To amend title 19 of the Code of the Federated States of Micronesia by adding a new chapter 6 to provide for the creation of preferred ship mortgages, maritime liens, and for other purposes.

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

Section 1. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new chapter 6 to be entitled "Preferred Ship Mortgages and Maritime Liens Act."

Section 2. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 601 of chapter 6 to read as follows:

"Section 601. Definitions. In this chapter:

(1) 'Acknowledge' means making an acknowledgement before the Secretary of Transportation and Communication or before a notary public or other officer authorized by the laws of the place where the acknowledgement is made to take the acknowledgements of deeds; and

(2) 'Secretary of Transportation and Communication' means the Secretary of the Department of Transportation and Communication of the Federated States of Micronesia."

Section 3. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 602 of chapter 6 to read as follows:

"Section 602. Recordation.

(1) A sale, conveyance, hypothecation, mortgage or assignment of mortgage of any vessel shall not be valid with respect to such vessel against any person other than
the grantor or mortgagor, his heirs or devisees and persons
having actual notice thereof, until the instrument
evidencing such transaction is recorded in the
office of the Secretary of Transportation and Communication.
(2) The Secretary of Transportation and Communication
shall record such instruments in the order of their receipt
in books to be kept for that purpose and indexed to show:
   (a) The name of the vessel;
   (b) The name and address of the parties;
   (c) The time and date of receipt of the
       instrument;
   (d) The interest in the vessel transferred or
       affected; and
   (e) The amount and date of maturity of any
       mortgage."

Section 4. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 603 of chapter
6 to read as follows:

"Section 603. Documentary endorsement of preferred
mortgage. A valid mortgage, which at the time it is made
includes the whole of any vessel, shall have a preferred
status with respect to such vessel as of the date of its
recording, if:

(1) The mortgage is endorsed upon the vessel's
Certificate of Registry;"
(2) The mortgage is recorded as provided herein;

(3) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud an existing or future creditor of the mortgagor or any lienor of the mortgaged vessel; and

(4) The mortgage does not stipulate that the mortgagee waives the preferred status thereof."

Section 5. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 604 of chapter 6 to read as follows:

"Section 604. Termination of mortgagee's interest. The interest of a mortgagee in a vessel registered under this chapter shall not be terminated by a forfeiture of the vessel for a violation of any of the laws of the Federated States of Micronesia, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation."

Section 6. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 605 of chapter 6 to read as follows:

"Section 605. Conditions precedent to recording. A bill of sale, conveyance, mortgage or related instrument shall not be recorded unless it states the interest of the grantor or mortgagor in the vessel, and the interest so sold, conveyed
or mortgaged. A bill of sale, conveyance, mortgage, notice
of claim of lien, certificate of discharge thereof or
related instrument shall not be recorded unless previously
acknowledged."

Section 7. Title 19 of the Code of the Federated States
of Micronesia is hereby amended by adding a new section 606 of chapter
6 to read as follows:

"Section 606. Recording of bills of sale. The Secretary of
Transportation and Communication may accept for recording
in his office upon payment of the prescribed fee any bill
of sale of a vessel which recites the interest of the
grantor in the vessel and the interests sold or conveyed;
PROVIDED, that it has previously been acknowledged; and
PROVIDED FURTHER, that any bill of sale of a vessel already
documented under the laws of the Federated States of
Micronesia must have incorporated therein a true copy of
its latest Certificate of Registry."

Section 8. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 607 of chapter
6 to read as follows:

"Section 607. Recording of mortgages. The Secretary of
Transportation and Communication may accept for the recording in
his office upon payment of the prescribed fee any mortgage of a
vessel which recites the mortgagor of the vessel and the
interest so mortgaged; PROVIDED, that the mortgage has been
previously acknowledged; and PROVIDED FURTHER, that written
proof is furnished to the Secretary of Transportation and
Communication of the amounts and dates of any documents or
evidence of debts in support thereof. At the time of recording
the Secretary of Transportation and Communication may, if
requested, certify without charge two (2) copies of any mortgage
so recorded."

Section 9. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 608 of chapter
6 to read as follows:

"Section 608. Preferred mortgage.

(1) A mortgage which complies with the conditions
enumerated in this section shall be designated as a
'Preferred Mortgage.'

(2) There shall be endorsed upon the Certificate of
Registry of a vessel covered by a Preferred Mortgage:

(a) The names of the mortgagor and mortgagee;
(b) The time and date the endorsement is made;
(c) The amount and date of the maturity of the
mortgage; and
(d) Any amount required to be endorsed by
subsections (5) and (6) of this section.

(3) Such endorsement shall be made by the Secretary
of Transportation and Communication, or his designee, at the
port of registry who is empowered and authorized to endorse on
the document, whether a permanent or provisional Certificate of
Registry of a vessel covered by a Preferred Mortgage recorded in
his office, a notation of such mortgage as required under
subsection (2) of this section. Clearance shall not
be given to the vessel until such endorsement is made.

(4) A certificate of such endorsement, giving the
place, time and description of the endorsement, shall be
recorded with the records of registration. Where the
endorsement is properly made by an authorized person other
than the Secretary of Transportation and Communication,
such certificate shall be promptly furnished to the
Secretary of Transportation and Communication.

(5) A mortgage which includes property other than a
vessel shall not be held a Preferred Mortgage unless the
mortgage provides for the separate discharge of such
property by the payment of a specified portion of the
mortgage indebtedness. If a Preferred Mortgage so provides
for the separate discharge, the amount of the portion of
such payment shall be endorsed upon the certificate of the
vessel.

(6) If a Preferred Mortgage includes more than one
vessel and provides for the separate discharge of each
vessel by the payment of a portion of the mortgage
indebtedness, the amount of such portion shall be endorsed
upon the document of the vessel."
Section 10. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 609 of chapter 6 to read as follows:

"Section 609. Lien of Preferred Mortgage. A Preferred Mortgage shall constitute a maritime lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel."

Section 11. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 610 of chapter 6 to read as follows:

"Section 610. Interest on Preferred Mortgage. A Preferred Mortgage may bear such rate of interest as agreed between the two parties."

Section 12. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 611 of chapter 6 to read as follows:

"Section 611. Disclosure of liens and priority.

(1) The mortgagor, before executing a preferred mortgage, shall disclose to the mortgagee in writing the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, which is known to the mortgagor.

(2) After the execution of such mortgage and before the mortgagee has had a reasonable time to record it and have proper endorsements made upon the document of the
vessel, the mortgagor, without the consent of the mortgagee,
shall not incur any contractual obligation creating a lien
upon the vessel, other than liens for wages of stevedores
when employed directly by the owner, operator,
master, ship's husband, or agent of the vessel, for wages
of the crew of the vessel, for general average or for
salvage, including contract salvage, tonnage taxes and all
other charges (not to exceed $1,000) of the Secretary of
Transportation and Communication with respect to the vessel.

(3) Whoever, being a mortgagor or an officer of a
corporate mortgagor, with the intent to defraud, violates
this section shall be liable for a fine not exceeding
$3,000 or to a term of imprisonment not exceeding two (2)
years, or both. The mortgage indebtedness shall thereupon
become immediately due and payable at the election of the
mortgagee."

Section 13. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 612 of chapter
6 to read as follows:

"Section 612. Exhibiting certified copies.

(1) Upon recording a Preferred Mortgage, two (2)
certified copies shall be delivered to the mortgagor who
shall place, and use due diligence to retain, one copy on
board the mortgaged vessel and cause such copy and the
certificate of the vessel to be exhibited by the master to
any person having business which may give rise to a
maritime lien or to the sale, conveyance, or mortgage of
the vessel.

(2) A master who willfully fails to exhibit
such documents and copy of the mortgage shall be liable to
have his license suspended or revoked."

Section 14. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 613 of chapter
6 to read as follows:

"Section 613. Record of notice of claim of lien. The
Secretary of Transportation and Communication or his duly
authorized agent shall upon the request of any person
record notice of such person's claim to a lien upon a
registered vessel, together with the nature, date of
creation, and amount of the lien and the name and address
of the person. Any person who has caused notice of his
claim of lien to be so recorded shall, upon a discharge in
whole or in part of the indebtedness, forthwith file a
certificate of such discharge with the Secretary of
Transportation and Communication or his duly authorized
agent, who shall thereupon record the certificate."

Section 15. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 614 of chapter
6 to read as follows:

"Section 614. Discharge of mortgage. The mortgagor upon a
complete discharge of the mortgage indebtedness shall
forthwith file a certificate of such discharge duly
executed by the mortgagee, his successor or assigns with
the Secretary of Transportation and Communication or his duly
authorized agent, who shall thereupon record the certificate and
the mortgagor may similarly file a certificate of partial
discharge of a mortgage covering more than one vessel."

Section 16. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 615 of chapter
6 to read as follows:

"Section 615. Preferred Mortgage liens and enforcement.

(1) On default of any term of the Preferred Mortgage,
the mortgagee may:

(a) Enforce the Preferred Mortgage lien in a
civil action in rem (i.e., against the vessel) in the
Supreme Court of the Federated States of Micronesia under
its admiralty jurisdiction; and

(b) Enforce a claim for outstanding indebtedness
secured by the mortgaged vessel in a civil action in
personam in the Supreme Court of the Federated States of
Micronesia against the mortgagor, maker, co-maker, or
guarantor for the amount of the outstanding indebtedness or
any deficiency in full payment of that indebtedness.

(2)(a) Actual notice of a civil action brought in the
Supreme Court of the Federated States of Micronesia under
subsection (1) of this section must be given in the manner
directed by that court to:

(i) The master or individual in charge of the
vessel;

(ii) A mortgagee of a mortgage recorded under
this chapter that is an undischarged mortgage on the vessel;

(iii) Any person who has recorded a notice of
claim of an undischarged lien on the vessel.

(b) Failure to give notice under section (2)(a)
of this section is not required, if, after search
satisfactory to the Supreme Court of the Federated States of
Micronesia, the person entitled to such notice has not been
found in the Federated States of Micronesia.

(c) Failure to give notice required by subsection
(2)(a) does not affect the jurisdiction of the Supreme
Court of the Federated States of Micronesia in which the
civil action in rem or in personam is brought. However,
unless notice is not required under subsection (b) of this
section, the party required to give notice is liable to the
person not noticed for damages in the amount of that
person's interest in the vessel terminated by the action
brought under subsection (1) of this section. A civil
action may be brought in the Supreme Court of the Federated
States of Micronesia to recover the amount of the terminated
interest. If the plaintiff prevails, that court may award
costs and attorney fees to the plaintiff.

(3) In a civil action brought under subsection (1) of this section:

(a) The Supreme Court of the Federated States of Micronesia may appoint a receiver and authorize the receiver to operate the mortgage vessel and shall retain in rem jurisdiction over the vessel even if the vessel operates outside the Federated States of Micronesia;

(b) The Supreme Court of the Federated States of Micronesia may direct the National police or other authorized agent, including a substitute custodian, to take possession of a mortgaged vessel even if the vessel is in the possession of or under the control of a person claiming a possessory common law lien."

Section 17. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 616 of chapter 6 to read as follows:

"Section 616. Preferred status. As used in this chapter, the term 'Preferred Mortgage' shall include, in addition to a Preferred Mortgage made pursuant to the provisions of this chapter, any mortgage, hypothecation or similar charge created as security upon any registered foreign vessel, if such mortgage, hypothecation or similar charge has been duly and validly executed and registered in accordance with the laws of the nation where the vessel is documented;
and the term 'Preferred Mortgage lien' shall also include
the lien of such mortgage, hypothecation or similar
charge."

Section 18. Title 19 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 617 of chapter
6 to read as follows:

"Section 617. Court sales to enforce Preferred Mortgage
liens and maritime liens and priority of claims.

(1) When a vessel is sold by order of the Supreme Court
of the Federated States of Micronesia in a civil action in
rem brought to enforce a Preferred Mortgage lien or a
maritime lien, any claim in the vessel existing on the date
of the sale is terminated, including a possessory common
law lien of which a person is deprived when the vessel is
arrested or possession otherwise is taken by an authorized
agent of the Supreme Court of the Federated States of
Micronesia, and the vessel is sold free of all those claims.

(2) Each of the claims terminated under subsection (1)
of this section attaches, in the same amount and in
accordance with their priorities to the proceeds of the
sale, except, that:

(a) The Preferred Mortgage lien has priority over
all claims against the vessel, except for expenses and fees
allowed by the Supreme Court of the Federated States of
Micronesia, and the following preferred maritime liens:
Section 19. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 618 of chapter 6 to read as follows:

"Section 618. Necessaries.

(1) Whoever furnishes repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any foreign or domestic vessel upon the order of the owner or person authorized by the owner, shall have a maritime lien on the vessel.

(2) The managing owner, ship's husband, master or any person to whom the management of the vessel at the port of supply is entrusted including any such appointed by a charterer, owner pro hac vice or agreed purchaser in possession, shall be presumed to have authority from the owner to procure such necessaries, but a person tortiously or unlawfully in possession or charge of the vessel shall not have authority to bind it.

(3) This section shall not confer a lien when the workman or materialman knows, or by exercise of reasonable diligence should have ascertained, that because of the
Section 20. Title 19 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 619 of chapter 6 to read as follows:

"Section 619. Waiver of lien in necessaries. This chapter shall not prevent the furnisher of repairs, supplies, tonnage, use of dry dock or marine railway, or other necessaries, or a mortgagee, from waiving his right to lien or in the case of a Preferred Mortgagee, to waive the preferred status of such lien, at any time by agreement or otherwise."

Section 21. Regulations. The Secretary of Transportation and Communication is hereby authorized to promulgate regulations, in accordance with the requirements of chapter 1 of title 17 of the Code of the Federated States of Micronesia, to carry out the purposes of this act.
Section 22. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

President
Federated States of Micronesia

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