A BILL FOR AN ACT

To further amend title 33 of the Code of the Federated States of Micronesia, as amended, by repealing sections 921 through 933 in their entirety, by renaming Chapter 9 "Real Property Security Investments," by enacting a new chapter 10 named "The Secured Transactions Act," by enacting new sections 1001 through 1072 setting forth a law of secured transactions; to further amend title 53, as amended, by amending section 607 to make social security liens subject to the Secured Transactions Act; to further amend title 54, as amended, by amending sections 135, 152, 224 and 226 to make tax liens subject to the Secured Transactions Act; and for other purposes.

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

1. Section 1. Sections 921 through 933 of Title 33 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-136, are hereby repealed in their entirety.

2. Section 2. Chapter 9 of Title 33 of the Code of the Federated States of Micronesia is hereby renamed "Real Property Security Instruments."

3. Section 3. Section 901 of Title 33 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 901. Short title. This chapter is known and may be cited as the "Real Property Security Instruments Act of 1977."

4. Section 4. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Chapter 10 entitled "The Secured Transactions Act."

5. Section 5. Title 33 of the Code of the Federated States of Micronesia is hereby amended by...
Micronesia is hereby amended by enacting a new subchapter entitled "General Provisions" of new Chapter 10 entitled "The Secured Transactions Act."

Section 6. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1001 to read as follows:

"Section 1001. Purpose; construction; authority; title.

(1) The purpose of this Act is to promote commerce through a unified set of rules on personal property as security, consignments, the sale and assignment of accounts and chattel paper, and on leasing of goods. This Act shall be liberally construed to effectuate its purpose.

(2) If there is a conflict between a provision of this Act and a provision of any other law enacted by the Congress of the Federated States of Micronesia, this Act shall govern unless the other law specifically cites or amends the conflicting provision of this Act.

(3) This Act is adopted pursuant to the power of the Congress to regulate interstate commerce, banking, and bankruptcy under article IX, section 2(g) of the Constitution of the Federated States of Micronesia.

(4) This Act may be cited as ‘The Secured Transactions Act.’"

Section 7. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1002 to read as follows:

"Section 1002. Definitions.

(1) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(2) "Account debtor" means the person who is obligated on an account, chattel paper, or other intangible property.

(3) "Assignee" means a person who takes an assignment.

(4) "Assignment" means the transfer from one person to another, in whole or in part, of any right in an account, chattel paper, document, instrument, or other right to payment.

(5) "Assignor" means the person who makes an assignment.

(6) "Authenticate" means to execute or adopt a name or symbol by any means, with present intent to identify the signing party or to adopt or establish the authenticity of a record. The term does not require a manual signature.

(7) "Buyer in the ordinary course of business" means a person who buys goods from a person in the business of selling goods of that kind, if the buyer buys in good faith and without actual knowledge that the sale
violates the rights of another person in the goods.

(8) "Chattel paper" means a record that creates a debt and a security interest in, or a lease of, goods.

(9) "Collateral" means the property subject to a security interest, and may include personal property, including tangible and intangible property, of any nature, farm products, fixtures, timber to be cut, and minerals to be extracted. The term includes collateral that arises in the future and collateral located in or outside of the Federated States of Micronesia. The term includes goods subject to consignment. The term includes accounts and chattel paper that have been sold, leased goods, and proceeds of collateral.

(10) "Consignment" means a transaction, regardless of the form or terminology used in the agreement, in which a person (the consignor) delivers goods for the purpose of sale to a merchant (the consignee) who deals in goods of that kind under a name other than that of the consignor and who is not an auctioneer. The term excludes transactions involving goods that are consumer goods of the consignor.

(11) "Consumer goods" means goods used primarily for personal, family, or household purposes.

(12) "Debtor" means the person who owes payment or other performance of the secured obligation, whether or
not the person owns or has rights in the collateral, and
includes the seller of accounts or chattel paper, and
the lessee or consignee of goods.

(13) "Department" means the Department of Economic
Affairs of the Federated States of Micronesia.

(14) "Deposit account" means a demand, time, savings,
or similar account maintained with an institution
licensed under any law. The term does not include
investment property or accounts evidenced by chattel
paper or an instrument.

(15) "Document" means a document of title or a receipt,
such as a bill of lading or warehouse receipt, issued by
a person in the business of transporting or storing
goods.

(16) "Equipment" means goods that are not farm
products, inventory, or consumer goods.

(17) "Farm products" means goods of a debtor engaged in
farming, other than standing timber, which are:

(a) crops grown, growing, or to be grown;
(b) aquatic goods produced in aquacultural
operations;
(c) livestock, including the unborn;
(d) supplies used or produced in a farming
operation; or
(e) products of crops or livestock in their
unmanufactured state.

(18) "Filing office" means the secured transactions filing office established in subchapter 4 of this Act.

(19) "Fixture" means goods that are fixed to real property, or are intended to become fixed to real property, in a manner that causes a property right to arise in the goods under the prevailing law. Readily removable factory machines, office machines, and domestic appliances are not fixtures.

(20) "Goods" means all things that are movable when a security interest attaches. The term includes fixtures, timber to be cut and removed for sale, and farm products. The term does not include accounts or chattel paper, money, documents, or instruments.

(21) "Guarantee" means a secondary obligation that consists of an obligation to pay, or an issuer’s obligation to pay under a letter of credit, and that supports the payment on an account, chattel paper, document, instrument, or other intangible property.

(22) "Instrument" means a writing that evidences a right to the payment of money, that is not itself a security agreement or lease, and that is of a type which is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment. The term includes a certificated security.
(23) "Inventory" means goods held for sale or lease, or goods that are raw materials, work in process, or materials used or consumed in a business.

(24) "Investment property" means a security other than a certificated security.

(25) "Lease of goods for a period greater than one year" means:

   (a) a lease of goods for a stated duration of more than one year;

   (b) a lease of goods for an indefinite term;

   (c) a lease of goods for an initial term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for more than one year after the lessee first acquired possession of the goods, but the lease does not become a lease for a term of more than one year until the lessee's possession extends beyond one year; or

   (d) a lease of goods for a term of one year or less where the lease provides that it is renewable for a period that may exceed one year.

(26) "Lessee in the ordinary course of business" means a person who, in good faith and without actual or constructive knowledge that the lease is in violation of the ownership rights or security interest or leasehold
interest of a third party in the goods, leases in the
ordinary course from a person in the business of selling
or leasing goods of that kind.

(27) "Lien holder" means:

(a) a person who obtains a right in a secured
party’s collateral, or a right to seize a secured
party’s collateral, by order of a court or by order of
any authority under prevailing law, or by the authority
of an administrator in an insolvency proceeding; or

(b) any other person who obtains a right in a
secured party’s collateral by operation of law, except a
person with a right of retention.

(28) "Motor vehicle" means the following, when not held
as inventory of a debtor: a motor vehicle, a trailer, an
aircraft, an outboard motor, or a motorized boat.

(29) "Notice" means a record filed or presented for
filing in the filing office. The term includes
amendments, continuation statements, and termination
statements that are filed or presented for filing. An
"initial notice" is the notice to which an amendment,
continuation statement, termination statement, or
correction statement may relate.

(30) "Other intangible property" means any movable
property other than goods, accounts, chattel paper,
documents, instruments, and money.
(31) "Person" means an individual, a corporation whether for profit or not for profit, a joint venture, and all national, state and municipal governments of the Federated States of Micronesia.

(32) "Proceeds" means

(a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(b) whatever is collected on, or distributed with respect to, collateral;

(c) rights arising out of collateral;

(d) to the extent of the value of collateral, claims arising out of the loss or nonconformity of, defects in, or damage to the collateral;

(e) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

"Cash proceeds" means proceeds that are money, checks, funds on deposit in banks, and the like.

(33) "Purchase" means to take collateral as a buyer, a donee, a person receiving security such as a secured party, consignor, lessor, or mortgagee, or by any other voluntary transaction creating an interest in property.

A person who takes by purchase is a "purchaser."
(34) "Purchase money security interest." A security interest is a purchase money security interest to the extent that it is:

(a) taken or retained by the seller of goods to secure all or part of its price; or
(b) taken by a person other than the seller who gives value to enable the debtor to acquire rights in or the use of goods, if such value is in fact so used.

(35) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The term includes a photocopy, facsimile copy, and electronic mail.

(36) "Secondary obligor" means an obligor to the extent that:

(a) the obligor's obligation is secondary; or
(b) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(37) "Secured party" means a lender, seller or other person in whose favor a security interest is created under a security agreement, including a person to whom accounts or chattel paper have been sold, and a lessor of goods. The term includes a consignor of goods.

(38) "Security agreement" means an agreement that
creates or provides for a security interest.

(39) "Security interest" means a property right in collateral that secures performance of an obligation.

(40) "Unless otherwise agreed" means unless the secured party and the debtor agree otherwise.

(41) "Value" A person gives value for rights if the person acquires the rights
(a) in return for a binding commitment to give credit, whether or not drawn upon; or
(b) as security for or satisfaction of a pre-existing claim, in whole or in part; or
(c) by accepting delivery pursuant to a pre-existing contract for purchase; or
(d) in return for anything given in exchange, or for any promise."

Section 8. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1003 to read as follows:

"Section 1003. Scope.
(1) This Act applies to:
(a) all transactions where the effect is to secure an obligation with collateral, including pledge, conditional sale, chattel mortgage, and assignment;
(b) the sale of accounts and chattel paper;
(c) consignments;
(d) the lease of goods for a period greater than one year; and
(e) the interest of a lien holder in collateral.

(2) This Act applies without regard to the form of an agreement or the terminology used in an agreement, and whether ownership of the collateral is held by the secured party or the debtor. The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.

(3) Notwithstanding subsection (1), this Act does not apply to:

(a) the transfer of an interest in real property, except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted;
(b) the transfer of a claim for compensation of an employee;
(c) a sale of accounts or chattel paper as part of a sale of a business out of which they arose;
(d) an assignment of accounts, chattel paper, or instruments for the purpose of collection only;
(e) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(f) the transfer of an interest in a flagged vessel subject to the maritime and admiralty law of the
Federated States of Micronesia;

(g) the transfer of an interest in investment property."

Section 9. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1004 to read as follows:

"Section 1004. Security interest.

(1) Any person may give a security interest in collateral, and any person may take a security interest in collateral.

(2) Notwithstanding subsection (1), no security interest other than a purchase money security interest may be given or taken in consumer goods.

(3) A security interest may not be deemed invalid because the debtor has the right to use, possess, sell, exchange, commingle, or otherwise dispose of the collateral."

Section 10. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1005 to read as follows:

"Section 1005. Secured obligation.

(1) A security interest may secure one or more obligations.

(2) Secured obligations may be described specifically or in general terms.
(3) Secured obligations may be monetary or non-
monetary obligations.

(4) Secured obligations may be governed by foreign 
law.

(5) A security interest may secure future obligations, 
whether mandatory, conditional, or optional.

(6) A security interest may secure pre-existing 
obligations."

Section 11. Title 33 of the Code of the Federated States of 
Micronesia is hereby amended by enacting a new section 1006 to 
read as follows:

"Section 1006. Collateral description.

(1) A description of collateral is sufficient if it 
reasonably identifies what is described.

(2) A description of collateral may be expressed in 
general terms, except as may be required in this Act 
with respect to motor vehicles.

(3) A description such as "all assets" or "all movable 
property" of the debtor is sufficient, except with 
respect to a security interest in consumer goods of a 
declaror."

Section 12. Title 33 of the Code of the Federated States of 
Micronesia is hereby amended by enacting a new section 1007 to 
read as follows:

"Section 1007. Effectiveness of security agreement.

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(1) A security agreement must be in the form of a record.

(2) A security agreement may be found in multiple records when read together.

(3) A security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors and lien holders, except as otherwise provided in this Act."

Section 13. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1008 to read as follows:

"Section 1008. Collateral in secured party’s possession or control.

(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, if collateral is in the secured party's possession:

(a) reasonable expenses shall be charged to the debtor and secured by the collateral, including the cost of any insurance, and the payment of taxes or fees associated with the collateral;
(b) the risk of accidental loss or damage is born by the debtor to the extent of a deficiency in any insurance coverage;

(c) the secured party may hold as additional security any increases received from the collateral except money, and shall apply money to reduce the secured obligation unless the money is remitted to the debtor;

(d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(e) the secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) in the manner and to the extent agreed by the debtor.

(3) A secured party having possession or control of collateral:

(a) may hold as additional security any proceeds, except money or funds, received from the collateral; and

(b) shall apply money or funds received from the collateral to reduce the secured obligation, unless
remitted to the debtor.

(4) This section does not apply to a buyer of accounts, chattel paper, or other intangible property."

Section 14. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1009 to read as follows:

"Section 1009. Assignment.

(1) A person may assign all or part of the person’s rights in accounts, chattel paper, instruments, or other intangible property.

(2) An assignment under this section may be a specific or general assignment.

(3) An assignment may include accounts, chattel paper, instruments, or other intangible property that have not been created at the time of the assignment.

(4) The assignee is subject to all the terms of the agreement between the account debtor and assignor.

(5) No communication to the account debtor shall be required for attachment, perfection or enforcement of a security interest arising from an assignment, except as provided in this section.

(6) If an account debtor is given information about an assignment, the information shall be in writing, shall identify the rights assigned, and shall be signed by the assignor or the assignee, but need not disclose any of
the terms or conditions of the assignment.

(7) After being informed of an assignment of a right to payment, the account debtor shall perform the obligation by paying the assignee, and not the assignor. However, if requested by the account debtor, the assignee shall furnish timely and sufficient evidence of the assignment, and unless the assignee complies, the account debtor may perform the obligation by paying the assignor.

(8) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, the rights of an assignee are subject to:

(a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee; Provided, however, that the claim of an account debtor against an assignor may be asserted against an assignee only to reduce the amount the account debtor owes."

Section 15. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1010 to
read as follows:

"Section 1010. Restriction on sale or assignment.
An agreement between a secured party and a debtor is unenforceable if it prohibits or restricts the sale or assignment of an account, lease, or chattel paper."

Section 16. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1011 to read as follows:

"Section 1011. Attachment of security interest to collateral.

(1) A security interest attaches to collateral and becomes enforceable against the debtor and third parties with respect to the collateral only if:

(a) the debtor has authenticated a security agreement that provides a description of the collateral;

(b) value has been given by the secured party to the debtor; and

(c) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(2) Unless otherwise agreed, the attachment of a security interest in collateral gives the secured party the right to a security interest in proceeds as provided in this Act.

(3) Goods shall be determined to be equipment,
inventory, farm products, or consumer goods at the time
that a security interest attaches to the goods."

Section 17. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new subchapter 2
entitled "Priority of security interests" of new Chapter 10
entitled "The Secured Transactions Act."

Section 18. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1012 to
read as follows:

"Section 1012. Perfection of security interest.

(1) A security interest is perfected when it has
attached to the collateral and a means of perfection has
been completed. There are four means of perfecting a
security interest:

(a) the filing of a notice in the filing office;
(b) possession of the collateral by the secured
party;
(c) control of the collateral by the secured
party; and
(d) perfection upon attachment of the security
interest to collateral, without further action.

(2) A notice must be filed in the filing office to
perfect a security interest, unless this section
provides otherwise.

(3) The following security interests are perfected
when they attach to the collateral and without the filing of a notice:

(a) a purchase money security interest in consumer goods;

(b) a security interest in proceeds, if the underlying security interest is perfected;

(c) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

(4) A security interest in goods, instruments, documents, or chattel paper may be perfected by the secured party's taking possession, and without filing a notice.

(a) A security interest is perfected by possession from the time possession is taken and continues only so long as possession is retained.

(b) A security interest perfected by possession under this subsection may also be perfected by filing a notice before, during, or after a period of possession by a secured party.

(5) A security interest in money may be perfected only by the secured party's taking possession of the money, except for cash proceeds.

(6) A security interest in a deposit account may be perfected by the secured party’s taking control of the
deposit account, as provided in subpart (B), and without filing a notice.

(7) A security interest in a motor vehicle may be perfected by filing a notice that describes the motor vehicle generally or by serial number.

(8) While goods are in the possession of a bailee that has issued a document covering the goods, a security interest in the goods may be perfected by perfecting a security interest in the document. Any security interest in the goods perfected by filing a notice during the period that goods are in the possession of the bailee is subordinate to a security interest perfected in the document.

(9) Perfection of a security interest in collateral also perfects a security interest in a guarantee supporting the collateral. The filing of a notice is not necessary to perfect a security interest in a guarantee.

(10) Perfection of a security interest in a right to payment or performance also perfects a security interest in a mortgage on real property securing the right to payment.

(11) The filing of a notice is not necessary to perfect a security interest in property subject to a treaty under which the requirements for perfecting a security
interest vary from the requirements of this Act.
Compliance with the requirements of the treaty to
perfect a security interest is equivalent to the filing
of a notice under this Act."

Section 19. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1013 to
read as follows:

"Section 13. Continuity of perfection.

(1) A security interest is perfected continuously if
it is first perfected in one manner and later perfected
in another manner, without a period when it is not
perfected.

(2) If a secured party assigns a perfected security
interest, a notice need not be filed under this Act to
continue perfection of the security interest against
creditors of the debtor, transferees from the debtor,
and lien holders."

Section 20. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1014 to
read as follows:

"Section 1014. Priority among security interests in the
same collateral.

(1) Security interests in the same collateral have
priority according to time of filing of a notice or
perfection, except as otherwise provided in this Act.
(2) Priority is measured from the time the first notice is filed covering the collateral, or the time the security interest is first perfected, whichever is earlier, if there is no time after the first time of filing or perfection at which the notice was ineffective or the continuity of perfection was interrupted.

(3) The first security interest to attach to collateral has priority among security interests for which no effective notice covers the collateral and for which there is no perfection.

(4) A date of filing or perfection as to collateral is deemed to be the date of filing or perfection of a security interest in proceeds."

Section 21. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1015 to read as follows:

"Section 1015. Priority of lien holder. A security interest has priority over the rights of a lien holder unless a notice of the rights of the lien holder is filed in accordance with this Act:

(1) before the security interest is perfected; and

(2) before a notice covering the collateral is filed."

Section 22. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1016 to read as follows:
"Section 1016. Purchasers of collateral.

(1) A purchaser takes collateral free of a security interest if the purchaser gives value for the collateral without actual or constructive knowledge of the security interest and before it is perfected. If the collateral is tangible, the purchaser must also take delivery of the collateral without actual or constructive knowledge of the security interest and before it is perfected.

(2) Notwithstanding subsection (1), a buyer in the ordinary course of business takes goods free of a security interest in the goods, even if the security interest is perfected and even if the buyer has actual or constructive knowledge of its existence.

(3) Notwithstanding subsections (1) and (2), a buyer of goods that are consumer goods of the seller takes the goods free of a security interest whether or not the security interest is perfected, if the person buys and takes delivery of the goods without actual or constructive knowledge of the security interest.

(4) Notwithstanding subsections (1), (2), and (3), a person who buys a motor vehicle or who takes a security interest in a motor vehicle, takes the motor vehicle or security interest free of a prior security interest only if:

(a) the person bought without actual knowledge of
the security interest; and

(b) the motor vehicle was not described, or was incorrectly described, by serial number in a filed notice.

(5) Notwithstanding subsections (1) and (2) a person who buys farm products takes the farm products free of any security interest."

Section 23. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1017 to read as follows:

"Section 1017. Lessees of collateral.

(1) A lessee of goods takes its leasehold interest free of a security interest in the goods if the lessee receives delivery of the goods:

(a) without actual or constructive knowledge of the security interest; and

(b) before the security interest is perfected.

(2) Notwithstanding subsection (1), a lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods even if the security interest is perfected and even if the lessee has actual or constructive knowledge of its existence.

(3) Notwithstanding subsection (1), a lessee takes a motor vehicle free of a security interest only if the lessee leased:
(a) without actual knowledge of the security interest; and
(b) the motor vehicle was not described, or was incorrectly described, by serial number in a filed notice."

Section 24. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1018 to read as follows:

"Section 1018. Disposition of collateral and proceeds.

(1) A security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition of the collateral, except as otherwise provided in this Act or agreed upon by the parties.

(2) Upon the disposition of collateral, a security interest attaches to proceeds of the collateral, except as otherwise provided in this Act or agreed upon by the parties.

(3) A security interest in proceeds is a continuously perfected security interest if the security interest in the original collateral was perfected. The security interest in proceeds becomes unperfected twenty days after the debtor receives the proceeds unless:

(a) a filed notice covers the original collateral, and the proceeds are cash proceeds or proceeds of a nature described in the notice; or
(b) the security interest in the proceeds is
perfected before the expiration of the twenty day
period.

Section 25. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1019 to
read as follows:

"Section 1019. Notice of purchase money security
interest. If a person files a notice with respect to a
purchase money security interest in goods before or
within 5 days after the debtor receives delivery of the
goods, the security interest has priority over the
rights in the goods of a buyer, lessee, or lien holder
which arise between the time the security interest
attaches and the time of filing of the notice."

Section 26. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1020 to
read as follows:

"Section 1020. Priority of purchase money security
interest in equipment. A perfected purchase money
security interest in equipment has priority over a
conflicting security interest in the same collateral and
the interest of a lien holder, and also has priority in
its proceeds, if the purchase money security interest is
perfected when the debtor receives possession of the
equipment, or within five days thereafter."
Section 27. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1021 to read as follows:

"Section 21. Priority of purchase money security interest in inventory or livestock. A perfected purchase money security interest in inventory or livestock has priority over a conflicting security interest in the same inventory or livestock if:

(1) the purchase money security interest is perfected when the debtor receives possession of the inventory or livestock; and

(2) the purchase money secured party notifies in writing the holder of the conflicting security interest if the holder had filed a notice covering the same types of inventory or livestock before the time of a notice filed by the purchase money secured party. The notification must describe the inventory or livestock and state that the person giving the notification has or expects to acquire a purchase money security interest in inventory or livestock of the debtor."

Section 28. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1022 to read as follows:

"Section 22. Priority of lien arising by operation of law. A lien or right of retention arising by operation
of law in goods has priority over a perfected security interest while the goods are in the possession of the person holding the right of retention if:

(1) the right of retention is created in favor of a person in possession of the goods to secure payment for materials or services with respect to the goods; and

(2) the materials or services are provided in the ordinary course of business."

Section 29. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1023 to read as follows:

"Section 1023. Fixtures.

(1) A security interest may be created in goods that are fixtures. A security interest may continue in goods that become fixtures.

(2) Notwithstanding subsection (1), a security interest in ordinary building materials is unenforceable when the building materials are incorporated into real property.

(3) This section does not determine priority in readily removable factory machines, office machines, and domestic appliances.

(4) A security interest in fixtures is subordinate to all other real rights in real property, except as provided in this section.
(5) A perfected security interest in fixtures has priority over the interest of the owner of real property, or a mortgagee notwithstanding any provision in the mortgage, if a notice is filed before the interest of the owner or the mortgagee is registered in the land registry.

(6) A perfected security interest in fixtures has priority over the interest of a lien holder if a notice is filed before the filing of a notice of the interest of the lien holder as required by this Act.

(7) A perfected security interest in fixtures has priority over the interest of the owner of real property, a lien holder, or a mortgagee notwithstanding any provision in the mortgage, if the security interest is a purchase money security interest given by the debtor before the goods become fixtures, and a notice is filed before the goods become fixtures or within five days thereafter. The priority established in this subsection is not effective against a person who holds a construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation to pay for the construction of an improvement on real property, if the mortgage is registered in accordance with the land law and if the mortgage indicates that it secures such an obligation."
Section 30. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1024 to read as follows:

"Section 1024. Crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of the owner or a mortgagee if the debtor is in possession of the real property or has an interest in the real property that is registered in accordance with the real property law."

Section 31. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1025 to read as follows:

"Section 1025. Accessions.
(1) "Accession" means goods that are physically united with other goods in a manner such that the identity of the goods is not lost.
(2) A security interest may be created in an accession and continues in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the accession.
(3) On default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole."
(4) A secured party that removes an accession shall promptly reimburse the holder (other than the debtor) of any interest in the whole or the other goods for the cost of repair of any physical injury to the whole.

(a) A secured party that removes accessions shall promptly reimburse any other secured party for the cost of repair of any damage to the property.

(b) The secured party need not reimburse the debtor or other secured party for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them.

(c) A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse."

Section 32. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1026 to read as follows:

"Section 1026. **Commingled goods.**

(1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest may not be created in commingled goods. However, a security interest may attach to a product or mass that results when goods
become commingled goods.

(3) If collateral becomes commingled goods, a security interest in the collateral attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected without the need for filing a notice. The priority of the security interest in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled.

(5) If more than one security interest attaches to the product or mass, the following rules determine priority.

   (a) A security interest that is perfected has priority over a security interest that is unperfected at the time the collateral becomes commingled goods;

   (b) The first security interest to attach to the product or mass has priority among unperfected security interests; and

   (c) If more than one security interest is perfected, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods."

Section 33. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1027 to
"Section 1027. Purchase of chattel paper and instruments. A purchaser of chattel paper or instruments has priority over a conflicting security interest in the chattel paper or instruments and also has priority with respect to the proceeds of the chattel paper or instruments if:

(1) in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or instruments; and

(2) the chattel paper or instruments do not indicate an assignment to the person holding the conflicting security interest."

Section 34. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1028 to read as follows:

"Section 1028. Control of deposit account.

(1) A secured party has control of a deposit account if:

(a) the secured party is the bank with which the deposit account is maintained;

(b) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account."
account without further consent by the debtor; or

(c) the secured party becomes the bank’s customer
with respect to the deposit account.

(2) A secured party that has satisfied subsection (1)
has control, even if the debtor retains the right to
direct the disposition of funds from the deposit
account."

Section 35. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1029 to
read as follows:

"Section 1029. Priority of conflicting security
interests in deposit accounts.

(1) A security interest held by a secured party having
control of a deposit account has priority over a
conflicting security interest held by a secured party
that does not have control.

(2) Except as otherwise provided in subsections 3 and
4, security interests perfected by control have priority
according to the time of obtaining control.

(3) Except as otherwise provided in subsection 4, a
security interest held by the bank with which the
deposit account is maintained has priority over a
conflicting security interest held by another secured
party.

(4) A security interest perfected by control has
priority over a security interest held by the bank with
which the deposit account is maintained if the secured
party has become the customer of the bank with respect
to the deposit account.

Section 36. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1030 to
read as follows:

"Section 1030. Transfers of money and funds from
deposit accounts. A transferee of money, including
funds from a deposit account, takes the money free of a
security interest unless the transferee acts in
collusion with the debtor in violating the rights of the
secured party."

Section 37. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1031 to
read as follows:

"Section 1031. Right of recoupment or setoff against
deposit account.

(1) Except as otherwise provided in subsection (2), a
bank with which a deposit account is maintained may
exercise any right of recoupment or setoff against a
secured party that holds a security interest in the
deposit account.

(2) A setoff by a bank based on a claim against a
debtor is ineffective against a secured party that has
established control of a deposit account by becoming the bank’s customer with respect to the deposit account."

Section 38. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1032 to read as follows:

"Section 1032. Inter-bank transactions. Nothing in this Act limits any special priorities, protections or preferences under the banking law, held by banks that acquire instruments or documents in a manner or under circumstances that entitles them to such priorities, protections or preferences. These interests take preference over an earlier security interest, even if perfected, to the extent provided by the banking law."

Section 39. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new subchapter entitled "Filing" of new Chapter 10 entitled "The Secured Transactions Act."

Section 40. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1033 to read as follows:

"Section 1033. Filing office.

(1) A secured transactions filing office is established in the Department.

(a) The Department may contract with any person for the performance of some or all of the duties
required of the filing office.

(b) The Department shall provide electronic means for filing notices and searching notices, and the electronic records of the filing office shall be the official records. All notices shall be filed and searches shall be performed by electronic means.

(c) All obligations of the Department under this Act shall be fully discharged by the creation and businesslike maintenance of an electronic information system that provides for the filing of notices of security interests and notices of the interests of lien holders, and for the search of such notices by any person.

(2) The filing of a notice provides constructive knowledge of its contents to all persons. The filing of a notice does not create a security interest in collateral and does not provide evidence that a security interest in collateral exists.

(3) The duties of the filing officer are merely administrative. By filing a notice or refusing to file a notice, the filing office does not determine the sufficiency, correctness, authenticity, or validity of any information contained in the notice.

(4) The secured transactions filing office is the place to file
(a) a notice of a security interest in collateral;
(b) a notice of the interest of a lien holder;
and
(c) a notice of the interest of a secured party in a transaction concluded prior to the effective date of this Act as provided in this Act.

(5) Records of the filing office shall be maintained in the English language.

Section 41. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1034 to read as follows:

"Section 1034. Regulations.
(1) The Department has power to issue regulations only as provided in this section.
(2) Regulations may prescribe filing fees not to exceed the reasonable estimation of costs necessary to operate the filing office.
(a) Regulations may prescribe the fee for filing of a notice.
(b) Regulations may prescribe the fee for filing of a certified search report.
(c) There shall be no fee for filing a notice of the interest of a lien holder.
(d) There shall be no fee for a search of filing


office records.

(e) There shall be no fee for any other services
of the filing office.

(3) Regulations may prescribe the means by which fees
authorized by this Act may be paid."

Section 42.  Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1035 to
read as follows:

"Section 1035.  Notice of the interest of a lien holder.

The Department shall adopt an electronic form for the
submission of notice of the interest of a lien holder.

The notice of the interest of a lien holder shall be
limited to identification of the lien holder,
identification of the person owing payment or
performance to the lien holder, and a description of
movable property against which the lien holder claims a
right, in the same manner as provided in this Act for
the filing of a notice of a security interest."

Section 43.  Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1036 to
read as follows:

"Section 1036.  Access to filing office records.

(1) A notice is a public record.

(2) Indexes and other records created by the filing
office with respect to notices, in any form or medium,
are public records.

(3) Any person has a right to inspect and make copies of the records of the filing office."

Section 44. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1037 to read as follows:

"Section 1037. Contents of initial notice.

(1) An initial notice is sufficient if it:

(a) identifies the debtor and provides a mailing address;

(b) identifies the secured party or an agent of the secured party and a mailing address; and

(c) describes the collateral covered by the notice. In addition, a notice must provide a description of the relevant real property if it covers timber to be cut, minerals to be extracted, or fixtures. A description of real property need only reasonably describe the real property, and need not satisfy the requirements of a description necessary to create a mortgage in real property or to establish ownership rights in real property.

(2) A person is entitled to file an initial notice only if the debtor authorizes the filing in an authenticated record. The debtor’s authorization need not be contained in the notice."
(3) By signing a security agreement, a debtor authorizes the filing of an initial notice covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.

(4) A notice may be filed before a security agreement is concluded or before a security interest attaches to collateral.

(5) A notice substantially complying with the requirements of this Act is effective, even if it is insufficient under this section, unless the insufficiency makes the notice seriously misleading. A notice that insufficiently provides the name of the debtor is seriously misleading."

Section 45. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1038 to read as follows:

"Section 1038. Name of debtor and secured party.

(1) A notice sufficiently provides the name of the debtor when:

(a) the debtor is a natural person and a citizen of the Federated States of Micronesia and the notice contains the name of the person as it appears on the records of the Social Security Administration;

(b) the debtor is a corporation organized under
law enacted by the Federated States of Micronesia or a state of the Federated States of Micronesia, and the notice contains the name of the debtor as shown on the registry established by that law;

(c) the debtor is a foreign corporation qualified to do business under law enacted by the Federated States of Micronesia or a state of the Federated States of Micronesia and the notice provides the name of the debtor as shown in the registry established under that law;

(d) the debtor is a foreign corporation not registered under the law enacted by the Federated States of Micronesia or any state of the Federated States of Micronesia, and the notice contains the name of the debtor as shown on the appropriate registry in the country where the foreign corporation is organized.

(2) A notice that sufficiently provides the name of the debtor is not rendered ineffective by the presence or absence of a trade name or other name of the debtor. A notice that provides only the debtor’s trade name does not sufficiently provide the name of a debtor.

(3) A notice may provide the name of more than one debtor and the name of more than one secured party.

(4) The failure to indicate on a notice that a person is an agent of the secured party does not affect the
1 sufficiency of a notice."

Section 46. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1039 to read as follows:

"Section 1039. **Effect of changes in circumstance.**

(1) A filed notice remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues, even if the secured party has actual or constructive knowledge of or consents to the disposition.

(2) If a debtor changes its name so that a filed notice becomes seriously misleading, the notice is effective to perfect a security interest in collateral acquired by the debtor before or within four months after the change. The notice is effective to perfect a security interest in collateral acquired by the debtor more than four months after the change only if an amendment to the notice is filed within four months of the change to correct the name.

(3) Except as provided for a change of debtor name under subsection (2), a notice remains effective if, after the notice is filed, a change of circumstances renders the notice seriously misleading.

Section 47. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1040 to read as follows:

"Section 1040. Duration of notice and effect of lapse.
(1) A filed notice is effective for a period of five years after the date of filing.
(2) The effectiveness of a filed notice lapses on the expiration of the five year period unless, before the lapse, a continuation statement is filed.
(3) Upon lapse, a notice becomes ineffective and any security interest that was perfected by the notice becomes unperfected, unless the security interest is perfected without filing.
(4) If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected against a prior or subsequent purchaser of the collateral for value."

Section 48. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1041 to read as follows:

"Section 1041. Amendment of notice.
(1) An initial notice may be amended by one or more amendments. An amendment must:
(a) identify the initial notice by its file number;
(b) identify the secured party on the notice who
authorizes the amendment;

(c) indicate that it is an amendment to the notice; and

(d) provide all of the information required of an initial notice, completely restating the notice in a manner that reflects the amended state of the notice.

(2) If an amendment adds collateral covered by a notice, or adds a debtor to a notice, it is effective if the debtor authorizes the filing in an authenticated record. By signing a security agreement, a debtor authorizes the filing of an amendment, covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.

(3) If there is more than one secured party on the notice, the amendment is effective if a secured party authorizes the filing in an authenticated record.

(4) An amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(5) An amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(6) An amendment other than an amendment to add collateral or add a debtor is effective only if a
secured party on the notice authorizes the filing of the amendment in an authenticated record.

(7) An amendment is ineffective if it purports to delete all secured parties and fails to provide the name of a new secured party, or purports to delete the names of all debtors and fails to provide the name of a debtor not previously named on the notice.

(8) If there is more than one secured party on the notice, each secured party may authorize the filing of an amendment.

(9) The filing of an amendment does not extend the period of effectiveness of a notice.”

Section 49. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1042 to read as follows:

"Section 1042. Continuation of notice.

(1) The period of effectiveness of a notice may be continued by filing a continuation statement that:

(a) identifies the initial notice by its file number;

(b) identifies a secured party on the notice who authorizes the continuation statement; and

(c) indicates that the effectiveness of the notice, with respect to the secured party who authorized the filing, is to be continued."
(2) A continuation statement may be filed only within six months before the expiration of the five-year period of the notice.

(a) Upon timely filing of a continuation statement, the effectiveness of the notice continues for a period of five years commencing on the day on which the notice would have become ineffective in the absence of the filing.

(b) The effectiveness of a notice is continued only with respect to the secured party who authorized the filing of the continuation statement.

(c) Upon the expiration of the new five-year period, the notice lapses with respect to the secured party unless, before the lapse, another continuation statement authorized by that secured party is filed. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the notice."

Section 50. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1043 to read as follows:

"Section 1043. Termination of notice.

(1) The effectiveness of a notice may be terminated by filing a termination statement that:

(a) identifies the initial notice by its file
(b) identifies a secured party on the notice who authorizes the termination statement; and

(c) indicates that the notice is no longer effective with respect to the interest of the secured party who authorized the filing of the termination statement.

(2) Within 20 days after the secured party receives a written demand by the debtor, the secured party on a notice shall file a termination statement if:

(a) there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) the debtor did not authorize the filing of the initial notice; or

(c) the notice covers accounts or chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation.

(3) A termination statement effectively terminates the interest of a secured party on the notice only if the termination statement is authorized in an authenticated record by that secured party. Upon the filing of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorizing secured party."
Section 51. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1044 to read as follows:

"Section 1044. Effectiveness of notice.

(1) An initial notice, amendment, continuation statement, or termination statement is effective at the time it becomes public by means of a search of the records of the filing office as provided in this Act.

(2) The filing office may refuse to file a record because:

(a) in the case of an initial notice, the record does not provide the name of a debtor;

(b) in the case of an amendment, the record does not provide the name of a debtor, does not provide the file number of the initial notice, or the record identifies an initial notice whose effectiveness has lapsed;

(c) in the case of a continuation statement, the record does not provide the file number of the initial notice, or was not delivered within the permitted six-month time period; or

(d) in the case of a termination statement, the record does not provide the file number of the initial notice, or the record relates to an initial notice that has lapsed with respect to each secured party on the
notice. 

(e) less than the full filing fee is tendered, or no arrangement has been made for the periodic payment of fees.

(3) A record that the filing office refuses to accept for a reason other than one set forth in this section is effective as a filed record except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

(4) If a filing office refuses to accept a record for filing, it shall promptly communicate the fact of and reason for its refusal to the person that presented the record.

(5) A notice authorized by one secured party on the notice does not affect the rights of another secured party on the notice.

(6) The failure of the filing office to index a record correctly does not affect the effectiveness of the record."

Section 52. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1045 to read as follows:

"Section 1045. Filing office duties.

(1) For each notice filed, the filing office shall:

(a) assign a unique file number in the case of an
initial notice;

(b) assign a unique number to notices other than the initial notice;

(c) create a record that bears the number assigned to the filed record and the date and time of filing; and

(d) maintain the filed record for public inspection.

(2) The filing office shall index an initial notice by the name of the debtor and shall index all filed records relating to an initial notice in a manner that associates the initial notice and all filed records relating to the initial notice. For notices containing serial numbers of motor vehicles, the filing office shall maintain an index of serial numbers.

(3) The filing office shall maintain the capability to retrieve a record by the name of the debtor and by the file number assigned to the initial notice to which the record relates, and that associates an initial notice and all records relating the initial notice with one another. For notices containing the serial number of a motor vehicle, the filing office shall maintain the capability to retrieve a record by the serial number of the motor vehicle.

(4) The filing office shall maintain records of lapsed
notices for a period of ten years beyond the date of lapse."

Section 53. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1046 to read as follows:

"Section 1046. Information from filing office.

(1) The filing office shall communicate the following information to any person that requests it:

(a) whether there is on file on a date and time specified by the filing office, any notice that designates a particular debtor and has not lapsed with respect to all secured parties;
(b) the file number, and the date and time of filing of each notice;
(c) the name and address of each debtor and secured party on each notice;
(d) all of the information contained in each notice.

(2) A request may be made to search the records of the filing office by any of the following criteria:

(a) the file number of a notice;
(b) the name of a debtor; or
(c) the serial number of a motor vehicle.

(3) In complying with its duty, the filing office may communicate information in any medium. However, if
requested, the filing office shall communicate
information by issuing a written certificate that can be
admitted into evidence in the courts without extrinsic
evidence of its authenticity."

Section 54. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1047 to
read as follows:

"Section 1047. Filing Office Revolving Fund.

(1) There is established a Filing Office Revolving
Fund, hereinafter referred to as the ‘Fund,’ separate
from the General Fund of the Federated States of
Micronesia and all other funds.

(2) The purpose of the Fund is to establish an ongoing
revolving fund to allow appropriations for, and revenues
from, the filing of notices to be used for the costs of
maintenance of a filing office.

(3) All future appropriations for, and revenues
received from, the filing of notices shall be deposited
in the Fund. Any unexpended monies in the Fund shall
not revert to the General Fund nor lapse at the end of
the fiscal year; provided that at the end of each fiscal
year, funds in excess of fifty percent of the actual
operating costs of the filing system during the fiscal
year just closed shall be deposited in the General Fund.

(4) The Fund shall be administered by the Secretary of
the Department of Economic Affairs. The Secretary shall, not later than 30 days after the close of each governmental fiscal year, submit a complete report of the activities and condition of the Fund for the fiscal year just closed to the President and the Congress of the Federated States of Micronesia.

(5) The Public Auditor shall audit the Fund at such times as the Public Auditor deems appropriate."

Section 55. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new subchapter 4 entitled "Enforcement of security interests" of new Chapter 10 entitled "The Secured Transactions Act."

Section 56. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1048 to read as follows:

"Section 1048. Rights after default--judicial enforcement--consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes."

(1) After default a secured party has the rights provided in this part and those provided by agreement of the parties.

(2) After default, a secured party may reduce a claim to judgment, foreclose, or otherwise enforce the claim, or security interest by any available judicial procedure.
(3) After default, if the collateral is documents, the secured party may proceed either as to the documents or as to the goods they cover.

(4) A secured party in possession of collateral or control of collateral has the rights and duties provided in section 8.

(5) Rights under this section are cumulative and may be exercised simultaneously.

(6) Except as otherwise provided in this part with respect to an unknown debtor, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(7) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest in the collateral; or

(b) the date of filing a notice covering the collateral.

(8) A secured party may purchase at any execution sale or sale pursuant to judicial foreclosure upon collateral and thereafter hold the collateral free of any other requirements of this Act.

(9) This part imposes no duties upon a secured party
that is a consignor or a buyer of accounts, chattel paper, or other intangible property."

Section 57. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1049 to read as follows:

"Section 1049. Procedure if security agreement covers real property or fixtures.

(1) Subject to subsection (2), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) under this part; or

(b) in accordance with the rights with respect to real property.

(2) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(3) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any
necessity of replacing them. A person entitled to
reimbursement may refuse permission to remove until the
secured party gives adequate assurance for the
performance of the obligation to reimburse."

Section 58. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1050 to
read as follows:

"Section 1050. Unknown debtor or secondary obligor. A
secured party does not owe a duty based on its status as
secured party:

(1) to a person that is a debtor or obligor, unless
the secured party actually knows:

(a) that the person is a debtor or obligor;
(b) the identity of the person; and
(c) how to communicate with the person; or

(2) to a secured party or lien holder that has filed a
notice naming the person as a debtor, unless the secured
party actually knows:

(a) that the person is a debtor; and
(b) the identity of the person."

Section 59. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1051 to
read as follows:

"Section 1051. Collection and enforcement by secured
party."
(1) If so agreed by the debtor, and in any event after default, a secured party:

(a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) may take any proceeds to which the secured party is entitled;

(c) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral.

(2) If so agreed by the debtor, and in any event after default:

(a) if a secured party holds a security interest in a deposit account perfected by control pursuant to section 1028(1)(a), the secured party may apply the balance of the deposit account to the obligation secured by the deposit account; or

(b) if a secured party holds a security interest in a deposit account perfected pursuant to section
1028(1)(b) or (c), the secured party may instruct the
bank to pay the balance of the deposit account to or for
the benefit of the secured party.

(3) A secured party shall proceed in a commercially
reasonable manner if the secured party:

(a) undertakes to collect from or enforce an
obligation of an account debtor or other person
obligated on collateral; and

(b) is entitled to charge back uncollected
collateral or otherwise to full or limited recourse
against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections
made pursuant to subsection (3) reasonable expenses of
collection and enforcement, including reasonable
attorney's fees and legal expenses incurred by the
secured party."

Section 60. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1052 to
read as follows:

"Section 1052. Secured party’s right to possession.

(1) Upon default, a secured party with a right to
possession of collateral under the Secured Transactions
Act shall be entitled to a special, expedited order from
the court having jurisdiction granting the secured party
possession or control over the collateral.
(2) The secured party shall file a verified application under oath with the court having in rem jurisdiction over the collateral requesting a hearing and an order to take control of the collateral; attached to the application shall be a copy of the security agreement and evidence of default thereunder, and a detailed identification of the collateral and its present location.

(3) The secured party shall serve notice of the application upon the debtor and shall include a copy of the application and the attached documents; such notice may be given personally to the debtor or by leaving it as his usual place of abode or business with some person not less than 18 years of age and sound mind then residing or employed there, and if the person with whom the notice is left states that he is unable to read it, by also orally explaining the substance of it to him, if practical, in a language understood by him, or otherwise in a language generally understood in the locality. The notice shall also include a proposed stipulation whereby the debtor can agree to the secured party taking possession of the collateral without further legal proceedings. Such stipulation must be acknowledged by a notary public and must be in the language of the debtor, or certified as having been translated and explained to
the debtor.

(4) If within five days after such notice the debtor does not agree in writing to allow the secured party to take possession of the collateral without further legal proceedings, the secured party shall notify the court in writing that the debtor has not agreed and that a hearing is requested.

(5) The court shall set a hearing within ten days after filing of the application by the secured party and service of notice to the debtor, unless the debtor has agreed in writing as provided in subparagraph (b) above to the secured party taking possession of the collateral without further legal proceedings.

(6) At anytime before the hearing the debtor can file a response to the application. However, the failure to file a response shall not constitute a waiver of any defenses which the debtor may present at the hearing.

(7) The court shall not grant any enlargements of time or extensions of time to either party for any reason; however, the secured party may withdraw the application without prejudice at any time.

(8) Issues at the hearing are limited to the existence of a security agreement covering the collateral, and the existence of at least one event of default under the terms of the security agreement.
(9) The court shall issue an order within five days after the hearing either granting or denying the application. A denial of an application shall be without prejudice to the secured party to refile.

(10) An order to dispossess the debtor under this section may be appealed by the debtor but no court shall stay the dispossession order or prevent the disposal of the collateral during the appeal process.

(11) An order denying the application may be appealed by the secured party; during the pendency of the appeal the debtor shall not sell, transfer, or otherwise dispose of the collateral and shall maintain the collateral for the benefit of the secured party, unless the court finds that the collateral is not covered by the terms of the security agreement.

(12) Any appeal filed under this section shall be expedited.

(13) Proceedings under this section are informal and the rules of evidence shall not apply.

(14) If the service of a court official or police official or other government official is required for the dispossession of the collateral from the debtor, the secured party shall pay the costs of enforcement.

(15) If the security agreement so provides, the secured party may require the debtor to assemble the collateral
and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(16) If the security agreement so provides, a secured party may render equipment unusable without removing it from its location, and may dispose of collateral on the debtor’s place of business, residence, or any other location where the collateral is found. A debtor shall not have any right to a claim of trespass, or interference with the debtor’s property, or damage to property, or any other claim relating to or as a consequence of a secured party exercising its rights under this section, regardless of the location of the collateral. Nothing contained herein shall be construed to authorize a violation of any criminal law by any secured party, debtor or person acting on behalf of either.

(17) Nothing contained herein shall affect the right of a secured party to proceed under sections 1405 and 1406 of title 6 of this Code at any time with respect to collateral or to bring any civil action for foreclosure in such manner as may be authorized under any other law.
"Section 1053. Application of proceeds of collection or enforcement--liability for deficiency and right to surplus.

(1) If a security interest secures payment or performance of an obligation, the following rules apply:

(a) a secured party shall apply or pay over for application the cash proceeds of collection or enforcement in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by a superior security interest in or other lien on the collateral subject to the security interest under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed;

(iii) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and

(iv) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest under
which the collection or enforcement is made if the
secured party receives an authenticated demand for
proceeds before distribution of the proceeds is
completed.

(b) if requested by a secured party, a holder of
a subordinate security interest or other lien shall
furnish reasonable proof of the interest or lien within
a reasonable time. Unless the holder complies, the
secured party need not comply with the holder's demand.

(c) a secured party need not apply or pay over
for application noncash proceeds of collection and
enforcement unless the failure to do so would be
commercially unreasonable. A secured party that applies
or pays over for application noncash proceeds shall do
so in a commercially reasonable manner.

(d) a secured party shall account to and pay a
debtor for any surplus, and the obligor is liable for
any deficiency.

(2) If the underlying transaction is a sale of
accounts, chattel paper, payment intangibles, or
promissory notes, the debtor is not entitled to any
surplus, and the obligor is not liable for any
deficiency."

Section 62. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1054 to
Section 1054. Secured party's right to take possession after default.

(1) After default, a secured party:
   (a) may take possession of the collateral; and
   (b) without removal, may render equipment unusable and dispose of collateral on a debtor's premises.

(2) A secured party may proceed under subsection (1):
   (a) pursuant to judicial process; or
   (b) without judicial process, if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

Section 63. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1055 to read as follows:

Section 1055. Disposition of collateral after default.

(1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.
(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral:
   (a) at a public disposition; or
   (b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):
   (a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract; or
   (b) by communicating to the purchaser a record
evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import."

Section 64. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1056 to read as follows:

"Section 1056. Notification before disposition of collateral.

(1) In this section, "notification date" means the earlier of the dates on which:

(a) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(b) the debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under section 1055 shall send to the persons specified in subsection (3) a reasonable authenticated notification of disposition. This subsection does not apply if the collateral is perishable or threatens to decline
speedily in value or is of a type customarily sold on a recognized market.

(3) To comply with subsection (2), the secured party shall send an authenticated notification of disposition to:

(a) the debtor;

(b) any secondary obligor; and

(c) if the collateral is other than consumer goods:

(i) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral; and

(ii) any other secured party or lien holder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a notice that identified the collateral and was indexed under the debtor's name as of that date.

(4) A secured party complies with the requirement for notification prescribed by subsection (3)(c)(ii) if:

(a) not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning notices indexed under the
debtor's name in the filing office; and

(b) before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lien holder named in that response whose notice covered the collateral."

Section 65. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1057 to read as follows:

"Section 1057. Timeliness of notification before disposition of collateral.

(1) Except as otherwise provided in subsection (2), whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition."

Section 66. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1058 to
"Section 1058. Contents of notification before disposition of collateral--general. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(a) describes the debtor and the secured party;
(b) describes the collateral that is the subject of the intended disposition;
(c) states the method of intended disposition;
(d) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
(e) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) are nevertheless sufficient is a question of fact."

Section 67. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1059 to read as follows:

"Section 1059. Application of proceeds of disposition--liability for deficiency and right to surplus.

(1) A secured party shall apply or pay over for
application the cash proceeds of disposition under section 1055 in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.
(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1), paragraph (c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under section 1055 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) unless subsection (1), paragraph (d), requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, or other intangible property:

(a) the debtor is not entitled to any surplus; and
(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) A secured party that receives cash proceeds of a disposition in good faith and without actual or constructive knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured
by the security interest or other lien; and

c) is not obligated to account to or pay the
holder of the security interest or other lien for any
surplus."

Section 68. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1060 to
read as follows:

"Section 1060. Rights of transferee of collateral.

(1) A secured party's disposition of collateral after
default:

(a) transfers to a transferee for value all of
the debtor's rights in the collateral;
(b) discharges the security interest under which
the disposition is made; and
(c) discharges any subordinate security interest
or other subordinate lien.

(2) A transferee that acts in good faith takes free of
the rights and interests described in subsection (1),
even if the secured party fails to comply with this Act
or the requirements of any judicial proceeding.

(3) If a transferee does not take free of the rights
and interests described in subsection (1), the
transferee takes the collateral subject to:

(a) the debtor's rights in the collateral;
(b) the security interest under which the
disposition is made; and

(c) any other security interest or other lien."

Section 69. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1061 to read as follows:

"Section 1061. Rights and duties of certain secondary obligors.

(1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party with respect to collateral.

(2) An assignment, transfer, or subrogation described in subsection (1):

(a) is not a disposition of collateral under section 1055; and

(b) relieves the secured party of further duties under this Act."

Section 70. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1062 to
read as follows:

"Section 1062. Transfer of record or legal title.

(1) In this section, "transfer statement" means a record authenticated by a secured party stating:

(a) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(b) that the secured party has exercised its post-default remedies with respect to the collateral;

(c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral;

and

(d) the name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(a) accept the transfer statement;

(b) promptly amend its records to reflect the transfer; and
(c) if applicable, issue a new appropriate certificate of title in the name of the transforee.

(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under this Act and does not of itself relieve the secured party of its duties under this Act."

Section 71. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1063 to read as follows:

"Section 1063. Acceptance of collateral in full or partial satisfaction of obligation—compulsory disposition of collateral.

(1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under subsection (3);

(b) the secured party does not receive, within the time set forth in subsection (4), a notification of objection to the proposal authenticated by:

(i) a person to which the secured party was required to send a proposal under section 1064; or

(ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the
security interest that is the subject of the proposal;

(iii) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(iv) subsection (5) does not require the secured party to dispose of the collateral or the debtor waives the requirement.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless:

(a) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(b) the conditions of subsection (1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a
condition that collateral not in the possession of the
secured party be preserved or maintained;

(ii) in the proposal, proposes to accept
collateral in full satisfaction of the obligation it
secures; and

(iii) does not receive a notification of
objection authenticated by the debtor within twenty days
after the proposal is sent.

(4) To be effective under subsection (1), paragraph
(b), a notification of objection must be received by the
secured party:

(a) in the case of a person to which the proposal
was sent pursuant to section 1064, within twenty days
after notification was sent to that person; and

(b) in other cases:

(i) within twenty days after the last
notification was sent pursuant to section 1064; or

(ii) if a notification was not sent, before
the debtor consents to the acceptance under subsection
(3).

(5) A secured party that has taken possession of
collateral shall dispose of the collateral pursuant to
section 1055 within the time specified in subsection (6)
if sixty percent of the cash price has been paid.

(6) To comply with subsection (5), the secured party
shall dispose of the collateral:

(a) within ninety days after taking possession;

or

(b) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures."

Section 72. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1064 to read as follows:

"Section 1064. Notification of proposal to accept collateral.

(1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(a) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(b) any other secured party or lien holder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the
collateral perfected by the filing of a notice that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as

of that date.

(c) any other secured party that, ten days before
the debtor consented to the acceptance, held a security
interest in the collateral perfected by compliance with
a statute or treaty.

(2) A secured party that desires to accept collateral
in partial satisfaction of the obligation it secures
shall send its proposal to any secondary obligor in
addition to the persons described in subsection (1)."

Section 73. Title 33 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 1065 to
read as follows:

"Section 1065. Effect of acceptance of collateral.

(1) A secured party's acceptance of collateral in full
or partial satisfaction of the obligation it secures:

(a) discharges the obligation to the extent

consented to by the debtor;

(b) transfers to the secured party all of a
debtor's rights in the collateral;

(c) discharges the security interest that is the
subject of the debtor's consent and any subordinate
security interest or other subordinate lien; and
(d) terminates any other subordinate interest. 

(2) A subordinate interest is discharged or terminated under subsection (1), even if the secured party fails to comply with this Act."

Section 74. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1066 to read as follows:

"Section 1066. Right to redeem collateral.

(1) A debtor, any secondary obligor, or any other secured party or lien holder may redeem collateral. 

(2) To redeem collateral, a person shall tender: 

(a) fulfillment of all obligations secured by the collateral; and 

(b) reasonable expenses and attorney's fees. 

(3) A redemption may occur at any time before a secured party:

(a) has collected collateral under section 1051; 

(b) has disposed of collateral or entered into a contract for its disposition under section 1055; or 

(c) has accepted collateral in full or partial satisfaction of the obligation it secures under section 1064."

Section 75. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1067 to read as follows:
"Section 1067. Waiver.

(1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 1056 only by an agreement to that effect entered into and authenticated after default.

(2) A debtor may waive the right to require disposition of collateral under section 1064, subsection (5), only by an agreement to that effect entered into and authenticated after default.

(3) A debtor or secondary obligor may waive the right to redeem collateral under section 1066 only by an agreement to that effect entered into and authenticated after default."

Section 76. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1068 to read as follows:

"Section 1068. Remedies for secured party's failure to comply with Act.

(1) If it is established that a secured party is not proceeding in accordance with this Act, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), a person is liable for damages in the amount of any loss caused by a failure to
comply with this Act. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) A debtor whose deficiency is eliminated under section 1069 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 1069 may not otherwise recover under subsection (2) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) In addition to damages recoverable under subsection (2), a person named as a debtor in a filed record may recover five hundred dollars in each case from a person that files a record that the person is not entitled to file under subchapter 3 of this Act, and an additional five hundred dollars in each case where failure is part of a pattern, or consistent with a practice, of noncompliance."

Section 77. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1069 to read as follows:

"Section 1069. Action in which deficiency or surplus is in issue. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following
rules apply:

(1) a secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) if the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) If a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(a) the proceeds of the collection, enforcement, disposition, or acceptance; or

(b) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) for purposes of subsection (3), paragraph (2), the
amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) if a deficiency or surplus is calculated under section 1059, subsection (6), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought."

Section 78. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1070 to read as follows:

"Section 1070. Determination of whether conduct was commercially reasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a
commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market;
(b) at the price current in any recognized market at the time of the disposition; or
(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(a) in a judicial proceeding;
(b) by a bona fide creditors' committee;
(c) by a representative of creditors; or
(d) by an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable."

Section 79. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new subchapter 5 entitled "Transition provisions" of new Chapter 10 entitled "The Secured Transactions Act."

Section 80. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1071 to
read as follows:

"Section 1071. Effective date of this Act. This Act shall come into effect upon the date certified by the Department to the President of the Federated States of Micronesia as the date on which the filing office is prepared to perform the duties required in subchapter 3 of this Act."

Section 81. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1072 to read as follows:

"Section 1072. Transactions concluded prior to effective date of this Act. This section applies to transactions concluded prior to the effective date of this Act that would be subject to this Act if this Act had been in effect at the time the transactions were concluded. In this section, such a transaction is referred to as a "prior transaction."

(1) The validity, effect and enforcement of a prior transaction shall be determined by reference to the law in effect when the agreement was concluded, except as provided otherwise in this section.

(2) The provisions of this Act on filing, priority, and enforcement apply to a property interest created by a prior transaction to the extent the interest in the prior transaction conflicts with a security interest

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created under this Act.

(3) A secured party under a prior transaction may file
a notice of the property interest created by the prior
transaction within sixty days of the effective date of
this Act, in the same manner as provided for a notice of
a security interest. The secured party shall deliver a
copy of the notice to the debtor. If a notice
establishes priority in a property right created in
collateral under a prior transaction, the priority of
the property right over a perfected security interest
under this Act shall be measured from the effective date
of this Act."

Section 82. Section 607 of title 53 of the Code of the
Federated States of Micronesia, is hereby amended to read as
follows:

"Section 607. Lien for taxes. All taxes, including
penalties and interest accrued thereon, imposed or
authorized under this subtitle shall be a lien upon any
property of the employer, having priority over all other
claims and liens including liens for other taxes, except
as provided in the Secured Transactions Act, and may be
collected by levy upon such property in the same manner
as the levy of an execution."

Section 83. Section 135 of title 54 of the Code of the
Federated States of Micronesia, is hereby amended to read as
Section 135. Employer’s responsibility for withheld taxes.

(1) All taxes withheld by any employer under section 131 of this chapter shall be held in trust by such employer for the Government and for payment to the Secretary in the manner and at the time required by this chapter.

(2) If any employer shall fail, neglect, or refuse to deduct and withhold from the compensation paid to an employee, or to pay over, the amount of the tax imposed by this chapter, such employer shall, moreover, be liable to pay to the Government the amount of the tax, which amount shall (whether or not tax withholdings constituting trust funds have been commingled with said employer’s assets) form a lien on the employer’s entire assets, having priority over all other claims and liens, except as provided by the Secured Transactions Act.

(3) Any employer may recover from an employee any amount which he should have withheld but did not withhold from such employee’s wages and salaries, if he has been required to pay and has paid the amount to the Government out of his own funds pursuant to this section.

Section 84. Section 152 of title 54 of the Code of the

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Federated States of Micronesia, is hereby amended to read as follows:

"Section 152. Tax assessment on failure to file or pay.

(1) Upon the failure of any person, business, or employer to make and file a return required by this chapter within the time and in the manner and form prescribed, or upon failure to pay any amount due, the Secretary may notify such person, business, or employer of such failure and demand that a return be made and filed and the tax paid as required by this chapter.

(2) If such person, business, or employer upon notice and demand by the Secretary fails or refuses within 30 days after receipt of said notice and demand to make and file a return and pay the tax required by this chapter, the secretary may make a return for such person, business, or employer from any information and records obtainable, may file a notice of lien pursuant to the Secured Transactions Act, and may levy and assess the appropriate amount of tax.

(3) Such assessment shall be presumed to be correct unless and until it is proved incorrect by the person, business, or employer disputing the amount of the assessment."

Section 85. Section 224 of title 54 of the Code of the Federated States of Micronesia, is hereby amended to read as
follows:

"Section 224. Lien on imported goods. All duties imposed on goods under this chapter, together with any penalties and interest thereon, shall constitute a lien on those goods having priority over all other claims and liens, except as provided in the Secured Transactions Act, and may be collected by levy upon those goods in the same manner as the levy of an execution."

Section 86. Section 226 of title 54 of the Code of the Federated States of Micronesia, is hereby amended to read as follows:

"Section 226. Lien on importer’s property. The personal liability of an importer provided for in this chapter shall be secured by a lien on any personal property of that importer, having priority over all other claims and liens, except as provided in the Secured Transactions Act, and with the exception of liens imposed pursuant to subsection (2) of section 135 of this title, and may be collected by levy upon such property in the same manner as the levy of an execution."

Section 87. 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: 5/25/05

Introduced by: /s/ Simiram Sipenuk

Simiram Sipenuk
(by request)