

A BILL FOR AN ACT

To further amend title 34 of the Code of the Federated States of Micronesia, as amended, by amending section 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and 113 to conform the language to modern Code usage, to clarify the duties and responsibilities of the Secretary of the Department of Justice, and for other purposes.

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

1 Section 1. Section 101 of title 34 of the Code of the
2 Federated States of Micronesia is hereby amended to read as
3 follows:

4 "Section 101. Short title.

5 This chapter may be cited as the 'Consumer
6 Protection Act'."

7 Section 2. Section 102 of title 34 of the Code of the
8 Federated States of Micronesia is hereby amended to read as
9 follows:

10 "Section 102. Definitions.

11 (1) 'Person' means natural persons, corporations,
12 trusts, partnerships, incorporated or
13 unincorporated associations, and any other legal
14 entity.

15 (2) 'Secretary' means the Secretary of the
16 Department of Justice or his designee.

17 (~~2~~)3) 'Trade' and 'commerce' mean the advertising,
18 offering for sale, sale, or distribution of any
19 services and any property, tangible or intangible,

1 real, personal, or mixed, and any other article,
2 commodity, or thing of value wherever situated, and
3 shall include any trade or commerce directly or
4 indirectly affecting the people of the [~~Trust~~
5 ~~Territory~~] Federated States of Micronesia."

6 Section 3. Section 103 of title 34 of the Code of the
7 Federated States of Micronesia is hereby amended to read as
8 follows:

9 "Section 103. Unlawful acts or practices.

10 The following unfair methods of competition and
11 unfair or deceptive acts or practices in the
12 conduct of any trade or commerce are hereby
13 declared to be unlawful:

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

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

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

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

25 (5) representing that goods or services have
26 sponsorship, approval, characteristics,

1 ingredients, uses, benefits, or quantities that
2 they do not have or that a person has a
3 sponsorship, approval, status, affiliation, or
4 connection that he does not have;

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

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

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

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

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

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

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

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

3 Section 4. Section 104 of title 34 of the Code of the
4 Federated States of Micronesia is hereby amended to read as
5 follows:

6 "Section 104. Exemptions.

7 Nothing in this chapter shall apply to:

8 (1) actions or transactions carried out by the
9 ~~[Trust Territory]~~ Government of the Federated
10 States of Micronesia, any branch thereof, or any
11 other governmental agency; or

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

22 Section 5. Section 105 of title 34 of the Code of the
23 Federated States of Micronesia is hereby amended to read as
24 follows:

25 "Section 105. Restraint of prohibited acts.

1 (1) Whenever the [~~Attorney General~~] Secretary has
2 reason to believe that any person is using, has
3 used, or is about to use any method, act, or
4 practice declared in section 103 of this chapter to
5 be unlawful, and that proceedings would be in the
6 public interest, he may bring a civil action in the
7 name of the [~~Trust Territory~~] Federated States of
8 Micronesia against such person to restrain by
9 temporary or permanent injunction the use of such
10 method, act, or practice.

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

14 (3) The action [~~may~~] shall be brought in the
15 [~~High Court~~] Supreme Court of the Federated States
16 of Micronesia in the [~~district~~] state in which such
17 person resides or has his principal place of
18 business, provided, however that any action
19 involving the transfer or possession of real
20 property shall be brought in the State Court where
21 such property is located.

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

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

7 Section 6. Section 106 of title 34 of the Code of the
8 Federated States of Micronesia is hereby amended to read as
9 follows:

10 "Section 106. Private and class actions.

11 (1) Any person who purchases or leases goods or
12 services primarily for personal, family, or
13 household purposes and thereby suffers any
14 ascertainable loss of money or property, real or
15 personal, as a result of the use or employment by
16 another person of a method, act, or practice
17 declared unlawful by section 103 of this chapter,
18 may bring an action under the rules of civil
19 procedure in the [~~High Court~~] Supreme Court of the
20 Federated States of Micronesia in the [~~district~~]
21 state in which the seller or lessor resides or has
22 his principal place of business or is doing
23 business, to recover actual damages or \$[~~100~~] 500,
24 whichever is greater, provided, however that any
25 action involving the transfer or possession of real
26 property shall be brought in the State Court where

1 such property is located. The presiding Court may,
2 in its discretion, award punitive damages and may
3 provide such equitable relief as it deems necessary
4 or proper.

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

17 (3) Upon commencement of any action brought under
18 subsection (1) of this section, the Clerk of Courts
19 shall mail a copy of the complaint or other initial
20 pleading to the [~~Attorney General~~] Secretary and,
21 upon entry of any judgment or decree in the action,
22 shall mail a copy of such judgment or decree to the
23 [~~Attorney General~~] Secretary.

24 (4) In any action brought by a person under this
25 section, the presiding Court may award, in addition

1 to the relief provided in this section, reasonable
2 attorney's fees and costs.

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

10 Section 7. Section 107 of title 34 of the Code of the
11 Federated States of Micronesia is hereby amended to read as
12 follows:

13 "Section 107. Nonnegotiability of consumer paper.

14 (1) If any contract for sale or lease of consumer
15 goods or services on credit entered into between a
16 retail seller and a retail buyer requires or
17 involves the execution of a promissory note or
18 instrument or other evidence of indebtedness of the
19 buyer, such note, instrument, or evidence of
20 indebtedness shall have printed on the face thereof
21 the words 'consumer paper,' and such note,
22 instrument, or evidence of indebtedness with the
23 words 'consumer paper' printed thereon shall not be
24 a negotiable instrument.

25 (2) Notwithstanding the absence of such notice on a
26 note, instrument, or evidence of indebtedness

1 arising out of a consumer credit sale or consumer
2 lease as described in this section, an assignee of
3 the rights of the seller or lessor is subject to
4 all claims and defenses of the buyer or lessee
5 against the seller or lessor arising out of the
6 sale or lease. Any agreement to the contrary shall
7 be of no force or effect in limiting the rights of
8 a consumer under this section.

9 (3) The assignee's liability under this section
10 may not exceed the amount owing to the assignee at
11 the time the claim or defense is asserted against
12 the assignee.

13 (4) Failure to imprint the words 'consumer paper'
14 on such note, instrument, or evidence of
15 indebtedness shall subject the seller or other
16 responsible person to appropriate civil and
17 criminal sanctions as provided in this chapter."

18 Section 8. Section 108 of title 34 of the Code of the
19 Federated States of Micronesia is hereby amended to read as
20 follows:

21 "Section 108. Assurances of voluntary compliance.

22 (1) In the administration of this chapter, the
23 [~~Attorney General~~] Secretary may accept an
24 assurance of voluntary compliance with respect to
25 any method, act, or practice deemed to be violative
26 of the chapter from any person who has engaged in

1 or is about to engage in such method, act, or
2 practice.

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

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

15 Section 9. Section 109 of title 34 of the Code of the
16 Federated States of Micronesia is hereby amended to read as
17 follows:

18 "Section 109. Investigation authorized.

19 (1) When it appears to the [~~Attorney General~~]
20 Secretary that a person has engaged in, is engaging
21 in, or is about to engage in any act or practice
22 declared to be unlawful by this chapter, or when he
23 believes it to be in the public interest that an
24 investigation should be made to ascertain whether a
25 person in fact has engaged in, is engaging in, or
26 is about to engage in such act or practice, he may

1 execute in writing and cause to be served upon any
2 person who is believed to have information,
3 documentary material, or physical evidence relevant
4 to the alleged or suspected violation, an
5 investigative demand requiring such person to
6 furnish, under oath or otherwise, a report in
7 writing setting forth the relevant facts and
8 circumstances of which he has knowledge, or to
9 appear and testify, or to produce relevant
10 documentary material or physical evidence for
11 examination, at such reasonable time and place as
12 may be stated in the investigative demand.

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

23 Section 10. Section 110 of title 34 of the Code of the
24 Federated States of Micronesia is hereby amended to read as
25 follows:

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

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

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

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

1 Section 11. Section 111 of title 34 of the Code of the
2 Federated States of Micronesia is hereby amended to read as
3 follows:

4 "Section 111. Service of notices, demands, or
5 subpoenas.

6 Service of any notice, demand, or subpoena under
7 this chapter shall be made personally within the
8 [~~Trust Territory~~] Federated States of Micronesia,
9 but if such cannot be obtained, substituted service
10 therefor may be made in the following manner:

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

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

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

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

1 Section 12. Section 112 of title 34 of the Code of the
2 Federated States of Micronesia is hereby amended to read as
3 follows:

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

6 (1) If any person fails or refuses to file any
7 statement or report, to or obey any subpoena or
8 investigative demand issued by the [~~Attorney~~
9 ~~General~~] Secretary, the [~~Attorney General~~]
10 Secretary may, after notice, apply to the [~~High~~
11 ~~Court~~] Supreme Court of the Federated States of
12 Micronesia in the [~~district~~] state in which the
13 person resides or has his principal place of
14 business, and, after hearing thereon, request an
15 order:

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

21 (b) vacating, annulling, or suspending the
22 corporate charter of a corporation created by or
23 under the laws of the [~~Trust Territory~~] Federated
24 States of Micronesia, or revoking or suspending the
25 business permit in the [~~Trust Territory~~] Federated
26 States of Micronesia of a foreign corporation, or

1 revoking or suspending any other licenses, permits,
2 or certificates issued pursuant to law to such
3 person which are used to further the allegedly
4 unlawful practice; and

5 (c) granting such other relief as may be
6 required, until the person files the statement or
7 report, or obeys the subpoena or investigative
8 demand.

9 (2) ~~[Any]~~ ~~[d]~~ Disobedience of any final order
10 entered under this section by any Court shall be
11 punished as a contempt thereof."

12 Section 13. Section 113 of title 34 of the Code of the
13 Federated States of Micronesia is hereby amended to read as
14 follows:

15 "Section 113. Civil and criminal penalties.

16 (1) Any person who violates the terms of an
17 injunction issued under section 105 of this chapter
18 shall forfeit and pay to the ~~[Trust Territory]~~
19 Federated States of Micronesia a civil penalty of
20 not more than \$10,000 per violation. For the
21 purposes of this section, the ~~[High]~~ Court issuing
22 an injunction shall retain jurisdiction, and the
23 cause shall be continued, and in such cases the
24 ~~[Attorney General]~~ Secretary, acting in the name of
25 the ~~[Trust Territory]~~ Federated States of

1 Micronesia, may petition for recovery of civil
2 penalties.

3 (2) In any action brought under section 105 of
4 this chapter, if the presiding Court finds that a
5 person is willfully using or has willfully used a
6 method, act, or practice declared unlawful by
7 section 103 of this chapter, the [~~Attorney General~~]
8 Secretary, upon petition to the Court, may recover,
9 on behalf of the [~~Trust Territory~~] Federated States
10 of Micronesia, a civil penalty of not exceeding
11 \$1,000 per violation.

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

17 Section 14. Section 114 of title 34 of the Code of the
18 Federated States of Micronesia is hereby amended to read as
19 follows:

20 "Section 114. Forfeiture of corporate franchise.
21 Upon petition by the [~~Attorney General~~] Secretary,
22 the [~~High Court~~] Supreme Court of the Federated
23 States of Micronesia in the [~~district~~] state in
24 which the alleged violator has its principal place
25 of business may, in its discretion, order the
26 dissolution or suspension or forfeiture of

1 franchise of any corporation which violates the
2 terms of any injunction issued under section 105 of
3 this chapter."

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

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8 Date: 1/10/03

Introduced by: /s/ Peter M. Christian
Peter M. Christian

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