A BILL FOR AN ACT

To establish title 27 of the Code of the Federated States of Micronesia as the National Monetary Transactions Act for the purpose of requiring certain reports or records where they have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings, and for other purposes.

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

Section 1. Section 101 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 101. Title. This act shall be known and cited as the "National Monetary Transactions Act."

Section 2. Section 102 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 102. Definitions and application. As used in this title, unless contrary intention appears:

(1) 'Account' means any facility or arrangement by which a financial institution or cash dealer does any one or more of the following:

(a) Accepts deposits of currency;

(b) Allows withdrawals of currency;

(c) Pays checks or payment orders drawn on a financial institution or cash dealer by, or collects checks or payment orders on behalf of, a person, and includes a facility or arrangement for a safety deposit box.

(2) 'Cash dealer' means:

(a) A person who carries on a business of an insurer, an insurance intermediary, a securities dealer, a futures broker, an operator of a gambling house, casino or lottery;
(b) A person who carries on a business of issuing, selling or redeeming travellers checks, money orders or similar instruments, of dealing in bullion, or of collecting holding and delivering cash as part of a business of providing payroll services;

(c) A trustee, or manager of a unit trust.

(3) 'Cash transaction' means a transaction involving the physical transfer of currency from one person to another.

(4) 'Currency' means the coin and paper money of the United States of America or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue.

(5) 'Financial institution' means any person that carries on a business of:

(a) Acceptance of deposits and other repayable funds from the public;

(b) Lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

(c) Financial leasing;

(d) Money transmission services;

(e) Issuing and administering means of payment including, but not limited to, credit cards, traveller's
checks and banker's drafts;

(f) Guarantees and commitments;

(g) Trading for own account or for account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;

(h) Participation in securities issues and the provision of services related to such issues;

(i) Advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;

(j) Money-brokering;

(k) Portfolio management and advice;

(l) Safekeeping and administration of securities;

(m) Credit reference services;

(n) Safe custody services;

(o) Any other business designated by regulation which may have a high degree of usefulness in criminal, tax, or regulatory matters.

(6) 'Secretary of Finance' means the Secretary of Finance of the Federated States of Micronesia.

(7) 'Unit trust' means any arrangement made for the purpose or having the effect of providing, for a person
having funds available for investment, facilities for
the participation by the person as a beneficiary under a
trust, in any profits or income arising from the
acquisition, holding, management or disposal of any
property pursuant to the trust."

Section 3. Section 103 of title 27 of the Code of the
Federated States of Micronesia is hereby established to read as
follows:

"Section 103. Duty to verify customers identity.

(1) A financial institution or cash dealer shall
take reasonable measures to satisfy itself as to the
true identity of any applicant seeking to enter into a
business relationship with it, or to carry out a
transaction or series of transactions with it, and of
any other person on whose behalf the applicant purports
to act in the transaction by requiring the applicant to
produce an official record reasonably capable of
establishing the true identity of the applicant, such as
a certificate of incorporation, birth certificate, or
passport.

(2) In determining what constitutes reasonable
measures for the purposes of subsection (1), regard
shall be had for all the circumstances of the case, and
in particular:

(a) To whether the applicant is a person based
or incorporated in a country in which there are in force
provisions to prevent the use of the financial system
for the purpose of money-laundering:

(b) To custom and practice as may from time to
time be current in the relevant field of business.

(3) Nothing in this section shall require the
production of any evidence of identity where:

(a) The applicant is itself a financial
institution or a cash dealer to which this title
applies; or

(b) There is a transaction or a series of
transactions taking place in the course of a business
relationship, in respect of which the applicant has
already produced satisfactory evidence of identity."

Section 4. Section 104 of title 27 of the Code of the
Federated States of Micronesia is hereby established to read as
follows:

"Section 104. Duty to establish and maintain customer
records.

(1) A financial institution or cash dealer shall
establish and maintain:

(a) Records of all transactions carried out by
it in accordance with the requirements of subsection
(3):

(b) Where evidence of a person's identity is
obtained in accordance with section 103 a record that
indicates the nature of the evidence obtained, and which
comprises either a copy of the evidence or such
information as would enable a copy of it to be obtained.

(2) Customer accounts of a financial institution or
cash dealer shall be kept in the true name of the
account holder.

(3) Records required under subsection (1)(a) shall
contain information sufficient to identify the:

(a) Name, address and occupation, or where
appropriate business or principal activity, of each
person;

(i) conducting the transaction; or

(ii) if known, on whose behalf the
transaction is being conducted, as well as the method
used by the cash dealer to verify the identity of each
such person;

(b) Nature and date of the transaction;

(c) Type and amount of currency involved;

(d) Type and identifying number of any account
with the cash dealer involved in the transaction;

(e) If the transaction involves a negotiable
instrument other than currency, the name of the drawer
of the instrument, the name of the institution on which
it was drawn, the name of the payee (if any), the amount
and date of the instrument, the number (if any) of the
instrument and details of any endorsements appearing on
the instrument; and

(f) The name and address of the cash dealer,
and of the officer, employee or agent of the cash dealer
who prepared the report.

(4) Records required under subsection (1) shall be
kept by the financial institution for a period of at
least 5 years from the date the relevant business or
transaction was completed."

Section 5. Section 105 of title 27 of the Code of the
Federated States of Micronesia is hereby established to read as
follows:

"Section 105. Duty to report transactions.

(1) Whenever a financial institution or cash dealer
is a party to a transaction of an amount of more than
$10,000 or its equivalent value, it shall:

(a) Take reasonable measures to ascertain from
the relevant customer the purpose of the transaction,
the origin and ultimate destination of the funds
involved, and the identity and address of any ultimate
beneficiary;

(b) Prepare a report of the transaction in
accordance with subsection (2); and

(c) Communicate the information contained
therein to the Secretary of Finance in writing or in such other form as the Secretary of Finance may prescribe.

(2) A report required by subsection (1) shall:

(a) Contain particulars of the matters specified in subsection (1)(a) and in section 104;

(b) Be filed with the Secretary of Finance no later than 7 calendar days from the date of the transaction; and

(c) Be signed or otherwise authenticated by the financial institution or cash dealer.

(3) A financial institution or a cash dealer which has reported a transaction in accordance with this title shall, if requested to do so by the National Attorney General, give such further information as it has in relation to the transaction."

Section 6. Section 106 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 106. Duty to establish and maintain internal reporting procedures. In order to guard against money-laundering a financial institution or cash dealer shall:

(1) Develop internal policies, procedures and controls;

(2) Designate a compliance officer;
(3) Take appropriate measures for the purpose of making employees aware of the Federated States of Micronesia's laws relating to money-laundering, and the procedures and related policies established and maintained by it pursuant to this title; and

(4) Provide its employees with appropriate training in the recognition and handling of money-laundering transactions."

Section 7. Section 107 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 107. Other reports.

(1) Any person who accepts in the Federated States of Micronesia, in the course of any trade, business profession or occupation, any payment of cash in excess of $3,000 or such other amounts as the Secretary of Finance may prescribe, shall:

(a) Provide a written report to the Secretary of Finance in a form and at a time prescribed by the Secretary of Finance."

Section 8. Section 108 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 108. Money-laundering offenses.

(1) A person commits the offense of money-
laundering if he or she:

(a) Acquires, possesses or uses property,
knowing or having reason to believe that it is derived
directly or indirectly from acts or omissions:

(i) in the Federated States of
Micronesia which constitute an offense against this
title, or another law of the Federated States of
Micronesia punishable by imprisonment for not less than
2 years;

(ii) outside the Federated States of
Micronesia which, had they occurred in the Federated
States of Micronesia, would have constituted an offense
under Federated States of Micronesia law punishable by
imprisonment for not less than 2 years;

(b) Renders assistance to another person for:

(i) the conversion or transfer of
property derived directly or indirectly from those acts
or omissions, with the aim of concealing or disguising
the illicit origin of that property, or of aiding any
person involved in the commission of the offense to
 evade the legal consequences thereof;

(ii) concealing or disguising the true
nature, origin, location, disposition, movement or
ownership of the property derived directly or indirectly
from those acts or omissions.
Penalty: A person willfully violating this subsection shall be imprisoned for not more than 15 years, or fined more than $250,000, or both.

(2) Any person who:

(a) Acquires information in the course of a trade, profession, business or employment about another person's affairs;

(b) Thereby knows, or has reasonable grounds to suspect, that the other person has committed or is about to commit an offense against subsection (1); and

(c) Fails, without showing reasonable grounds for such failure, to disclose his knowledge or suspicion as soon as is reasonably practicable to the National Attorney General, commits an offense.

Penalty: A person willfully violating this subsection shall be imprisoned for not more than 5 years, or fined more than $25,000, or both."

Section 9. Section 109 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 109. Related offenses.

(1) Any person who brings into the Federated States of Micronesia, or takes or sends out of the Federated States of Micronesia an amount of more than $10,000 or its equivalent value, or such other amount of currency..."
or its equivalent value as the Secretary of Finance may prescribe commits an offense, unless:

(a) The transfer is one of a class prescribed
by the Secretary of Finance as one to which this section
does not apply;

(b) The transfer is effected through a
financial institution; or

(c) The person has given to the National
Attorney General a report specifying:

(i) the type and amount of currency
involved;

(ii) the date it is to be so brought in,
or taken or sent out of the Federated States of
Micronesia; and

(iii) the name, address, occupation or
where appropriate, the business or principal activity of
the recipient, sender or bearer.

(2) A person shall not open or operate an account
with a financial institution or a cash dealer in a false
name.

Penalty: A person willfully violating these subsections
shall be imprisoned for not more than 5 years, or fined
more than $25,000, or both.

(3) Any person who:

(a) Knows or suspects that a report under
subsection (1) is being prepared or has been sent to the
National Attorney General; and

(b) Discloses to another person information or
other matter which is likely to prejudice any
investigation of an offense or possible offense of
money-laundering under subsection 108(1) commits an
offense.

(4) In proceedings for an offense against
subsection (3), it is a defense that the person did not
know or have reasonable grounds to suspect that the
disclosure was likely to prejudice any investigation of
an offense or possible offense in money-laundering under
subsection 108(1).

Penalty: A person willfully violating subsection 109(3)
shall be imprisoned for not more than 5 years, or fined
more than $25,000, or both."

Section 10. Section 110 of title 27 of the Code of the
Federated States of Micronesia is hereby established to read as
follows:

"Section 110. Forfeiture. Nothing in the penalty
provisions of this title shall preclude an action for
forfeiture brought pursuant to applicable laws of the
Federated States of Micronesia."

Section 11. Section 111 of title 27 of the Code of the
Federated States of Micronesia is hereby established to read as
"Section 111. Liability for disclosures. Any financial institution or cash dealer, or any director, officer, employee or agent of the same, who voluntarily discloses any possible violation of law or regulation pursuant to this title, shall not be liable to any person under any constitution, law, or regulation of the Federated States of Micronesia or its States."

Section 12. Section 112 of title 27 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 112. The Secretary of Finance is hereby authorized to issue and promulgate rules and regulations implementing the provisions of this title which, upon approval by the President of the Federated States of Micronesia, shall have the force and effect of law."

Section 13. 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: 01/23/94

Introduced by: Joseph G. Urusmal (by request)