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A BILL FOR AN ACT

To further amend title 41 of the Code of the Federated States of Micronesia, as amended, by creating a new chapter 12 to regulate the manufacture, labelling, promotion, distribution, sale, use of tobacco products, and to implement the provisions of the WHO Framework Convention on Tobacco Control, and for other purposes.

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

2       Section 1. Title 41 of the Code of the Federated States of  
3 Micronesia (Annotated), as amended, is hereby further amended by  
4 creating a new chapter 12 to be entitled "Family Safety Against  
5 Tobacco and Smoking Act".

6       Section 2. Title 41 of the Code of the Federated States of  
7 Micronesia, as amended, (Annotated), is hereby further amended by  
8 inserting a new section 1201 under chapter 12 to read as follows:

9           "Section 1201. Short title. This chapter is known and  
10           may be cited as the "Family Safety Against Tobacco and  
11           Smoking Act".

12       Section 3. Title 41 of the Code of the Federated States of  
13 Micronesia (Annotated), as amended, is hereby further amended by  
14 inserting a new section 1202 under chapter 12 to read as follows:

15           "Section 1202. Definitions. The following terms shall  
16           have the following meanings for the purposes of this Act:

17           (1) 'tobacco advertisement and promotion' means any  
18           commercial communication through any media or  
19           means, that is intended to have, or is likely to

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1           have, the direct, indirect, or incidental effect  
2           of the following:

3           (a) creating an awareness of a tobacco product,  
4           brand, manufacturer, or seller;

5           (b) promoting the purchase or use of a tobacco  
6           product or brand of a tobacco advertisement includes, but  
7           is not limited to, words, names, messages, mottos, slogans,  
8           letters, numbers, pictures, images, colors and other  
9           graphics, sounds, and any other auditory, visual, or  
10          sensory matter, in whole or part, that is or are:

11           (i) commonly identified or associated with a  
12          tobacco product, brand, manufacturer;

13           (ii) otherwise an indicia of product, brand,  
14          manufacturer identification;

15          (2) 'brand' means a product line, trademark, or  
16          distinctive name identifying a line of tobacco product or  
17          tobacco product manufacturer;

18          (3) 'brand variant' means a tobacco product  
19          distinguishable from another tobacco product by any means,  
20          including, but not limited to, the following:

21           (a) a tobacco product that is sold under different  
22          brands or brand names;

23           (b) a tobacco product sold under the same brand  
24          name, but differing in characteristics in one or more of  
25          the following ways:

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- 1                   (i) containing or not containing menthol;  
2                   (ii) being otherwise differently flavored  
3 between tobacco products under the brand;  
4                   (iii) producing different quantities of tar,  
5 nicotine, carbon-monoxide or other constituents or  
6 allegations relating to these characteristics;  
7                   (iv) allegedly differing in mildness;  
8                   (v) having or not having filter tips or cork  
9 tips;  
10                  (vi) being of different length or mass between  
11 tobacco products under the brand;  
12                  (4) 'cigarette' means a tobacco product comprising a  
13 roll or cut tobacco, enclosed in paper;  
14                  (5) 'convention' means the WHO Framework Convention on  
15 Tobacco Control;  
16                  (6) 'distributor' means a person who engages in business  
17 of selling tobacco products, and includes a wholesaler,  
18 importer or exporter, but does not include a retailer who  
19 engages in the business of selling tobacco products by  
20 retail directly to consumers only;  
21                  (7) 'designated smoking area' means any outdoor area  
22 that a property owner or manager designates as acceptable  
23 for smoking, and establishes with signage to that effect,  
24 excluding all areas prohibited pursuant to chapter 8 of  
25 Title 41 of the Code of the Federated States of Micronesia

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1           and Section 1207 of this Act;

2           (8) 'electronic nicotine and non-nicotine delivery  
3           systems; means any person who sends tobacco products  
4           outside the Federated States of Micronesia for sale or  
5           supply in another country;

6           (9) 'exporter' means any person who sends tobacco  
7           products outside the Federated States of Micronesia for  
8           sale or supply in another country;

9           (10) 'indoor' means any enclosed or partially enclosed  
10          area including areas that are connected to an enclosed area  
11          which are covered by a roof or roof-like structure whether  
12          or not enclosed on its sides;

13          (11) 'inspector' means a person or class of person  
14          designated as an inspector under section 1210 of this Act;

15          (12) 'manufacturer' means any person that makes,  
16          fabricates, produces, processes, packs and/or labels  
17          tobacco products for the purpose of sale or distribution,  
18          and includes all entities inter alia that are associated  
19          with the manufacturer, including an entity that controls or  
20          is controlled by the manufacturer, or that is controlled by  
21          the same entity that controls the manufacturer;

22          (13) 'manufacturing' means making, fabricating,  
23          producing, processing, packing and/or labeling tobacco  
24          products for the purpose of sale or distribution;

25          (14) 'minor' means a person under the age of twenty-one;

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1           (15) 'package' means any pack, carton, wrapping or other  
2           container in which tobacco products are customarily sold at  
3           retail;

4           (16) 'person' means any natural person, partnership,  
5           cooperative association, corporation, personal  
6           representative, receiver, trustee, assignee, or any other  
7           legal entity;

8           (17) 'public place' means any enclosed place, fixed or  
9           mobile, accessible to the general public or place for  
10           collective use, regardless of ownership or right of access,  
11           whether by expressed or implied invitation. For purposes  
12           of this Act, an enclosed place is a partially or fully  
13           completed building or structure, including a mine or  
14           tunnel, that is separated from the outdoors, or areas  
15           enclosed by a roof or similar over-head covering; and/or at  
16           least 2 or more partial or full walls, or vehicle used by  
17           and open to the public regardless of whether the vehicle is  
18           owned in whole or in part by private persons or entities;

19           (18) 'retailer' means a person who engages in the selling  
20           of tobacco products directly to consumers and end-users;

21           (19) 'Secretary' means the Secretary of Health and Social  
22           Affairs or his/her designee;

23           (20) 'seller' means any person who supplies any tobacco  
24           product for a fee or other consideration, and includes any  
25           manufacturer, distributor, wholesaler, importer, exporter,

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1           or retailer;

2           (21) 'smoking' means inhaling, exhaling, burning, or  
3           carrying any ignited, lighted or heated cigar, cigarette,  
4           or pipe, or any other lighted or heated tobacco product,  
5           whether natural or synthetic, containing, made, or derived  
6           from nicotine, tobacco, marijuana, or other plant, that is  
7           intended for inhalation. Smoking also includes using an  
8           electronic smoking device or non-nicotine delivery system;

9           (22) 'tobacco' means any preparation or extract of leaves  
10           of the nicotiana tobacum plant;

11           (23) 'tobacco industry' means manufacturers, wholesalers,  
12           importers, exporters, distributors, and any other vendor  
13           for tobacco products, as well as any entity or person  
14           working to further the interests of any commercial entity  
15           that solely or the majority of which benefits from the sale  
16           of tobacco products;

17           (24) 'tobacco product' means any product containing  
18           tobacco or nicotine in any form that is intended for human  
19           use. A tobacco product includes all parts and materials  
20           inter alia, such as papers, filters and filter wrappers,  
21           over-wrappers, rods, portion pouches, cigars, cigarettes,  
22           smokeless tobacco, pipe tobacco and roll your own tobacco,  
23           and similar matter, as applicable, even if sold separately.  
24           Tobacco product includes areca (betel). Tobacco product  
25           also includes electronic nicotine delivery systems and non-

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1           nicotine delivery systems such as e-cigarettes and similar  
2           products, and any liquids or other inputs to such devices;

3           (25) "Terms and expressions used and not defined in this  
4           Act shall, unless the context otherwise requires, have the  
5           same meaning as in the Convention."

6           Section 4. Title 41 of the Code of the Federated States of  
7 Micronesia (Annotated), as amended, is hereby further amended by  
8 inserting a new section 1203 under chapter 12 to read as follows:

9           "Section 1203. General Provision and Product Regulations.

10           (1) No person shall manufacture, sell, or import  
11           electronic nicotine and non-nicotine delivery systems  
12           except as a tobacco product as defined by this Act.

13           (2) Tobacco product may only be manufactured, sold, or  
14           imported into FSM in strict compliance with this Act and  
15           any regulations promulgated under this Act.

16           (3) Every manufacturer and importer of a tobacco product  
17           shall provide the Secretary, in the prescribed manner and  
18           within the prescribed time, information about the product  
19           and its constituents and emissions as required by  
20           Regulations promulgated under this Act.

21           (4) The Secretary shall make regulations:

22                   (a) establishing standards for the manufacture of  
23           tobacco products, including:

24                           (i) prescribing the amount of substances

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1           that may be contained in the product or its emission;

2                   (ii) prescribing substances that may not be added  
3           to tobacco products;

4                   (iii) prescribing tobacco product packaging  
5           standards, including standards for biodegradable packaging  
6           and/or prohibiting materials that add to environmental or  
7           marine pollution; and

8                   (iv) prescribing product design standards to  
9           reduce the harmful effects of tobacco products, reduce  
10          their appeal to minors, and reduce tobacco product waste  
11          pollution; and

12                   (v) prescribing test methods, including methods  
13          to assess conformity with the standards;

14                   (vi) prescribing information that manufacturers  
15          must provide to the Secretary and or the public about  
16          tobacco products and their emission, including sales data  
17          and information on product composition, ingredients,  
18          hazardous properties and brand elements; and

19                   (vii) prescribing the standards for licensing of  
20          importers, wholesalers, and retailers;

21                   (viii) generally as needed to carry out the  
22          purposes of the Act.”

23           Section 5. Title 41 of the Code of the Federated States of  
24   Micronesia (Annotated), as amended, is hereby further amended by  
25   inserting a new section 1204 under chapter 12 to read as follows:



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1           "Section 1204. Prohibition of Tobacco Product Promotion,  
2           Advertisement, and Sponsorship.

3           (1) No person shall promote or cause to promote by any  
4           other person, a tobacco product or a tobacco product-  
5           related brand element, through direct or indirect means,  
6           including through sponsorship of an organization, service,  
7           physical establishment, vehicle of any kind, or event.

8           (2) No person shall sell, promote, distribute or cause  
9           to be sold, promoted or distributed, any item other than a  
10           tobacco product that bears the brand name or brand variant  
11           (alone or in conjunction with any other word), trade-mark,  
12           trade-name, distinguishing guise, logo, graphic  
13           arrangement, design, slogan, symbol, motto, selling  
14           message, recognizable color or pattern of colors, or any  
15           other indicia of product identification identical or  
16           similar to, or identifiable with, those used for any brand  
17           of tobacco product.

18           (3) No person shall promote or cause to promote by any  
19           other person, a tobacco product or a tobacco product-  
20           related brand element, except as prescribed by this Act.

21           (4) Notwithstanding any regulation made under this Act,  
22           no person or entity shall promote or cause to promote  
23           tobacco products or brand elements:

24           (a) in a manner that allows a consumer or purchaser  
25           of tobacco products to be deceived or misled concerning its

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1           character, properties, toxicity, composition, or safety;

2                   (b) that does not display, in the prescribed form  
3           and manner, the information required in accordance with  
4           this Act or any regulations about the product and its  
5           emissions, health hazards and effects arising from the use  
6           of the product or from its emissions and other health-  
7           related messages such as advice on how to quit smoking;

8                   (c) through means of promotion that can be viewed  
9           from outdoors;

10                   (d) within any place of retail or wholesale sales;

11                   (e) utilizing any item other than a tobacco product,  
12           which bears the brand name (alone or in conjunction with  
13           any other word), trade-mark, trade-name, distinguishing  
14           guise, logo, graphic arrangement, design, slogan, symbol,  
15           motto, selling messages, recognizable color or pattern of  
16           colors, or any other indicia of product identification  
17           identical or similar to, or identifiable with, those used  
18           for any brand of tobacco product;

19                   (f) utilizing any athletic, musical, artistic or any  
20           other social or cultural event, or any entry or team in any  
21           event, in the brand name (alone or in conjunction with any  
22           other word), trade-mark, trade-name, distinguishing guise,  
23           logo, graphic arrangement, design, slogan, symbol, motto,  
24           selling message, recognizable color or pattern of colors,  
25           or any other indicia of product identification identical or

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1           similar to, or identifiable with, those used for any brand  
2           of tobacco product;

3           (5) No person or entity shall offer or provide any  
4           consideration, direct or indirect, for the purchase of a  
5           tobacco product, including a gift to a retailer, purchaser  
6           or a third party, bonus, premium, cash rebate or right to  
7           participate in a game, lottery or contest, or distribute a  
8           tobacco product without monetary consideration, or in  
9           consideration of the purchase of a product or service or  
10           the performance of a service, whether requiring the  
11           purchase of a tobacco product or not. No person or entity  
12           shall redeem or offer discounts, coupons, or any similar  
13           promotion that results in the effective sale of any tobacco  
14           product at less than full retail price.

15           (6) No person or entity shall directly target  
16           individuals with promotional, or informational material,  
17           such as direct mail, telemarketing, internet advertising  
18           and social media, "consumer survey", "research" or person-  
19           to-person conversation by a business in the tobacco  
20           industry or person acting to further its interests;

21           (7) No person shall advertise, arrange for, influence,  
22           or participate in the advertising of any tobacco product,  
23           brand, manufacturer, directly or indirectly;

24           (8) No person shall:

25                   (a) display, exhibit, announce, broadcast or

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1        telecast, or cause or permit to be displayed, exhibited,  
2        announced, broadcast or telecast, or authorize the display,  
3        exhibition, announcement, broadcast or telecast to the  
4        public of a tobacco product advertisement;

5                (b) whether or not for payment or other  
6        consideration, publish, broadcast or disseminate on behalf  
7        of another person a tobacco product advertisement or  
8        arrange for a tobacco product advertisement to be  
9        published, broadcast, or disseminated;

10               (c) print or publish, or cause or permits to be  
11        printed or published, or authorize the printing or  
12        publication of a tobacco product advertisement in any  
13        printed publication, book, magazine, leaflet, handbill,  
14        newspaper or other printed matter intended for the public.

15               (9) Subsections (1), (2), (3), (4), (5), (6), (7), and (8) do  
16        not apply to the following:

17               (a) information about tobacco products prepared by  
18        government agencies, news media, or public health  
19        professionals, not funded by or working for the tobacco  
20        industry, for the purposes of educating the public about  
21        the dangers of tobacco products, ways to seek treatment and  
22        assistance in quitting tobacco products, and related health  
23        and environmental issues;

24               (b) announcements or solicitations by public health  
25        researchers and scientists, not funded by or working for

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1           the tobacco industry, studying the FSM tobacco and health  
2           issues;

3           (c) any tobacco product advertisement included in  
4           any book, magazine, or newspaper printed outside the FSM,  
5           or in any radio or television transmission originating  
6           outside the FSM, or any film, video recording or visual  
7           disk originating outside the FSM;

8           (d) notwithstanding section 9(c), the following are  
9           prohibited:

10           (e) any book, magazine, newspaper, broadcast,  
11           telecast, film, video recording or visual disk with the  
12           principal purpose is the promotion of the use of a tobacco  
13           product or smoking; or

14           (ii) any book, magazine, newspaper, broadcast,  
15           telecast, film, video recording or visual disk intended for  
16           sale, distribution, or exhibition in the FSM; or

17           (iii) in the case of, a tobacco product  
18           advertisement in any radio, television, electronic  
19           transmission or data message, any advertisement is targeted  
20           at an audience in the FSM.

21           (10) For the purpose of monitoring compliance with this  
22           Section, tobacco manufacturers, wholesalers, distributors,  
23           importers, retailers, and any other sellers as may be  
24           designated in regulations, shall provide reports as  
25           required by this sub-section to the Secretary on a periodic

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1 basis, which shall be at least annually, and upon request,  
2 as prescribed as to content, format, periodicity, and all  
3 other details as specified in implementing regulations.  
4 Reports shall contain information in total and by brand on  
5 any tobacco advertising, promotion, or sponsorship  
6 including any donations, whether publicly acknowledged or  
7 not, undertaken during the reporting period, including, but  
8 not limited to:

9 (a) the kind of advertising, promotion or  
10 sponsorship, including its content, form, and the medium  
11 used;

12 (b) the placement and extent or frequency of the  
13 advertising, promotion, or sponsorship;

14 (c) the identity of all persons and entities  
15 involved in the advertising, promotion or sponsorship,  
16 including advertising and production companies;

17 (d) the amount of financial and/or other resources  
18 used for the tobacco advertising, promotion or sponsorship;  
19 and

20 (e) other information as may be required by the  
21 Secretary.

22 (11) The Secretary shall make information from the  
23 reports required by this Act readily available to the  
24 public, subject to any precautions necessary for preventing  
25 misleading or promotional information, if any, from

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1           becoming public.

2           (12) Government, including civil servants and elected  
3           officials, state and local governments, and public schools,  
4           shall not participate in, support, endorse, or accept:

5                   (a) any legal or policy measure drafted by or in  
6                   collaboration with the tobacco industry, or any offer of  
7                   assistance with drafting such measures from the tobacco  
8                   industry;

9                   (b) any education, instruction, or training on any  
10                  tobacco control policy matter provided by or with any kind  
11                  of contribution from the tobacco industry;

12                  (c) any partnership of any kind with the tobacco  
13                  industry;

14                  (d) any agreement or tobacco industry code of  
15                  conduct in the place of legally enforceable tobacco control  
16                  measures; or

17                  (e) any tobacco industry involvement in any manner  
18                  in any initiative, campaign, program, or activity directly  
19                  or indirectly related to tobacco control or public health,  
20                  including but not limited to, any youth access or education  
21                  program, public education campaign, or other tobacco  
22                  control or public health initiative.

23           Section 6. Title 41 of the Code of the Federated States of  
24           Micronesia (Annotated), as amended, is hereby further amended by  
25           inserting a new section 1205 under chapter 12 to read as follows:

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1           "Section 1205. Restrictions or Limitations on Distribution  
2           and Sale of Tobacco Products.

3           (1) No person shall sell or offer to sell tobacco to a  
4           person who is less than twenty-one years of age;

5           (2) No person shall allow a person under the age of  
6           twenty-one to purchase or sell a tobacco product on  
7           premises owned or controlled by the aforementioned person.

8           (3) It shall not be a defense to sections 1 to 3 of this  
9           chapter that the person appeared to be twenty-one years old  
10           or older.

11           (4) A retailer of tobacco products shall display clearly  
12           for the public a notice to the effect that the sale of any  
13           tobacco product to a person under twenty-one years old is  
14           prohibited.

15           (5) It is not a defense for a person charged under  
16           subsection (5) or (6) that the person believed that the  
17           person to whom the tobacco product was sold, given or  
18           provided was over the age of twenty-one years of age at the  
19           time of the offense is alleged to have been committed.

20           (6) A person who contravenes subsections  
21           (1), (2), (3), (5), (6), and (7), commits an offense.

22           (7) It is a defense to a prosecution under this section,  
23           but not subsection (5) or (6), if a person proves that  
24           he/she had taken all reasonable precautions to ensure that  
25           the purchaser presented a prescribed form of identification



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1 showing his or her age and that there was no apparent  
2 reason to doubt the authenticity of the document or that it  
3 was issued to the person producing it.

4 (8) No person shall sell or offer to sell tobacco  
5 products:

6 (a) by means of a display that permits a person to  
7 handle the tobacco product before paying for it;

8 (b) through a vending machine;

9 (c) through the mail or the internet;

10 (d) from a moveable place of business;

11 (e) at a retail store unless signs bearing health  
12 warnings and other information are posted at the place in  
13 accordance with this Act and its regulations.

14 (9) No person shall offer tobacco products for sale  
15 (whether by retail or wholesale) and allow any part of a  
16 tobacco product, tobacco package, or tobacco carton to be  
17 visible from:

18 (a) outside; or

19 (b) an area inside, visible to the public."

20 (10) Nothing in this Act preempts state or local  
21 licensing of tobacco retailers, or state or local  
22 regulations that provide for more restrictive regulation of  
23 sales of tobacco products, including but not limited to

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1           prohibitions of sales.”

2           Section 7. Title 41 of the Code of the Federated States of  
3 Micronesia (Annotated), as amended, is hereby further amended by  
4 inserting a new section 1206 under chapter 12 to read as follows:

5           “Section 1206. Restrictions or Limitations on Packaging  
6 and Labeling of Tobacco Products.

7           (1) No person shall sell or offer to sell tobacco  
8 products in any of the following manners:

9                   (a) loose cigarettes or cigarettes in an opened  
10 package; or

11                   (b) loose tobacco in an unopened package that  
12 contains less than thirty-four point two (34.2) grams of  
13 tobacco; or

14                   (c) cigarettes in an unopened package that contains  
15 fewer than 20 pieces being no less than 84mm in length and  
16 weighing no less than 0.8grams per cigarette.

17           (2) No person shall sell tobacco products except in a  
18 package containing the quantities or number of units  
19 prescribed by this Act or regulations promulgated by the  
20 Secretary under this Act.

21           (3) No person shall sell, distribute, or display for  
22 sale or distribution, import, or export any tobacco  
23 products in a package, or with a label in a manner that  
24 allows a consumer or purchaser of tobacco products to be

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1 deceived or misled concerning its characteristics,  
2 properties, toxicity, composition, merit or safety.

3 (4) No person shall sell or offer for sale a tobacco  
4 product unless:

5 (a) the package containing the product conforms with  
6 prescribed requirements in accordance with this Act and its  
7 Regulations;

8 (b) the package containing the product displays in  
9 accordance with this Act and its regulations with the  
10 following:

11 (i) a graphical health message;

12 (ii) a list of the harmful constituents of the  
13 product;

14 (iii) the emissions of the product (if any); and

15 (iv) in the case of a tobacco product intended  
16 for inhaling, a list of the harmful constituents present in  
17 the smoke, vapour, or aerosol.

18 (5) Regulations the Secretary promulgates under this Act  
19 may provide that every unit packet and package of tobacco  
20 sold in the Federated States of Micronesia must carry  
21 messages that are in the form of, or include, pictures or  
22 pictograms. Such regulations may also dictate other  
23 packaging specifications, including materials used and  
24 plain packaging requirements.

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1           (6) All tobacco products imported for sale or sold in  
2           the FSM must carry a clear statement that the product is  
3           intended or made for sale in the FSM.

4           (7) No manufacturer, distributor, wholesaler, importer,  
5           or retailer of a tobacco product shall distribute or supply  
6           any tobacco product in contravention of subsection (1),  
7           (2), (3), (5), (6), and (7) of this section.

8           (8) Any requirements arising from subsections (6) and  
9           (7) do not relieve a manufacturer, importer, or retailer of  
10          tobacco products of other obligations or liabilities  
11          arising from other requirements.

12          Section 8. Title 41 of the Code of the Federated States of  
13          Micronesia (Annotated), as amended, is hereby further amended by  
14          inserting a new section 1208 under chapter 12 to read as follows:

15          "Section 1208. Licensing and Measures to Combat Smuggling

16               (1) Manufacturing of tobacco products is prohibited in  
17               the Federated State of Micronesia;

18               (2) Exporting tobacco products from the Federated States  
19               of Micronesia is prohibited.

20               (3) No person shall sell or offer to sell tobacco  
21               products from a moveable place of business or in a place  
22               other than those permitted by regulations under this Act.

23               (4) No importer, or person, partnership, corporation or  
24               other entity shall conduct on any premises or vehicle the

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1 business of importation, of tobacco products without first  
2 obtaining a tobacco importer license from the FSM  
3 Department of Finance and Administration, including payment  
4 of the fee specified by regulations promulgated pursuant to  
5 this Act.

6 (5) No distributor or wholesaler, or person partnership,  
7 corporation or other entity shall conduct on any premises  
8 or vehicle the business of distributing or wholesaling  
9 tobacco products without first obtaining a tobacco  
10 distributor or wholesaler license from the FSM Department  
11 of Finance and Administration, including payment of the fee  
12 specified pursuant to the laws and regulations of the FSM,  
13 regulations promulgated pursuant to this Act, or laws and  
14 regulations of its four states where applicable.

15 (6) No retailer, person, partnership, corporation or  
16 other entity shall conduct on any premises or vehicle the  
17 business of retailing tobacco products without first  
18 obtaining a tobacco retail license , or licenses, from the  
19 FSM Department of Finance and Administration and any other  
20 regulator, including payment of the fee specified pursuant  
21 to the laws and regulations of the FSM, regulations  
22 promulgated pursuant to this Act, or laws and regulations  
23 of its four states or municipalities, where applicable.

24 (7) For the purpose of this Act, the FSM Department of  
25 Finance and Administration shall serve as the licensing

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1 authority but the Secretary shall have the authority to  
2 prescribe by regulation the requirements pursuant to this  
3 Act for the grant of new license, renewal of a license, or  
4 revocation of any license, and determine the valid period  
5 of the license. Appeals of decisions by the Department of  
6 Finance and Administration regarding licenses shall be  
7 heard by the Secretary.

8 (8) Nothing in this section preempts state or local  
9 licensing of tobacco wholesalers and retailers. Before  
10 commencing business, tobacco product wholesalers and  
11 retailers shall obtain licenses from all applicable  
12 regulators."

13 Section 9. Title 41 of the Code of the Federated States of  
14 Micronesia (Annotated), as amended, is hereby further amended by  
15 inserting a new section 1209 under chapter 12 to read as follows:

16 "Section 1209. Testing and Reporting of Constituents,  
17 Additives, and Certain Business Information.

18 (1) Every importer of tobacco products shall submit to  
19 the Department of Health and Social Affairs on at least an  
20 annual basis, and as prescribed by Regulation, reports and  
21 returns containing the information specified in this Act  
22 and regulations under this Act.

23 (2) For the purpose of this Act's requirements regarding  
24 tests for harmful constituents of brands of manufactured  
25 cigarettes and other tobacco products, and the respective

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1           quantities of those constituents present in smoke and other  
2           aerosols, every importer of a tobacco product shall:

3                   (a) test all tobacco products annually per brand  
4                   variant at a laboratory that is a part of the WHO Tobacco  
5                   Laboratory Network (TobLabNet) and nominated by the  
6                   Secretary;

7                   (b) test for all toxins in contents and emissions as  
8                   designated by the Secretary through Regulations, consistent  
9                   with WHO standards; specifically,

10                           i) all the toxicants listed by the Secretary by  
11                           regulation shall be tested for and measured in smoke or  
12                           aerosol emissions from tobacco products present in  
13                           Federated States of Micronesia;

14                                   ii) the emissions testing should be done with  
15                                   two methods, namely: ISO Regime and the World Health  
16                                   Organization (WHO) Intense Regime;

17   iii) nicotine content must be tested;

18   iv) test results must be normalized to per  
19   milligram of nicotine in order for it to be comparable  
20   across brand names and brand variants over time.

21                           (c) The cost of all required tests will be borne by  
22                           the importer applying for tobacco import licensing or  
23                           registration.

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1                   (d) Test results shall be assessed and cleared by  
2                   the Secretary and submitted to the Federated States of  
3                   Micronesia Department of Finance and Administration at the  
4                   time of registration or licensing in the form of the  
5                   testing report and return form as may be prescribed under  
6                   this Act or Regulations promulgated by the Secretary.

7                   (3) Every importer of a tobacco product commits an  
8                   offense whenever they fail to:

9                   (a) submit any return required by subsection 1; or

10                   (b) publish any report required by subsection 2."

11           Section 10. Title 41 of the Code of the Federated States of  
12 Micronesia (Annotated), as amended, is hereby further amended by  
13 inserting a new section 1210 under chapter 12 to read as follows:

14           "Section 1210. Inspection.

15           (1) For the purpose of this Act, the Secretary may  
16           appoint any qualified person or designate any class of  
17           persons to perform the duties of tobacco control inspector  
18           or analyst. The responsibilities of an inspector shall be  
19           specified in the Regulation promulgated by the Secretary.

20           (2) Every person authorized as an inspector or analyst  
21           under subsection 1 of this section, may, at any reasonable  
22           time, to ascertain compliance with this Act and its  
23           regulations, enter and inspect any public places suspected  
24           of violating this law or promulgated regulations.



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1           (3) Authorized inspectors or analysts shall have the  
2           following powers, which no person shall deny, obstruct, or  
3           hinder:

4           (a) Enter any port of entry or public places where  
5           articles subject to this chapter are being received,  
6           shipped or prepared for distribution, and examine and take  
7           samples of articles, and examine anything which appears  
8           capable of being used for such preparation, packaging,  
9           storage, sale or conveyance;

10           (b) Open and inspect any package which contains any  
11           article subject to this chapter;

12           (c) Examine any books, accounts, documents, or other  
13           records that could contain any relevant information about  
14           articles subject to this chapter and make copies of them;

15           (d) Destroy or dispose of tobacco products, which  
16           has been imported with prior notice to the owner;

17           (e) Notify the national authorities for necessary  
18           assistance. National authorities for purposes of this Act  
19           refers to National Police. Assistance may be rendered by  
20           the authorities as requested;

21           (f) Question any person to determine compliance with  
22           this Act.

23           (4) After any inspection, the tobacco control inspector  
24           shall give to the owner or person in charge a written  
25           report noting any violation of this Act or the regulations.

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1           A copy of this report shall be given to the Secretary and  
2           the national authorities.

3           Section 11. Title 41 of the Code of the Federated States of  
4 Micronesia (Annotated), as amended, is hereby further amended by  
5 inserting a new section 1211 under chapter 12 to read as follows:

6           "Section 1211: Enforcement, Offences, and Penalties.

7           (1) Any person found guilty of violating any provision  
8           undersection 1203, 1204, 1205, 1206, 1207, and 1208 of this  
9           Act shall be liable for a fine of:

10           (a) in the case of an individual, not less than \$500  
11           and not more than \$5,000 for the first offence, and of not  
12           less than \$1,000 and not more than \$10,000 for subsequent  
13           offences;

14           (b) in the case of the proprietor of a retail  
15           establishment or property manager or responsible owner, not  
16           less than \$1,000 and not more than \$10,000 for the first  
17           offence, and of not less than \$2,000 and nor more than  
18           \$20,000 for subsequent offences; and

19           (c) in the case of a manufacturer, importer, or  
20           wholesaler, not less than \$1,500 and not more than \$10,000  
21           for the first offence, and of not less than \$2,500 and not  
22           more than \$20,000 for subsequent offences; and

23           (d) in the case of a person or entity granted a  
24           license under this Act, upon a third offense suspension of  
25           that license for a term not less than three months and not

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1 more than two years, and upon a fourth offense revocation  
2 of the license with no right to reapply for five years.

3 (e) In addition to any fines imposed, any person  
4 found guilty of violating any provision under section 1208  
5 of this Act shall be liable for a penalty equivalent to the  
6 proceeds from the distribution of illegal tobacco products  
7 as well as taxes and duties owed on those products.

8 (2) Any person found guilty of violating any provision  
9 under section 1208 of this Act shall be liable for a fine  
10 of:

11 (a) in the case of a manufacturer, or importer, not  
12 less than \$4,000 and not more than \$10,000 for the first  
13 offence, and of not less than \$8,000 and not more than  
14 \$20,000 for subsequent offences; and

15 (b) in the case of a person or entity granted a  
16 license under this Act, upon a third offense suspension of  
17 that license for a term not less than three months and not  
18 more than two years, and upon a fourth offense revocation  
19 of the license with no right to reapply for five years.

20 (3) Where a person is found guilty of an offence under  
21 any section of this Act other than section 1208, the Court  
22 may impose an additional fine in addition to any other  
23 penalty, following an application by the prosecuting party  
24 appended to the statement of offence, equal to the amount  
25 of monetary benefit gained by the person as a result of the

