have been violated, is entitled to bring an action. A person entitled to bring an action may do so on behalf of himself and other persons similarly situated.

(3) In any action the court may award, in addition to the relief provided for herein, reasonable attorney's fees and costs."

Section 23. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 1/25/06 Introduced by: /s/ Simiram Sipenuk

Simiram Sipenuk
(by request)