

## CHAPTER 2

### Usury

#### SECTIONS

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#### **§ 201. Statement of policy.**

It is the policy of the Federated States of Micronesia that the interest rates legally permitted to be charged by creditors shall be at such reasonable levels as to afford a competitive rate of return, thereby encouraging and facilitating an increase in the extension of credit to the people of the Federated States of Micronesia.

**Source:** TT Code 1980, 33 TTC 251; amended by PL 2-33 § 1.

**Cross-reference:** The statutory provisions on Commercial Banking are found in title 29 of this code. The statutory provisions on Commercial Law are found in title 33 of this code. See also, FSM Const., art. IX, § 2(i).

**Case annotations:** Although FSM PL 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. *Bernard's Retail Store & Wholesale v. Johnny*, 4 FSM R. 33, 36 (App. 1989).

#### **§ 202. Definitions.**

As used in this chapter:

(1) “Annual percentage rate” means the annual percentage rate of interest. This rate shall be computed in the manner prescribed in the Truth in Lending Act, U.S.C. section 1601 et seq., and regulations promulgated thereunder, 12 C.F.R. section 226.1 et seq.

- (2) “Cardholder” means any person to which a credit card is issued.
- (3) “Card issuer” means any person who issues a credit card, or the agent of such person with respect to such card.
- (4) “Commercial credit” means credit extended to a person in which the money, property, or service which is the subject of the transaction is primarily for business purposes.
- (5) “Consumer credit” means credit extended to a natural person in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes.
- (6) “Credit” means the right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.
- (7) “Creditor” means a person who in the ordinary course of business regularly extends credit.
- (8) “Credit card” is any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.
- (9) “Customer” means:
- (a) a person to whom credit is extended, and includes a comaker, endorser, guarantor, or surety for such person who is or may be obligated to repay the extension of credit; or
  - (b) a cardholder.
- (10) “Interest” is any and all compensation paid or agreed to be paid by regarding the use, forbearance, or detention of money or the extension of credit.
- (11) “Person” includes individuals, corporations, partnerships, unincorporated associations, as well as banks, savings and loan associations, credit unions, and other institutional lending organizations.
- (12) “Prime rate” means the rate of interest charged on loans by a bank to its prime customer(s).
- (13) “Usury” is the exacting, taking, or receiving of an interest charge in an amount or at a rate in excess of that allowed by law for the use of money or extension of credit.

**Source:** TT Code 1980, 33 TTC 252; PL 2-33 § 2; PL 7-135 § 1; PL 10-52 § 1.

**Editor’s note:** PL 10-52 that amended sections 202, 203, and 204 of this chapter became law without the signature of the President on November 20, 1997.

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**Cross-reference:** The statutory provisions on Commercial Banking are found in title 29 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

### **§ 203. Consumer credit transactions.**

- (1) In consumer credit transactions, no person may directly or indirectly receive or charge interest which

exceeds an annual percentage rate of 15 percent.

(2) Nothing contained in this section shall prevent a creditor from charging and receiving, in addition to interest permitted by this section, a processing fee with respect to the transaction, not to exceed \$25, or a late charge on all or any portion of any payment due on a consumer credit transaction which is unpaid after 15 days from the due date of the payment, provided that such late charge shall not exceed five dollars or five percent of the amount overdue, whichever is less, on any payment.

(3) With respect to credit extended after October 31, 1998, the 15 percent annual percentage rate in subsection (1) of this section shall be automatically changed to a 24 percent annual percentage rate.

**Source:** TT Code 1980, 33 TTC 253; PL 2-33 § 3; PL 7-135 § 2; new subsection (3) added by PL 10-52 § 2.

**Cross-reference:** The statutory provisions on Commercial Banking are found in title 29 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

**Case annotations:** Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 218 (Pon. 1990).

#### **§ 204. Commercial credit transactions.**

In commercial credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of 24 percent.

**Source:** TT Code 1980, 33 TTC 254; PL 2-33 § 4; PL 7-135 § 3; repealed and reenacted by PL 10-52 § 3.

**Case annotation:** Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. *Jayko Int'l, Inc. v. VCS Constr. & Supplies*, 10 FSM R. 502, 504 (Pon. 2002).

**§ 205. Credit transactions secured by real property. [REPEALED by PL 10-52 § 4 and subsequent sections renumbered].**

#### **§ 205. Credit card—Applicable law.**

The extension of credit arising from the use of a credit card issued to a resident of the Federated States of Micronesia shall be subject to any applicable usury laws of the jurisdiction where the principal place of business of the credit card issuer is located, and not to the provisions of this chapter.

**Source:** TT Code 1980, 33 TTC 256; PL 2-33 § 6; renumbered by PL 10-52 § 5.

### **§ 206. Remedies.**

No credit transaction in which the annual percentage rate exceeds those limits established in sections 203 and 204 of this chapter shall for that reason be void, but:

- (1) The creditor in such transaction shall have no right to collect or receive any interest;
- (2) The debtor shall within two years of maturity of the loan be entitled to bring suit to recover two times any interest paid to the creditor, plus costs of the suit and reasonable attorney's fees; and
- (3) The debtor shall also be entitled, at any time, to assert the remedies of this section by way of a defense or counterclaim to any action by the creditor.

**Source:** TT Code 1980 33 TTC 257; PL 2-33 § 7; repealed and reenacted by PL 7-135 § 4; renumbered by PL 10-52 § 5.

### **§ 207. Current interest rates.**

Every bank shall post in a public place within each of its branches located in the Federated States of Micronesia the current rate of interest paid on deposits held, including demand deposits, savings deposits, and certificates of deposit, by such bank and the prime rate currently in effect for loans. In any loan in which an adjustable rate is used, the lender shall notify the borrower by mail of any changes in the rate of interest applicable to the loan, at least 10 days in advance of such changes taking effect.

**Source:** PL 7-135 § 5; renumbered by PL 10-52 § 5.

**Cross-reference:** The statutory provisions on Commercial Banking are found in title 29 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.