

SEVENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1991

CONGRESSIONAL BILL NO. 7-19, C.D.1, C.D.2

Public Law No. 7-9

AN ACT

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:

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

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

7 "Section 601. Definitions. In this chapter:

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

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

16 Section 3. Title 19 of the Code of the Federated States of
17 Micronesia is hereby amended by adding a new section 602 of chapter
18 6 to read as follows:

19 "Section 602. Recordation.

20 (1) A sale, conveyance, hypothecation, mortgage or
21 assignment of mortgage of any vessel shall not be valid
22 with respect to such vessel against any person other than

1 the grantor or mortgagor, his heirs or devisees and persons
2 having actual notice thereof, until the instrument
3 evidencing such transaction is recorded in the
4 office of the Secretary of Transportation and Communication.

5 (2) The Secretary of Transportation and Communication
6 shall record such instruments in the order of their receipt
7 in books to be kept for that purpose and indexed to show:

8 (a) The name of the vessel;

9 (b) The name and address of the parties;

10 (c) The time and date of receipt of the
11 instrument;

12 (d) The interest in the vessel transferred or
13 affected; and

14 (e) The amount and date of maturity of any
15 mortgage."

16 Section 4. Title 19 of the Code of the Federated States of
17 Micronesia is hereby amended by adding a new section 603 of chapter
18 6 to read as follows:

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

24 (1) The mortgage is endorsed upon the vessel's
25 Certificate of Registry;

1 (2) The mortgage is recorded as provided herein;

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

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

9 Section 5. Title 19 of the Code of the Federated States of
10 Micronesia is hereby amended by adding a new section 604 of chapter
11 6 to read as follows:

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

19 Section 6. Title 19 of the Code of the Federated States of
20 Micronesia is hereby amended by adding a new section 605 of chapter
21 6 to read as follows:

22 "Section 605. Conditions precedent to recording. A bill of
23 sale, conveyance, mortgage or related instrument shall not
24 be recorded unless it states the interest of the grantor or
25 mortgagor in the vessel, and the interest so sold, conveyed

1 or mortgaged. A bill of sale, conveyance, mortgage, notice
2 of claim of lien, certificate of discharge thereof or
3 related instrument shall not be recorded unless previously
4 acknowledged."

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

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

18 Section 8. Title 19 of the Code of the Federated States of
19 Micronesia is hereby amended by adding a new section 607 of chapter
20 6 to read as follows:

21 "Section 607. Recording of mortgages. The Secretary of
22 Transportation and Communication may accept for the recording in
23 his office upon payment of the prescribed fee any mortgage of a
24 vessel which recites the mortgagor of the vessel and the
25 interest so mortgaged; PROVIDED, that the mortgage has been

1 previously acknowledged; and PROVIDED FURTHER, that written
2 proof is furnished to the Secretary of Transportation and
3 Communication of the amounts and dates of any documents or
4 evidence of debts in support thereof. At the time of recording
5 the Secretary of Transportation and Communication may, if
6 requested, certify without charge two (2) copies of any mortgage
7 so recorded."

8 Section 9. Title 19 of the Code of the Federated States of
9 Micronesia is hereby amended by adding a new section 608 of chapter
10 6 to read as follows:

11 "Section 608. Preferred mortgage.

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

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

- 17 (a) The names of the mortgagor and mortgagee;
18 (b) The time and date the endorsement is made;
19 (c) The amount and date of the maturity of the
20 mortgage; and

21 (d) Any amount required to be endorsed by
22 subsections (5) and (6) of this section.

23 (3) Such endorsement shall be made by the Secretary
24 of Transportation and Communication, or his designee, at the
25 port of registry who is empowered and authorized to endorse on

1 the document, whether a permanent or provisional Certificate of
2 Registry of a vessel covered by a Preferred Mortgage recorded in
3 his office, a notation of such mortgage as required under
4 subsection (2) of this section. Clearance shall not
5 be given to the vessel until such endorsement is made.

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

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

21 (6) If a Preferred Mortgage includes more than one
22 vessel and provides for the separate discharge of each
23 vessel by the payment of a portion of the mortgage
24 indebtedness, the amount of such portion shall be endorsed
25 upon the document of the vessel."

1 Section 10. Title 19 of the Code of the Federated States of
2 Micronesia is hereby amended by adding a new section 609 of chapter 6
3 to read as follows:

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

8 Section 11. Title 19 of the Code of the Federated States of
9 Micronesia is hereby amended by adding a new section 610 of chapter
10 6 to read as follows:

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

14 Section 12. Title 19 of the Code of the Federated States of
15 Micronesia is hereby amended by adding a new section 611 of chapter
16 6 to read as follows:

17 "Section 611. Disclosure of liens and priority.

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

23 (2) After the execution of such mortgage and before
24 the mortgagee has had a reasonable time to record it and
25 have proper endorsements made upon the document of the

1 vessel, the mortgagor, without the consent of the mortgagee,
2 shall not incur any contractual obligation creating a lien
3 upon the vessel, other than liens for wages of stevedores
4 when employed directly by the owner, operator,
5 master, ship's husband, or agent of the vessel, for wages
6 of the crew of the vessel, for general average or for
7 salvage, including contract salvage, tonnage taxes and all
8 other charges (not to exceed \$1,000) of the Secretary of
9 Transportation and Communication with respect to the vessel.

10 (3) Whoever, being a mortgagor or an officer of a
11 corporate mortgagor, with the intent to defraud, violates
12 this section shall be liable for a fine not exceeding
13 \$3,000 or to a term of imprisonment not exceeding two (2)
14 years, or both. The mortgage indebtedness shall thereupon
15 become immediately due and payable at the election of the
16 mortgagee."

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

20 "Section 612. Exhibiting certified copies.

21 (1) Upon recording a Preferred Mortgage, two (2)
22 certified copies shall be delivered to the mortgagor who
23 shall place, and use due diligence to retain, one copy on
24 board the mortgaged vessel and cause such copy and the
25 certificate of the vessel to be exhibited by the master to

1 any person having business which may give rise to a
2 maritime lien or to the sale, conveyance, or mortgage of
3 the vessel.

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

7 Section 14. Title 19 of the Code of the Federated States of
8 Micronesia is hereby amended by adding a new section 613 of chapter
9 6 to read as follows:

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

22 Section 15. Title 19 of the Code of the Federated States of
23 Micronesia is hereby amended by adding a new section 614 of chapter
24 6 to read as follows:

25 "Section 614. Discharge of mortgage. The mortgagor upon a

1 complete discharge of the mortgage indebtedness shall
2 forthwith file a certificate of such discharge duly
3 executed by the mortgagee, his successor or assigns with
4 the Secretary of Transportation and Communication or his duly
5 authorized agent, who shall thereupon record the certificate and
6 the mortgagor may similarly file a certificate of partial
7 discharge of a mortgage covering more than one vessel."

8 Section 16. Title 19 of the Code of the Federated States of
9 Micronesia is hereby amended by adding a new section 615 of chapter
10 6 to read as follows:

11 "Section 615. Preferred Mortgage liens and enforcement.

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

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

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

24 (2)(a) Actual notice of a civil action brought in the
25 Supreme Court of the Federated States of Micronesia under

1 subsection (1) of this section must be given in the manner
2 directed by that court to:

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

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

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

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

14 (c) Failure to give notice required by subsection
15 (2)(a) does not affect the jurisdiction of the Supreme
16 Court of the Federated States of Micronesia in which the
17 civil action in rem or in personam is brought. However,
18 unless notice is not required under subsection (b) of this
19 section, the party required to give notice is liable to the
20 person not noticed for damages in the amount of that
21 person's interest in the vessel terminated by the action
22 brought under subsection (1) of this section. A civil
23 action may be brought in the Supreme Court of the Federated
24 States of Micronesia to recover the amount of the terminated
25 interest. If the plaintiff prevails, that court may award

1 costs and attorney fees to the plaintiff.

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

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

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

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

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

1 and the term 'Preferred Mortgage lien' shall also include
2 the lien of such mortgage, hyphothecation or similar
3 charge."

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

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

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

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

22 (a) The Preferred Mortgage lien has priority over
23 all claims against the vessel, except for expenses and fees
24 allowed by the Supreme Court of the Federated States of
25 Micronesia, and the following preferred maritime liens:

1 damages arising out of tort, crew wages, general average,
2 and salvage (including contract salvage); and

3 (b) For a foreign vessel, the Preferred
4 Mortgage lien is subordinated to a maritime lien for
5 necessities provided in the Federated States of Micronesia."

6 Section 19. Title 19 of the Code of the Federated States of
7 Micronesia is hereby amended by adding a new section 618 of chapter
8 6 to read as follows:

9 "Section 618. Necessaries.

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

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

23 (3) This section shall not confer a lien when the
24 workman or materialman knows, or by exercise of reasonable
25 diligence should have ascertained, that because of the

1 terms of a charter party, agreement of sale of the vessel,
2 or for other reason, the person ordering necessaries was
3 without authority to bind the vessel thereof."

4 Section 20. Title 19 of the Code of the Federated States of
5 Micronesia is hereby amended by adding a new section 619 of chapter
6 6 to read as follows:

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

14 Section 21. Regulations. The Secretary of Transportation and
15 Communication is hereby authorized to promulgate regulations, in
16 accordance with the requirements of chapter 1 of title 17 of the Code
17 of the Federated States of Micronesia, to carry out the purposes
18 of this act.

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CONGRESSIONAL BILL NO. 7-19, C.D.1, C.D.2

Public Law No. 7 - 9

1 Section 22. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its becoming
3 law without such approval.

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Bailey Olter
President
Federated States of Micronesia

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