

R811

A BILL FOR AN ACT

To amend certain sections of Public Law No. 1-94 to make the language of the entire law consistent with the provisions of section 201 of that law, as amended by Public Law No. 1-154, and for other purposes.

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

1 Section 1. Section 102 of Public Law No. 1-94, as amended by
2 Public Law No. 1-154, is hereby amended to read as follows:

3 "Section 102. Definitions. As used in this act, unless it
4 is otherwise provided or the context requires a different
5 construction, application, or meaning:

6 (1) "Bank" means a stock or mutual corporation or
7 unincorporated association with sufficient capital, authorized
8 by law to receive deposits of money or securities, to open
9 credits, checking accounts, and savings accounts, to make
10 loans, and in general to engage in all kinds of banking
11 transactions, but does not mean a national banking association
12 established by the Federated States of Micronesia. "Bank"
13 includes a savings and loan association but does not include a
14 credit union.

15 (2) "Banking Board" means the board established pursuant
16 to Section 201 of this act.

17 (3) "Branch" means an office of a bank at which deposits
18 are received or checks paid or money lent.

19 (4) "Director" means the Director of Finance of the
20 Federated States of Micronesia.

21 (4)(b) "Demand Deposit" means any deposit which is repayable
22 by its terms not more than 3 days after the time it is made.

23 (5)(b) "Deposits" means money or other property transferred
24 or assigned to any person pursuant to an agreement, expressed
25 or implied, that the person shall repay such moneys upon demand

1 (whether in person or by written order) or after a fixed or
2 determinable period of time; PROVIDED, HOWEVER, that money
3 loaned to a bank which is to be repaid not sooner than five
4 years from the date of the loan, and pursuant to a loan
5 agreement under which the obligation to repay is subordinate
6 to the rights of depositors, shall not be deemed to be a
7 deposit; and PROVIDED FURTHER, that money transferred to a
8 credit union as a purchase of its shares shall not be deemed
9 to be a deposit.

10 (6) (7) "Domestic bank" means a bank organized under the
11 provisions of Chapter 3 of this act.

12 (7) (8) "Foreign bank" means a corporation or other
13 financial institution organized for the purpose of engaging
14 in the banking business under the laws of the United States
15 or of a territory or state of the United States, or of a
16 foreign country, operating a bank in its home territory, state
17 or country.

18 (8) (9) "Legal reserve" means the sum which every domestic
19 bank and foreign bank shall at all times have available for
20 the payment of their deposit liabilities pursuant to the
21 provisions of this act.

22 (9) (10) "Paid in capital, surplus, and undistributed
23 profits" means, in the case of a foreign bank, the aggregate
24 paid in capital, surplus, and undistributed profits of such
25 bank and not merely that allocated to, located in, or arising

1 out of its operations in the Federated States of Micronesia.

2 (10) (11) "Person" includes individuals, corporations,
3 partnerships and any other business entity.

4 (11) (12) "Public Auditor" means the Public Auditor
5 appointed by the President of the Federated States of Micronesia
6 with the advice and consent of the Congress pursuant to the
7 Constitution.

8 (12) (13) "Registrar of Corporations" means the Registrar
9 of Corporations of the National Government of the Federated
10 States of Micronesia.

11 (13) (14) "Related Person", with respect to any person,
12 means his spouse, child, parents, brothers or sisters, or any
13 partnership, corporation or firm in which he owns more than
14 a 10 percent interest."

15 Section 2. Section 202 of Public Law No. 1-94 is hereby amended
16 to read as follows:

17 "Section 202. Powers. The Banking Board and the ~~Director~~
18 Chairman shall have the powers conferred upon them by this
19 act."

20 Section 3. Section 204 of Public Law No. 1-94 is hereby amended
21 to read as follows:

22 "Section 204. Services of Public Auditor and Others. The
23 Banking Board and the ~~Director~~ Chairman shall be entitled to
24 utilize the services of the Public Auditor and such independent
25 accountants, lawyers and other experts as they may select in

K40

1 carrying out their powers and duties under this act. The
 2 President of the Federated States of Micronesia shall provide
 3 such administrative support and staff as may be needed to
 4 conduct the business of the Banking Board."

5 Section 4. Section 301 of Public Law No. 1-94 is hereby amended
 6 to read as follows:

7 "Section 301. Incorporation.

8 (1) Any five or more persons of sufficient legal
 9 capacity may organize a domestic bank, but for said purpose
 10 they shall first apply in writing for a permit from the
 11 Banking Board. Said application shall set forth and prove
 12 the need of the services of a banking institution in the
 13 locality wherein the bank is sought to be established, and
 14 that the services rendered by other banking institutions do
 15 not answer the needs of said locality.

16 (2) It shall be the duty of the Ditétét Chairman,
 17 immediately after the Banking Board receives an application
 18 for a permit, to make whatever investigations and hold such
 19 hearings as he deems may be necessary as to:

20 (a) the banking and commercial ability and
 21 experience of the applicants;

22 (b) whether such ability and experience are
 23 sufficient to warrant the efficient functioning and operation
 24 of the bank;

25 (c) whether local need justifies the application;

1 (d) the character and repute, as well as the
2 banking and commercial experience of the prospective directors
3 or officers who are to conduct the business of said bank;

4 (e) whether the bank shall be of benefit to the
5 general public; and

6 (f) the capital which the bank has available for
7 its operations.

8 (3) The Banking Board may issue the permit applied for
9 if, in its judgment, the results of the investigations are
10 satisfactory. Any permit may be granted subject to such
11 conditions as the Banking Board, in its discretion, deems
12 necessary to protect the interests of the people of the
13 Federated States of Micronesia.

14 (4) The articles of incorporation must be subscribed by
15 each of the incorporators and duly sworn to before a notary
16 public. They shall specifically state:

17 (a) the name by which such bank is to be known;

18 (b) the state where its main office is to be
19 established, which shall be its legal domicile;

20 (c) the amount of the authorized capital stock,
21 the number of shares into which the same is divided, and if
22 they have a par value, the par value of each share;

23 (d) the term of duration of the bank;

24 (e) the transactions to which the capital of the bank
25 is to be preferably devoted;

1 (f) the time and manner of calling and holding
2 regular meetings of stockholders, and the reasons and circumstances
3 for, and manner of, calling and holding special meetings;

4 (g) the manner of constituting a quorum at the
5 regular and special meetings of the stockholders;

6 (h) the names and places of residence of the
7 incorporators and the number of shares subscribed by each;

8 (i) the number of directors of the bank, which shall
9 not be less than five, and not less than two-thirds of the
10 total number of whom shall be citizens of the Federated States
11 of Micronesia and shall have resided in the Federated States of
12 Micronesia for at least one year prior to the date of the
13 application; the manner of their election, their terms of
14 office, and the number necessary to constitute a quorum; and

15 (j) any other articles which the incorporators may
16 deem it advisable to insert for the regulation of the business
17 and the conduct of the affairs of the bank; ~~provided~~ PROVIDED,
18 that such articles shall not be in conflict with this act, or
19 with any other laws of the Federated States of Micronesia."

20 Section 5. Section 303 of Public Law No. 1-94 is hereby amended to
21 read as follows:

22 "Section 303. Commencement of business.

23 (1) Upon the issuance by the Registrar of Corporations of
24 a certificate of incorporation, as provided in Section 302 of
25 this Chapter, the Registrar of Corporations shall so notify

1 the ~~Director~~ Chairman and at the same time shall transmit to
2 the ~~Director~~ Chairman a duplicate copy of the articles of
3 incorporation.

4 (2) When the duplicate copy is received by the ~~Director~~
5 Chairman, he shall notify the corporation, and the corporation
6 shall then file with the ~~Director~~ Chairman a statement of all
7 the facts necessary to enable him to determine whether the bank
8 has in fact complied with all the requirements of law and is
9 lawfully entitled to commence business, such statement to be
10 sworn to by a majority of the directors and by the president
11 or the manager of the bank. Upon receipt of such statement by
12 the ~~Director~~ Chairman, he shall examine the condition of the
13 corporation and ascertain specifically the amount of its capital
14 paid in, the names and places of residence of its stockholders,
15 directors, and officers, the amount of the capital stock which
16 each owns in good faith, and, generally, whether such corporation
17 has complied with all the provisions of law required to entitle
18 it to a license to engage in the business of banking.

19 (3) If, upon careful examination of the facts so reported,
20 or of any other relevant facts which may come to his knowledge,
21 the ~~Director~~ Chairman is satisfied that such bank has complied
22 with all the applicable provisions of this act and other laws
23 required to be complied with before a bank shall be authorized to
24 commence the business of banking, he shall issue an initial
25 license to engage in the banking business, valid until it must

1 be renewed according to Section 501 of this act. The ~~Direktor~~
2 Chairman may withhold from a bank the license authorizing it to
3 commence business whenever he is satisfied that the shareholders
4 have organized said bank for any other than the legitimate
5 objects determined by this act. The expenses incurred by the
6 ~~Direktor~~ Chairman in connection with such investigations shall
7 be paid by the corporation in conformity with the regulations
8 the Banking Board may promulgate for that purpose."

9 Section 6. Section 402 of Public Law No. 1-94 is hereby amended
10 to read as follows:

11 "Section 402. Investigation by ~~Direktor~~ Chairman; permit required.

12 (1) No foreign bank may open any branch or office or change
13 the location of any branch or office in the Federated States of
14 Micronesia without a permit to do so from the Banking Board.
15 An application to the Banking Board for such permit shall
16 state the benefit to the public expected to result from the
17 granting of the permit applied for. The Banking Board, upon
18 receipt of such application, may require the submittal of such
19 additional information as may be necessary in order for it to
20 make the necessary investigations.

21 (2) It shall be the duty of the ~~Direktor~~ Chairman,
22 immediately after the Banking Board receives an application
23 for a permit, to make whatever investigations may be necessary
24 as to:

25 (a) the overall financial condition of the applicant;

1 (b) whether or not granting the application would
2 reasonably be apt to result in an over-extension of applicant's
3 resources or facilities;

4 (c) the character and repute, as well as the banking
5 and commercial experience, of applicant and the bank's directors
6 and executive officers;

7 (d) whether the bank shall be of benefit to the
8 general public; and

9 (e) the investment which the bank has made or has
10 available for its operations in the Federated States of
11 Micronesia.

12 (3) The Banking Board may issue the permit applied for
13 if, in its judgment, the results of the investigations are
14 satisfactory; ~~provided~~ PROVIDED, that the decision of the
15 Banking Board shall be final; and provided further, that
16 all expenses incurred by the Banking Board in connection with
17 such investigations shall be paid by the applicant in
18 conformity with regulations which the Banking Board may make.

19 (4) Upon the issuance of a permit to an applicant, the
20 Banking Board shall forthwith transmit a certified copy thereof
21 to the Registrar of Corporations who shall file it along with
22 such other documents submitted to him."

23 Section 7. Section 403 of Public Law No. 1-94 is hereby amended to
24 read as follows:

25 "Section 403. Commencement of business.

1 (1) When the permit of the Banking Board is received by
2 the foreign bank, as provided in Section 402, it shall proceed
3 to comply with all applicable provisions of law so as to place
4 it in readiness to commence operations upon issuance to it of
5 the license provided by Section 501 of this act. When such
6 foreign bank is in such position of readiness, it shall notify
7 the ~~Direktor~~ Chairman by means of a statement of all facts
8 necessary to enable the ~~Direktor~~ Chairman to determine whether
9 such foreign bank has, in fact, complied with all the requirements
10 of law and is lawfully entitled to commence operations, such
11 statement to be sworn to by a majority of the directors or by
12 the president or manager of such foreign bank.

13 (2) Upon receipt of such statement, the ~~Direktor~~ Chairman
14 shall make such investigations as may be necessary to assure
15 himself that the foreign bank has, in fact, complied with all
16 the provisions of law to entitle it to a license to engage in
17 the business of banking.

18 (3) If, upon a careful examination of the facts so
19 reported or any other relevant facts which may come to his
20 knowledge, he is satisfied that the foreign bank has complied
21 with all of the provisions of this act required before a
22 foreign bank shall be authorized to open or operate a branch
23 or office in the Federated States of Micronesia, the ~~Direktor~~
24 Chairman shall issue an initial license to engage in the
25 banking business valid until it must be renewed according to

1 Section 501 of this act. The ~~Director~~ Chairman may withhold
2 from a foreign bank the license authorizing it to commence
3 Operations whenever he is satisfied that the foreign bank seeks
4 to operate in the Federated States of Micronesia for any
5 other than the legitimate objects determined by this act.
6 The expense incurred by the ~~Director~~ Chairman in connection
7 with such investigation shall be paid by the foreign bank
8 in conformity with regulations which the Banking Board may
9 make and issue for that purpose.

10 (4) Before commencing business in the Federated
11 States of Micronesia, a foreign bank shall file with the
12 Banking Board an appointment of the ~~Director~~ Chairman as its
13 agent upon whom all process in any action or proceeding
14 against it arising out of the operations or activities of
15 its office or offices in the Federated States of Micronesia
16 may be served, which appointment shall be by its terms
17 perpetual and irrevocable."

18 Section 8. Section 602 of Public Law No. 1-94 is hereby amended
19 to read as follows:

20 "Section 602. Examination of banks.

21 (1) The ~~Director~~ Chairman may examine, or cause to be
22 examined, every domestic or foreign bank for the purpose of
23 ascertaining whether it has complied with this act and
24 other applicable laws and for such other purposes and such
25 other matters as the Banking Board may prescribe. The

1 ~~Director~~ Chairman and every examiner appointed by him may
2 administer an oath to any person whose testimony may be
3 required on the examination of any bank and summon and compel
4 the appearance and attendance of any person for the purpose
5 of the examination.

6 (2) As an examination fee, each bank so examined shall
7 pay the total cost of such examination, and the sum so paid
8 shall be covered into the General Fund of the Federated States
9 of Micronesia."

10 Section 9. Section 603 of Public Law No. 1-94 is hereby amended to
11 read as follows:

12 "Section 603. Reports of banks, penalties.

13 (1) Every domestic or foreign bank shall make at least
14 one report of its condition each year to the ~~Director~~ Chairman
15 within 90 days after the close of the bank's fiscal year, and
16 according to forms to be prescribed by him, verified by the
17 oath of the chief executive officer or chief financial
18 officer and attesting officer, certifying and subscribing
19 under oath that each of them has personal knowledge of the
20 facts stated therein and that the same are true. Such reports
21 shall exhibit in detail and under appropriate heads the total
22 resources and liabilities of the bank, and, in the case of a
23 foreign bank, shall show separately the resources, liabilities
24 and operations in the Federated States of Micronesia. The
25 ~~Director~~ Chairman shall have the right to require that any

1 such reports be audited at the banks expense by independent
2 accountants approved by the Director Chairman.

3 (2) The Director Chairman may also call for special
4 reports from any domestic or foreign bank whenever in his
5 judgment the same are necessary in order to obtain full
6 knowledge of its condition. During the first five years of
7 operations in the Federated States of Micronesia by any
8 domestic bank, the Director Chairman shall call for special
9 reports of its condition not less frequently than each
10 calendar quarter.

11 (3) Whoever willfully makes any false entry in any
12 book, report or statement of a bank or certifies and
13 subscribes to any report required by this section which is
14 false in any material respect shall be fined not more than
15 \$1,000 or imprisoned for not more than one year, or both.

16 (4) Any bank which fails to make, transmit, and publish
17 any report required under this section shall be subject to a
18 fine of \$100 per day for each day's delay after the period
19 specified in this section."

20 Section 10. Section 604 of Public Law No. 1-94 is hereby amended
21 to read as follows:

22 "Section 604. Alternative Examination and Reports. The
23 Director Chairman may accept, in lieu of the examination
24 required or authorized by Section 602 of this act, the most
25 current examination made by the Federal Deposit Insurance

1 Corporation, the Board of Governors of the Federal Reserve
2 System, or a Federal Reserve Bank or in case of a foreign bank
3 not examined by such agencies, an examination acceptable by
4 the appropriate government agency in the home jurisdiction
5 of that bank. The ~~Vice~~ Chairman may accept, in lieu of
6 any report of condition which may be required by Section 603,
7 a report of condition obtained by said Corporation, Board
8 of Governors, Federal Reserve Bank, or government agency."

9 Section 11. Section 605 of Public Law No. 1-94 is hereby amended
10 to read as follows:

11 "Section 605. Legal reserve.

12 (1) (a) Subject to such additional requirements as the
13 Banking Board may impose, every domestic bank shall maintain
14 a legal reserve which shall not be less than 20 percent of its
15 demand deposits and not less than 5 percent of its other
16 deposits. Said reserve shall consist of United States
17 currency or demand deposits in the name of such bank
18 deposited in another bank approved for such purpose by the
19 Banking Board.

20 (b) The Banking Board may increase or decrease
21 the minimum legal reserve for demand deposits established
22 in this section up to not more than 30 percent or down to
23 not less than 15 percent of the total demand deposits of a
24 domestic bank, when in its judgment the circumstances so
25 require it; but the order increasing or decreasing the minimum

1 legal reserve shall not be effective until 30 days after it
2 is entered; ~~provided~~ PROVIDED, that this time might be
3 extended by the Banking Board.

4 (2) Every foreign bank shall maintain, with respect to
5 its deposits in the Federated States of Micronesia, a legal
6 reserve which shall not be less than, and which shall be
7 subject to the same condition as, the legal reserve
8 requirement imposed in the jurisdiction of its place of
9 incorporation on deposits of the foreign bank in that
10 jurisdiction.

11 (3) The ~~Director~~ Chairman shall notify any domestic or
12 foreign bank whose legal reserve is less than that required
13 by this act of its obligations to make up the full amount.
14 If such bank fails to do so within a period of 30 days, it
15 may be declared in liquidation by the Banking Board. In such
16 event, the ~~Director~~ Chairman shall apply to the Trial Division
17 of the Supreme Court of the Federated States of Micronesia for
18 the appointment of a receiver to take charge of and wind up
19 the affairs of such bank and thereafter the matter shall be
20 governed by the provisions of Section 801 (2)."

21 Section 12. Section 608 of Public Law No. 1-94 is hereby amended
22 to read as follows:

23 "Section 608. Insurance.

24 (1) At such time as it becomes available under the laws
25 of the United States, all domestic banks and foreign banks,

1 as a condition to operating an office or branch in the
2 Federated States of Micronesia, shall secure their depositors
3 by deposit insurance of the Federal Deposit Insurance
4 Corporation or the Federal Savings and Loan Insurance Corporation
5 of the United States.

6 (2) All domestic and foreign banks operating an office
7 or branch in the Federated States of Micronesia shall provide
8 themselves with protection and indemnity against burglary,
9 embezzlement and other similar insurable loss; and if a
10 domestic or foreign bank refuses to comply with this requirement,
11 the ~~Director~~ Chairman shall have the right to make arrangements
12 to furnish such protection and indemnity, charging the cost
13 thereof to said bank."

14 Section 13. Section 610 of Public Law No. 1-94 is hereby amended
15 to read as follows:

16 "Section 610. Filing fees for banks.

17 (1) Every domestic bank or foreign bank in the Federated
18 States of Micronesia shall, upon filing its articles of
19 incorporation in the Office of the Registrar of Corporations,
20 pay a filing fee of \$50.

21 (2) Every domestic or foreign bank desiring to file
22 in the Office of the Registrar of Corporations articles
23 amendatory or supplementary or a certificate of increase or
24 decrease of capital stock shall pay a fee of \$25.

25 (3) The fee for furnishing a certified copy of any

1 of the documents referred to in the preceding subsections .
2 of this section shall be fifty cents per folio, but not less
3 than \$5.

4 (4) All fees required under the provisions of this act
5 shall be paid to the Office of the Registrar of Corporations
6 and shall be accounted for and covered into the General Fund
7 of the Federated States of Micronesia.

8 (5) All fines under this act shall be paid to the
9 ~~Director~~ Chairman and shall be accounted for and covered into
10 the General Fund of the Federated States of Micronesia."

11 Section 14. Chapter 7 of Public Law No. 1-94 is hereby amended
12 to read as follows:

13 "CHAPTER 7. PENALTIES

14 Section 701. Penalties. For any violation of this act or
15 the regulations prescribed pursuant to Subsection (2) of
16 Section 601, the delinquent domestic or foreign bank shall
17 be subject to a fine of not more than \$1,000 for each day
18 that the violation continues and, in the case of a material
19 violation, to the cancellation of its license. Such fine
20 or cancellation shall be imposed by the Banking Board only
21 with the approval of the President of the Federated States
22 of Micronesia and after notice to the delinquent bank and a
23 hearing concerning the alleged violation. In any such case,
24 the ~~Director~~ Chairman shall send written notice of his action
25 to the bank affected as quickly as circumstances will allow,

1 and if the cancellation of the bank's license has been decided
2 upon, shall transmit a written order to that effect to the
3 Registrar of Corporations for appropriate action."

4 Section 15. Section 801 of Public Law No. 1-94 is hereby amended
5 to read as follows:

6 "Section 801. Receivership of bank or foreign bank.

7 (1) If, in consequence of an examination or report made
8 by an examiner, or otherwise, the Banking Board should have
9 reason to believe that a bank or foreign bank is not in sound
10 financial condition to continue doing business, or that its
11 affairs are being conducted in such a manner that the public
12 or the persons or entities having securities or funds under
13 its custody are in danger of being defrauded, or if any such
14 bank shall violate its charter or any law relative thereto, or
15 this act in any material respect, or if it becomes insolvent,
16 the ~~Director~~ Chairman shall apply to the Trial Division of the
17 Supreme Court of the Federated States of Micronesia, or to the
18 Trial Division of the High Court of the Trust Territory of the
19 Pacific Islands if the Supreme Court has not commenced its
20 functions for the appointment of a receiver to take charge of
21 and wind up the affairs of such bank.

22 (2) If the Court, after hearing all parties concerned,
23 determines that the facts alleged by the ~~Director~~ Chairman
24 are supported by the evidence, it shall appoint a receiver.
25 Upon his appointment the receiver shall, under the direction

1 of the ~~Director~~ Chairman, take possession of the assets and
 2 liabilities, books, records, papers, and files of every
 3 description belonging to the bank, and collect all loans, fees,
 4 and claims of the bank, and see to the payment of its
 5 obligations and debts, and to the necessary expenses of
 6 receivership. He shall proceed to liquidate the affairs of
 7 the bank as soon as possible, and to this end may sell the
 8 personal and real property and other assets of the bank, but
 9 subject to the approval of the ~~Director~~ Chairman. The receiver
 10 shall continue to perform his duties in the manner prescribed
 11 herein until the bank or foreign bank is fully liquidated."

12 Section 16. This act shall become law upon approval by the
 13 President of the Federated States of Micronesia or upon its becoming
 14 law without such approval.

15
 16 Date: 6/2/81

Introduced by: Elias H. Thomas
 Elias H. Thomas

17
 18
 19
 20
 21
 22
 23
 24
 25