A BILL FOR AN ACT

To amend sections 301, 307, 313 and 322 of title 37 of the Code of the Federated States of Micronesia in order to expand and clarify the authority and powers of the Insurance Board in regulating the insurance industry, including the authority to approve certain transfers relating to insurance business before any transfer takes effect, both for domestic and foreign entities engaged in insurance business; to modify the requirements for broker’s license application, to expand the present exemption from posting of bond applicable to certain foreign insurers; to introduce a technical amendment to the provision on reporting and disclosure of information by auditors and actuaries; and for other purposes.

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

Section 1. Section 301 of title 37 of the Code of the Federated States of Micronesia, as amended by Public Law No. 14–87, is hereby further amended to read as follows:

“Section 301. License required.

(1) Every person that engages in insurance business in the Federated States of Micronesia must first obtain a license from the Insurance Board; provided, however, that foreign insurer is subject to the application of section 307 of the Code. Any person who transacts insurance business shall be licensed as either

(a) an insurer,
(b) an agent,
(c) a solicitor, or
(d) a broker.

(2) The Insurance Board may attach certain conditions and restrictions to the issuance of a license. Once a
license is issued, the Insurance Board retains authority of oversight to ensure that the terms and conditions of the license are fulfilled. The Insurance Board may from time to time, by notice in writing to a person holding a license issued, or deemed to have been issued, under this section, impose new or additional conditions of the license or vary or remove any conditions already imposed.

(3) Only a company may be licensed as an insurer.

(4) Only agents transacting insurance business on behalf of licensed or registered insurers shall be eligible for a license as an insurer.

(5) A foreign insurer who receives two million dollars or more in income from premiums collected in the Federated States of Micronesia in each fiscal year for three consecutive fiscal years shall be required to become licensed as an insurer.

(6) A foreign insurer who does not make the premium collections described in (5) shall be permitted to do business through a person licensed as an agent if the foreign insurer is registered, unless such foreign insurer chooses to be licensed as an agent if the foreign insurer is registered, unless such foreign insurer chooses to be licensed as an insurer instead.

(7) A person licensed as an agent may conduct business
on behalf of more than one insurer; however, the agent
must apply for a separate license as an insurance agent
for each insurer.

(8) A person applying for a broker’s license shall
carry and maintain professional indemnity insurance
against fraud, burglary, embezzlement, and other similar
insurable loss in an amount to be determined by the
Insurance Board.”

Section 2. Section 307 of title 37 of the Code of the
Federated States of Micronesia, as amended by Public Law No. 14-
87, is hereby further amended to read as follows:

“Section 307. Registered Foreign Insurers.

(1) A foreign insurer may be registered by providing
the following:

(a) information from the insurer’s home
supervisory authority that the insurer is solvent and
meets all the regulatory requirements in the home
jurisdiction and is otherwise in good standing; and a
statement from the home supervisory authority that the
foreign insurer is approved for transaction of insurance
business through an agent in the Federated States of
Micronesia; and

(b) posting of a bond, or deposit to an escrow
account, in the sum of $100,000, to be withdrawn by the
Commissioner upon the occurrence of certain events as
stated in the bond or escrow agreement; and

(c) compliance with any requirement, if set forth in Regulations under this Act, that a certain amount of premiums collected on behalf of the insurer are maintained in the Federated States of Micronesia; and

(d) designation of an agent for service of process.

(2) A foreign insurer providing a marine, aviation and transportation policy may be registered without posting the bond required in (1)(b). Other types of policies may be exempted by the Insurance Board from posting bond required under subsection (1)(b) hereof when the Insurance Board is satisfied that the insurance is not available in the FSM market from licensed or registered insurers or the insurance is available but under terms that would significantly disadvantage the insured. A request for exemption may be made by unregistered foreign insurers or licensed brokers or a prospective policyholder.

(3) The Commissioner may grant or deny or cancel registration of a foreign insurer based on these requirements and a review of the foreign insurer in the same manner as a review of an application for a license under this Act.
(4) Any person registered as an insurer under this Act shall be deemed and held to be doing business in the Federated States of Micronesia and may be sued upon any cause of action arising under any policy of insurance issued by it and any cause of action under the laws of the Federated States of Micronesia in the courts of the Federated States of Micronesia.”

Section 3. Section 313 of title 37 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

“Section 313. Mergers and transfers of insurance business.

(1) Without approval by the Insurance Board, [N]o domestic insurer licensed or registered under this title shall:

([1]a) [N]merge or reorganize, whether by agreement, order or takeover, with any one or more insurers; or

([2]b) [T]ransfer its insurance business or a part thereof to, or take transfer of the insurance business or a part thereof from, another insurer[ unless the merger, reorganization or transfer is approved by the Commissioner].

([2]3) No merger nor transfer that lessens the policy benefits of the insured shall be approved.”
Section 4. Section 322 of title 37 of the Code of the Federated States of Micronesia, as amended by Public Law No. 14-87, is hereby further amended to read as follows:

"Section 322. Disclosure of information by auditors and actuaries.

(1) If an auditor or actuary, in the course of reviewing the business of a person licensed under this Act, is satisfied that:

(a) there has been a violation of a provision of this Act, or Regulations or Orders under this Act; or

(b) a criminal offence involving fraud or dishonesty has been committed; or

(c) the business is insolvent or is likely to become insolvent; or

(d) there are irregularities which materially prejudice the interests of policy owners; or

(e) the business is unable, or is likely to become unable, to meet its liabilities;

the auditor or actuary must immediately report the matter to the directors of the business and to the Insurance Board.

(2) Failure to report shall constitute a violation of this Act.

(3) A person reporting under this provision shall not
be liable for any damage which may be a consequence of
the report.”

Section 5. 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: 5/12/09

Introduced by: /s/ Joe N. Suka

Joe N. Suka
(by request)