## A BILL FOR AN ACT

To further amend title 33 of the Code of the Federated States of Micronesia, as amended by Public Law No. 14-34, by creating a new chapter 11, defining transfers of debtor's assets and interests that are fraudulent against creditors and providing appropriate legal remedies upon occurrence, and for other purposes.

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

- Section 1. Title 33 of the Code of the Federated States of 2 Micronesia, as amended by Public Law No. 14-34, is hereby further
- 3 amended by creating a new chapter 11 entitled "Uniform Fraudulent
- 4 Transfer".
- 5 Section 2. Title 33 of the Code of the Federated States of
- 6 Micronesia, as amended by Public Law No. 14-34, is hereby further
- 7 amended by inserting a new section 1101 under chapter 11, to read
- 8 as follows:
- 9 "Section 1101. Title. This act shall be known as the
- 10 FSM Uniform Fraudulent Transfer Act of 2012."
- 11 Section 3. Title 33 of the Code of the Federated States of
- 12 Micronesia, as amended by Public Law No. 14-34, is hereby further
- 13 amended by inserting a new section 1102 under chapter 11, to read
- 14 as follows:
- "Section 1102. Definitions. As used in this chapter:
- 16 (1) "Affiliate" means:
- 17 (i) A person who directly or indirectly
- owns, controls, or holds with power to vote, twenty
- 19 percent or more of the outstanding voting securities of
- 20 the debtor, other than a person who holds the

1	securities;
2	(a) As a fiduciary or agent without sole
3	discretionary power to vote the securities; or
4	(b) Solely to secure a debt, if the person
5	has not exercised the power to vote;
6	(i) A corporation's twenty percent or
7	more of whose outstanding voting securities are
8	directly or indirectly owned, controlled, or held with
9	power to vote, by the debtor or a person who directly or
LO	indirectly owns, controls, or holds with power to vote,
L1	twenty percent or more of the outstanding voting
L2	securities of the debtor, other than a person who holds
L3	the securities:
L4	(a) As a fiduciary or agent without sole power to
L5	vote the securities; or
L6	(b) Solely to secure a debt, if the person has
L7	not in fact exercised the power to vote;
L8	(ii) A person whose business is operated by
L9	the debtor under a lease or other agreement, or a person
20	substantially all of whose assets are controlled by the
21	<u>debtor; or</u>
22	(iii) A person who operates the debtor's
23	business under a lease or other agreement or controls
24	substantially all of the debtor's assets.
25	(2) "Asset" means property of a debtor, but the term
26	does not include:

1	(i) Property to the extent it is encumbered
2	by a valid lien; or
3	(ii) Property to the extent it is generally
4	exempt under non-bankruptcy law.
5	(3) "Claim" means a right to payment, whether or not
6	the right is reduced to judgment, liquidated,
7	unliquidated, fixed, contingent, matured, unmatured,
8	disputed, undisputed, legal, equitable, secured, or
9	unsecured.
10	(4) "Creditor" means a person who has a claim.
11	(5) "Debt" means liability on a claim.
12	(6) "Debtor" means a person who is liable on a claim.
13	(7) "Insider" includes:
14	(i) If the debtor is an individual:
15	(a) A relative of the debtor or of a general
16	partner of the debtor;
17	(b) A partnership in which the debtor is a
18	<pre>general partner;</pre>
19	(c) A general partner in a partnership described
20	in subsection (7)(i)(b) of this section; or
21	(d) A corporation of which the debtor is a
22	director, officer, or person in control;
23	(ii) If the debtor is a corporation:
24	(a) A director of the debtor;
25	(b) An officer of the debtor;
26	(c) A person in control of the debtor;

1	(d) A partnership in which the debtor is a
2	<pre>general partner;</pre>
3	(e) A general partner in a partnership described
4	in subsection (7)(ii)(D) of this section; or
5	(f) A relative of a general partner, director,
6	officer, or person in control of the debtor;
7	(iii) If the debtor is a partnership:
8	(a) A general partner in the debtor;
9	(b) A relative of a general partner in, or a
LO	general partner of, or a person in control of the
L1	debtor;
L2	(c) Another partnership in which the debtor is a
L3	general partner;
L4	(d) A general partner in a partnership described
L5	in subsection (7)(iii)(C) of this section; or
L6	(e) A person in control of the debtor;
L7	(iv) An affiliate, or an insider of an
L8	affiliate as if the affiliate were the debtor; and
L9	(v) A managing agent of the debtor.
20	(8) "Lien" means a charge against or an interest in
21	property to secure payment of a debt or performance of
22	an obligation, and includes a security interest created
23	by agreement, a judicial lien obtained by legal or
24	equitable process or proceedings, a common-law lien, or
25	a statutory lien.
26	(9) "Person" means an individual, partnership,

corporation, association, organization, government or 1 governmental subdivision or agency, business trust, 2 3 estate, trust, or any other legal or commercial entity. (10) "Property" means anything that may be the subject 4 5 of ownership. 6 (11) "Relative" means an individual related by 7 consanguinity within the third degree as determined by 8 the common law, a spouse, or an individual related to a 9 spouse within the third degree as so determined, and includes an individual in an adoptive relationship 10 within the third degree. 11 12 (12) "Transfer" means every mode, direct or indirect, 13 absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in 14 an asset, and includes payment of money, release, lease, 15 and creation of a lien or other encumbrance. 16 17 (13) "Valid lien" means a lien that is effective 18 against the holder of a judicial lien subsequently 19 obtained by legal or equitable process or proceedings." 20 Section 4. Title 33 of the Code of the Federated States of Micronesia, as amended by Public Law No. 14-34, is hereby further 21 22 amended by inserting a new section 1103 under chapter 11, to read 23 as follows: 24 "Section 1103. Insolvency (a) A debtor is insolvent if the sum of the 25 26 <u>debtor's debts is greater than all of the debtor's</u>

1	assets, at a fair valuation.
2	(b) A debtor who is generally not paying his or
3	her debts as they become due is presumed to be
4	insolvent.
5	(c) A partnership is insolvent under subsection
6	(a) of this section if the sum of the partnership's
7	debts is greater than the aggregate of all of the
8	partnership's assets, at a fair valuation, and the sum
9	of the excess of the value of each general partner's
10	nonpartnership assets over the partner's nonpartnership
11	debts.
12	(d) Assets under this section do not include
13	property that has been transferred, concealed, or
14	removed with intent to hinder, delay, or defraud
15	creditors or that has been transferred in a manner
16	making the transfer voidable under this chapter.
17	(e) Debts under this section do not include an
18	obligation to the extent it is secured by a valid lien
19	on property of the debtor not included as an asset."
20	Section 5. Title 33 of the Code of the Federated States of
21	Micronesia, as amended by Public Law No. 14-34, is hereby further
22	amended by inserting a new section 1104 under chapter 11, to read
23	as follows:
24	"Section 1104. Value
25	(a) Value is given for a transfer or an
26	obligation if, in exchange for the transfer or

1	obligation, property is transferred or an antecedent
2	debt is secured or satisfied, but value does not include
3	an unperformed promise made otherwise than in the
4	ordinary course of the promisor's business to furnish
5	support to the debtor or another person.
6	(b) For the purposes of this Act, a person gives
7	a reasonably equivalent value if the person acquires an
8	interest of the debtor in an asset pursuant to a
9	regularly conducted, noncollusive foreclosure sale or
10	execution of a power of sale for the acquisition or
11	disposition of the interest of the debtor upon default
12	under a mortgage, deed of trust, or security agreement.
13	(c) A transfer is made for present value if the
14	exchange between the debtor and the transferee is
15	intended by them to be contemporaneous and is in fact
16	substantially contemporaneous."
17	Section 6. Title 33 of the Code of the Federated States of
18	Micronesia, as amended by Public Law No. 14-34, is hereby further
19	amended by inserting a new section 1105 under chapter 11, to read
20	as follows:
21	"Section 1105. Transfers fraudulent as to present and
22	<u>future creditors</u>
23	(a) A transfer made or obligation incurred by a
24	debtor is fraudulent as to a creditor, whether the
25	creditor's claim arose before or after the transfer was
26	made or the obligation was incurred, if the debtor made

1	the transfer or incurred the obligation:
2	(1) With actual intent to hinder, delay, or defraud
3	any creditor of the debtor; or
4	(2) Without receiving a reasonably equivalent value in
5	exchange for the transfer or obligation, and the debtor:
6	(i) Was engaged or was about to engage in a
7	business or a transaction for which the remaining assets
8	of the debtor were unreasonably small in relation to the
9	business or transaction; or
LO	(ii) Intended to incur, or believed or
L1	reasonably should have believed that he would incur,
L2	debts beyond his ability to pay as they became due.
L3	(b) In determining actual intent under subsection
L4	(a)(1) of this section, consideration may be given,
L5	among other factors, to whether:
L6	(1) The transfer or obligation was to an insider;
L7	(2) The debtor retained possession or control of the
L8	property transferred after the transfer;
L9	(3) The transfer or obligation was disclosed or
20	<pre>concealed;</pre>
21	(4) Before the transfer was made or obligation was
22	incurred, the debtor had been sued or threatened with
23	suit;
24	(5) The transfer was of substantially all the debtor's
25	assets;
26	(6) The debtor absconded;

1	(7) The debtor removed or concealed assets;
2	(8) The value of the consideration received by the
3	debtor was reasonably equivalent to the value of the
4	asset transferred or the amount of the obligation
5	<pre>incurred;</pre>
6	(9) The debtor was insolvent or became insolvent
7	shortly after the transfer was made or the obligation
8	was incurred;
9	(10) The transfer occurred shortly before or shortly
10	after a substantial debt was incurred; and
11	(11) The debtor transferred the essential assets of the
12	business to a lienor who transferred the assets to an
13	insider of the debtor."
14	Section 7. Title 33 of the Code of the Federated States of
15	Micronesia, as amended by Public Law No. 14-34, is hereby further
16	amended by inserting a new section 1106 under chapter 11, to read
17	as follows:
18	"Section 1106. Transfers fraudulent as to present
19	creditors.
20	(a) A transfer made or obligation incurred by a
21	debtor is fraudulent as to a creditor whose claim arose
22	before the transfer was made or the obligation was
23	incurred if the debtor made the transfer or incurred the
24	obligation without receiving a reasonably equivalent
25	value in exchange for the transfer or obligation and the
26	debtor was insolvent at that time or the debtor became

1	insolvent as a result of the transfer or obligation.
2	(b) A transfer made by a debtor is fraudulent as
3	to a creditor whose claim arose before the transfer was
4	made if the transfer was made to an insider for an
5	antecedent debt, the debtor was insolvent at that time,
6	and the insider had reasonable cause to believe that the
7	debtor was insolvent."
8	Section 8. Title 33 of the Code of the Federated States of
9	Micronesia, as amended by Public Law No. 14-34, is hereby further
10	amended by inserting a new section 1107 under chapter 11, to read
11	as follows:
12	"Section 1107. When transfer is made or obligation is
13	incurred.
14	For the purposes of this chapter:
15	(1) A transfer is made:
16	(i) With respect to an asset that is real
17	property other than a fixture, but including the
18	interest of a seller or purchaser under a contract for
19	the sale of the asset, when the transfer is so far
20	perfected that a good-faith purchaser of the asset from
21	the debtor against whom applicable law permits the
22	transfer to be perfected cannot acquire an interest in
23	the asset that is superior to the interest of the
24	transferee; and
25	(ii) With respect to an asset that is not
26	real property or that is a fixture, when the transfer is

so far perfected that a creditor on a simple contract 1 cannot acquire a judicial lien otherwise than under this 2 3 chapter that is superior to the interest of the 4 transferee; (2) If applicable law permits the transfer to be 5 perfected as provided in subsection (1) of this section 6 7 and the transfer is not so perfected before the commencement of an action for relief under this chapter, 8 9 the transfer is deemed made immediately before the commencement of the action; 10 (3) If applicable law does not permit the transfer to 11 12 be perfected as provided in subsection (1) of this 13 section, the transfer is made when it becomes effective between the debtor and the transferee; 14 (4) A transfer is not made until the debtor has 15 acquired rights in the asset transferred; 16 17 (5) An obligation is incurred: (i) If oral, when it becomes effective 18 19 between the parties; or 20 (ii) If evidenced by a writing, when the writing executed by the obligor is delivered to or for 21 the benefit of the oblique." 22 23 Section 9. Title 33 of the Code of the Federated States of Micronesia, as amended by Public Law No. 14-34, is hereby further 24 amended by inserting a new section 1108 under chapter 11, to read 25 26 as follows:

1	"Section 1108. Remedies of creditors
2	(a) In an action for relief against a transfer or
3	obligation under this chapter, a creditor, subject to
4	the limitations in the Bankruptcy Act, may obtain:
5	(1) Avoidance of the transfer or obligation to the
6	extent necessary to satisfy the creditor's claim;
7	(2) An attachment or other provisional remedy against
8	the asset transferred or other property of the
9	transferee in accordance with the procedure prescribed
10	by title 6 of the F.S.M.C., section 1405;
11	(3) Subject to applicable principles of equity and in
12	accordance with applicable rules of civil procedure:
13	(i) An injunction against further
14	disposition by the debtor or a transferee, or both, of
15	the asset transferred or of other property;
16	(ii) Appointment of a receiver to take charge
17	of the asset transferred or of other property of the
18	<u>transferee; or</u>
19	(iii) Any other relief the circumstances may
20	require.
21	(b) If a creditor has obtained a judgment on a
22	claim against the debtor, the creditor, if the court so
23	orders, may levy execution on the asset transferred or
24	its proceeds."
25	Section 10. Title 33 of the Code of the Federated States of
26	Micronesia, as amended by Public Law No. 14-34, is hereby further

amended by inserting a new section 1109 under chapter 11, to read 2 as follows: 3 "Section 1109. Defenses, liability, and protection of 4 transferee (a) A transfer or obligation is not voidable 5 6 under section 4 against a person who took in good faith 7 and for a reasonably equivalent value or against any subsequent transferee or oblique. 9 (b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a 10 creditor under section 6 the creditor may recover 11 12 judgment for the value of the asset transferred, as 13 adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, 14 whichever is less. The judgment may be entered against: 15 (1) The first transferee of the asset or the person 16 17 for whose benefit the transfer was made; or 18 (2) Any subsequent transferee other than a good-faith 19 transferee or oblique who took for value or from any 20 subsequent transferee or oblique. (c) If the judgment under subsection (b) of this 21 section is based upon the value of the asset 22 23 transferred, the judgment must be for an amount equal to 24 the value of the asset at the time of the transfer, subject to adjustment as the equities may require. 25 (d) Notwithstanding voidability of a transfer or 26

1	an obligation under this chapter, a good-faith
2	transferee or obligee is entitled, to the extent of the
3	value given the debtor for the transfer or obligation,
4	<u>to:</u>
5	(1) A lien on or a right to retain any interest in the
6	asset transferred;
7	(2) Enforcement of any obligation incurred; or
8	(3) A reduction in the amount of the liability on the
9	judgment.
10	(e) A transfer is not voidable under Section 4(a)
11	or Section 5 if the transfer results from:
12	(1) Termination of a lease upon default by the debtor
13	when the termination is pursuant to the lease and
14	applicable law; or
15	(2) Enforcement of a security interest in compliance
16	with this title, or enforcement of a real property
17	security interest through a mortgage or deed of trust in
18	compliance with applicable state law.
19	(f) A transfer is not voidable under section
20	<u>5(b):</u>
21	(1) To the extent the insider gave new value to or for
22	the benefit of the debtor after the transfer was made
23	unless the new value was secured by a valid lien;
24	(2) If made in the ordinary course of business or
25	financial affairs of the debtor and the insider; or
26	(3) If made pursuant to a good-faith effort to

1	rehabilitate the debtor and the transfer secured present
2	value given for that purpose as well as an antecedent
3	debt of the debtor."
4	Section 11. Title 33 of the Code of the Federated States of
5	Micronesia, as amended by Public Law No. 14-34, is hereby further
6	amended by inserting a new section 1110, to read as follows:
7	"Section 1110. Extinguishment of cause of action.
8	A cause of action with respect to a fraudulent transfer
9	or obligation under this chapter is extinguished unless
LO	action is brought:
L1	(a) Under section 4(a)(1), within four years
L2	after the transfer was made or the obligation was
L3	incurred or, if later, within one year after the
L4	transfer or obligation was or could reasonably have been
L5	discovered by the claimant;
L6	(b) Under section 4(a)(2) or section 5(a), within
L7	four years after the transfer was made or the obligation
L8	was incurred; or
L9	(c) Under section 5(b), within one year after the
20	transfer was made or the obligation was incurred."
21	Section 12. This act shall become law upon approval by the
22	President of the Federated States of Micronesia or upon its
23	becoming law without such approval.
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25	Date: 9/12/12 Introduced by: /s/ Florencio S. Harper
26	Florencio S. Harper

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