

TITLE 39

TRADE REGULATION

TITLE 39 TRADE REGULATION

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CHAPTER 1 UNFAIR BUSINESS PRACTICES

Section

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§1-101. Definitions. — As used in this chapter, “person” or “persons” includes an individual or individuals, corporations, firms, partnerships or any other association existing under or authorized by the law of the state of Pohnpei.

Source: 33 TTC §301 (1970); 33 TTC §301 (1980)

§1-102. Prohibited activities. — It is illegal for one or more persons to create or use an existing combination of capital, skill or acts the effect of which is:

- (1) To create or carry out restrictions in trade or commerce;
- (2) To limit or reduce the production, or increase the price of, merchandise or of any commodity;
- (3) To prevent competition in the manufacture, making, transportation, sale or purchase of any merchandise, produce or commodity;
- (4) To fix at any standard or figure whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption;
- (5) To discriminate in price between different purchasers of commodities of like grade and quality, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; PROVIDED that nothing herein contained shall prevent differentials in price which only make allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to be purchased, sold, and delivered; or
- (6) To make or enter into or carry out any contract, obligation or agreement by which the persons do any of the following:
 - (a) Bind themselves not to sell, dispose of or transport any article or commodity below a common standard figure or fixed value;

(b) Agree to keep the price of such article, commodity or transportation at a fixed or graduated figure;

(c) Establish or set the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude free and unrestricted competition among themselves or any purchaser or consumer in the sale or transportation of any such article or commodity; or

(d) Agree to pool, combine or directly or indirectly unite any interest that they may have connected with the sale or transportation of any such article or commodity that might in any way affect its price.

Source: 33 TTC §302 (1970); 33 TTC §302 (1980)

§1-103. Leases, sales, contracts, conditions, agreements or understandings to lessen competition.

— It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies or commodities for use within the state of Pohnpei, or to fix a price charged therefor, or discount from, or rebate upon, such price, on condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale, or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in the state of Pohnpei.

Source: 33 TTC §303 (1970); 33 TTC §303 (1980)

§1-104. Contracts or agreements in violation of chapter. — Any contract or agreement in violation of this chapter is, to that extent, void and not enforceable at law or equity.

Source: 33 TTC §304 (1970); 33 TTC §304 (1980)

§1-105. Competitive agreements. — It is not unlawful to enter into agreements or form an association or combination the purposes and effect of which is to promote, encourage or increase competition in any trade or industry.

Source: 33 TTC §305 (1970); 33 TTC §305 (1980)

§1-106. Criminal and civil liability of violators. —

(1) Any person who violates §1-102 or §1-103 is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$5,000.

(2) Any person who is injured in his business, personal property or real property by reason of another's violation of §1-102 or §1-103 may sue therefor in the Trial Division of the Pohnpei Supreme Court or where the defendant resides or where service may be obtained, and may recover three times the damages sustained by him together with a reasonable attorney's fee and the costs of suit; PROVIDED that the state of Pohnpei and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section, and may, through the Attorney General, bring an action on behalf of the state of Pohnpei, its political subdivisions or public agencies to recover the damages provided by this section, including a reasonable attorney's fee together with the costs of the suit.

(3) Upon conviction under this chapter of a noncitizen business, as defined in Chapter 7 of Title 37 of this Code, the Governor may revoke such noncitizen's business permit.

Source: 33 TTC §306 (1970); 33 TTC §306 (1980)

CHAPTER 2 CONSUMER PROTECTION

Section

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§2-101. Short title. — This chapter may be cited as the “Consumer Protection Act.”

Source: 33 TTC §351 (1970); 33 TTC §351 (1980)

§2-102. Definitions. —

(1) “Person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) “Trade” and “commerce” mean the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the state of Pohnpei.

Source: 33 TTC §352 (1970); 33 TTC §352 (1980)

§2-103. Unlawful acts or practices. — The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

(1) Passing off goods or services as those of another.

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.

(3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have.

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(11) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions.

(12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

(13) Engaging in any act or practice that is unfair or deceptive to the consumer.

Source: 33 TTC §353 (1970); 33 TTC §353 (1980)

§2-104. Exemptions. — Nothing in this chapter shall apply to:

(1) Actions or transactions carried out by the Pohnpei Government, any branch thereof or any other governmental agency; or

(2) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised product or service.

Source: 33 TTC §354 (1970); 33 TTC §354 (1980)

§2-105. Restraint of prohibited acts. —

(1) Whenever the Attorney General has reason to believe that any person is using, has used or is about to use any method, act or practice declared in §2-103 to be unlawful, and that proceedings would be in the public interest, he may bring a civil action in the name of the state of Pohnpei against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The notice must state generally the relief sought and must be served at least three days before the hearing of the action. The action may be brought in the Trial Division of the Pohnpei Supreme Court. The said court is authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Source: 33 TTC §355 (1970); 33 TTC §355 (1980)

§2-106. Private and class actions. —

(1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by §2-103, may bring an action under the Rules of Civil Procedure in the Trial Division of the Pohnpei Supreme Court to recover actual damages or \$100, whichever is greater. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(2) Any person entitled to bring an action under Subsection (1) of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons similarly situated and if they adequately represent such similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in Subsection (1) of this section. In any action brought under this section, the court may, in its discretion, order, in addition to damages, injunctive or other equitable relief.

(3) Upon commencement of any action brought under Subsection (1) of this section, the clerk of courts shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(4) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(5) Any permanent injunction, judgment or order of the court made under §2-105 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by §2-103.

Source: 33 TTC §356 (1970); 33 TTC §356 (1980)

§2-107. Non-negotiability of consumer paper. —

(1) If any contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, such note, instrument or evidence of indebtedness shall have printed on the face thereof the words "consumer paper," and such note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument.

(2) Notwithstanding the absence of such notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Failure to imprint the words "consumer paper" on such note, instrument or evidence of indebtedness shall subject the seller or other responsible person to appropriate civil and criminal sanctions as provided in this chapter.

Source: 33 TTC §357 (1970); 33 TTC §357 (1980)

§2-108. Assurances of voluntary compliance. — In the administration of this chapter, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the chapter from any person who has engaged in or is about to engage in such method, act or practice. Any such assurance shall be in writing and shall be filed with and subject to the approval of the Trial Division of the Pohnpei Supreme Court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to §2-105.

Source: 33 TTC §358 (1970); 33 TTC §358 (1980)

§2-109. Investigation authorized. —

(1) When it appears to the Attorney General that a person has engaged in, is engaging in or is about to engage in any act or practice declared to be unlawful by this chapter, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in such act or practice, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the Trial Division of the Pohnpei Supreme Court.

Source: 33 TTC §359 (1970); 33 TTC §359 (1980)

§2-110. Authority of Attorney General to issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations. — To accomplish the objectives and to carry out the duties prescribed by this chapter, the Attorney General, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations, upon approval of the Governor, shall have the force of law; PROVIDED that none of the powers conferred by this chapter shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and PROVIDED FURTHER that information obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest.

Source: 33 TTC §360 (1970); 33 TTC §360 (1980)

§2-111. Service of notices, demands or subpoenas. — Service of any notice, demand or subpoena under this chapter shall be made personally within the state of Pohnpei, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) Personal service thereof without the state of Pohnpei; or

(2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without the state of Pohnpei of such person for whom the same is intended; or

(3) As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding had been filed, or

(4) Such service as the Pohnpei Supreme Court may direct in lieu of personal service within the state of Pohnpei.

Source: 33 TTC §361 (1970); 33 TTC §361 (1980)

§2-112. Orders for enforcement of subpoenas or investigative demands. —

(1) If any person fails or refuses to file any statement or report or to obey any subpoena or investigative demand issued by the Attorney General, the Attorney General may, after notice, apply to the Trial Division of the Pohnpei Supreme Court, and after hearing thereon, request an order:

(a) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(b) Vacating, annulling or suspending the corporate charter of a corporation created by or under the laws of the state of Pohnpei or revoking or suspending the business permit in the state of Pohnpei of a foreign corporation, or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Source: 33 TTC §362 (1970); 33 TTC §362 (1980)

§2-113. Civil and criminal penalties. —

(1) Any person who violates the terms of an injunction issued under §2-105 shall forfeit and pay to the state of Pohnpei a civil penalty of not more than \$10,000 per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and

in such cases the Attorney General, acting in the name of the state of Pohnpei, may petition for recovery of civil penalties.

(2) In any action brought under §2-105, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by §2-103, the Attorney General, upon petition to the court, may recover, on behalf of the state of Pohnpei, a civil penalty of not exceeding \$1,000 per violation.

(3) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of §2-103.

Source: 33 TTC §363 (1970); 33 TTC §363 (1980)

§2-114. Forfeiture of corporate franchise. — Upon petition by the Attorney General, the Trial Division of the Pohnpei Supreme Court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation that violates the terms of any injunction issued under §2-105.

Source: 33 TTC §364 (1970); 33 TTC §364 (1980)

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CHAPTER 3 PRICE CONTROL

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§3-101. Purpose. — The people of Pohnpei are heavily reliant upon imported items, including basic foodstuffs, fuel, building materials, and supplies necessary for earning a living. The price charged to the ultimate consumer for the imported items often rises too many times the import cost, especially in time of shortage. The market pricing system has proven inadequate to control this exploitation of the public because of the irregularity of shipping and the lack of supply sources. The purpose of this chapter is to protect the people of Pohnpei from such exploitation by imposing price controls on the sale of imported items in Pohnpei and providing for enforcement of the price controls.

Source: D.L. No. 3L-72-73 §2, 10/30/73

§3-102. Definitions. — The following definitions shall apply in this chapter, unless the context clearly requires otherwise:

- (1) “Commission” means Price Control Commission.
- (2) “Cost” means the actual cost paid or promised by the seller for the item itself, exclusive of charges for shipping, handling, interest, warehousing, overhead, rent, salaries, damage, and loss.
- (3) “Item” means any good, personal property or tangible thing brought into Pohnpei from outside the state.
- (4) “Price” means the total amount of money or other valuable consideration exclusive of sales tax paid or promised by the buyer to the seller.
- (5) “Sale” means any transfer for money or other valuable consideration in the regular course of business, whether wholesale or retail.

Source: D.L. No. 3L-72-73 §3, 10/30/73

§3-103. Presumptions. — The following presumptions shall apply in the interpretation and enforcement of this chapter:

- (1) *Origin of items.* It is presumed that any item sold in Pohnpei is imported until the contrary is proven. The burden of proving that an item is not imported shall be upon the seller.
- (2) *Place of sale.* It is presumed that any sale of an imported item that is arranged or consummated through or with the assistance of an agent in Pohnpei is a sale within Pohnpei unless the contrary is proven. The burden of proving a sale outside of Pohnpei shall be upon the seller or his Pohnpei agent.

Source: D.L. No. 3L-72-73 §4, 10/30/73

§3-104. Limitation on price. — In the instance of the first sale within Pohnpei of any item that has been imported from outside the state, the seller may include the following items in his price to the buyer, and no others: cost of the goods; actual charges for inland and overseas freight; insurance; import taxes or duties; and a sum not greater than fifty percent (50%) of the cost of the goods. In the instance of a second or subsequent sale of the same item within Pohnpei, the subsequent seller shall

not charge a price to the buyer which is more than twenty percent (20%) greater than the price paid or promised to be paid by the seller for the item.

Source: D.L. No. 3L-72-73 §5, 10/30/73

§3-105. Price Control Commission. —

(1) There is hereby established a Price Control Commission in Pohnpei to be composed of five members appointed by the Governor with the advice and consent of the Legislature. The members appointed shall be citizens residing in Pohnpei State. The membership of the Commission shall not include more than one person having a controlling ownership or a managerial interest in one or more businesses in Pohnpei. The Administrator for the Office of Economic Affairs shall be an ex-officio member of the Commission, without the right to vote.

(2) The term of office of the appointed members of the Commission shall be two years. Appointments to fill vacancies shall be for the remainder of the unexpired term.

(3) At the first meeting and annually thereafter the Commission shall elect a Chairman from among its appointed members. Meetings shall be held not less than every 60 days and may be called by the Chairman, three of the appointed members, or the Governor. A quorum of the Commission shall be four appointed members, and the assent of three members present and voting shall be required for all decisions requiring a vote. The Commission shall adopt by-laws for its own government.

(4) Members of the Commission shall be compensated at rates established by the Government Officers' Salary Act, Title 9 Chapter 4 Subchapter I, as amended or superseded, when actually attending meetings of the Commission; PROVIDED, that those members who are government employees shall instead receive their regular salaries while performing functions of the Commission. The Office of Economic Affairs shall offer technical assistance to the Commission and provide records within its possession as requested by the Commission. The Attorney General shall serve as counsel for the Commission. The Governor shall provide clerical and administrative assistance as requested by the Commission. The Commission is authorized to hire its own staff to the extent that if additional assistance is required, and may seek assistance from any other source.

Source: D.L. No. 3L-72-73 §6, 10/30/73; D.L. No. 4L-154-78 §1, 9/14/78; S.L. No. 1L-71-86 §4-8, 4/1/86; S.L. No. 5L-14-00 §3-15, 10/1/00

§3-106. Powers and duties of Price Control Commission. — For purposes of this chapter, and without limitation on the scope or responsibilities vested in it by other laws of the state, the powers and duties of the Price Control Commission shall include the following:

(1) Upon its own initiative, make studies, investigations, and inquiries concerning the cost of items to sellers and the price to buyers in Pohnpei;

(2) Maintain records and files of the cost of items imported into the state and advise the public of the maximum price chargeable by sellers of items;

(3) Develop information concerning the pricing practices of sellers in Pohnpei;

(4) Consult with and advise merchants and sellers of imported items concerning this chapter and its implementation;

(5) Promulgate regulations, subject to the approval of the Governor, for the implementation and enforcement of this chapter;

(6) Ensure compliance of all sellers of imported items in the state with this chapter and all rules and regulations issued pursuant hereto, including the performance of investigatory functions as appropriate thereto and may, upon receipt of a sworn affidavit from any person that there is reason to believe that any provision of this chapter or regulation issued pursuant hereto has been or is being violated, investigate such alleged violation and in cooperation with the Office of the Attorney General, enforce this chapter and rules and regulations issued hereunder. In connection with any hearings or investigations conducted by the Commission upon its own initiative or upon receipt of a sworn

affidavit as provided herein, the Commission shall have the authority to subpoena witnesses, records, books, and documents and compel the attendance of any party summoned to testify before the Commission;

(7) Bring an action at law or equity in its own name with the cooperation of the Attorney General to enjoin violation of this chapter or any regulation issued pursuant hereto, and seek any other remedy or damages allowable by law or equity;

(8) Conduct hearings pursuant to §3-107 and make such awards, rulings, and issue such judgments as the evidence shall require. The Commission may recommend the cancellation, revocation, suspension or modification of any permit, license, lease or agreement to the issuing state department or officer;

(9) The Commission shall submit a written report on its activities and expenditures under this chapter within the first five days of each regular session of the Pohnpei Legislature; and

(10) Grant special exceptions to the application of §3-104 to specifically identified imported items and determine the maximum allowable price which may be charged therefor. No special exception shall be granted except after a public hearing and unless it clearly appears that the seller is deprived of a reasonable return upon his investment in the imported items by operation of this chapter. The Commissioner shall cause effective public notice to be given of all requested special exceptions and the time and place of hearing the request.

Source: D.L. No. 3L-72-73 §7, 10/30/73; S.L. No. 5L-14-00 §3-15, 10/1/00

§3-107. Civil penalties. — Any seller of an item imported into Pohnpei who shall violate any of this chapter or any regulation issued hereunder may be required to void the sale and refund the price paid by the buyer, or refund the illegal portion of the price paid by the buyer. In addition thereto, the seller may be required to pay treble the amount of the illegal part of the price to the buyer. In the event the buyer shall not request any refund of damages, the Commission may order the seller to pay the illegal part of the price to the Commission. All funds collected by the Commission shall be deposited in the general fund of Pohnpei.

Source: D.L. No. 3L-72-73 §8, 10/30/73

§3-108. Criminal penalties. — Any person who violates any of this chapter or any regulations issued hereunder, or who willfully falsifies or refuses to produce the records required hereunder shall, upon conviction thereof, be fined not more than \$500, or imprisoned not more than one year, or both such fine and imprisonment. Each sale at an illegal price or falsification or refusal to produce records shall be a separate offense.

Source: D.L. No. 3L-72-73 §9, 10/30/73

§3-109. Records required. — Every seller of an item shall maintain a complete and accurate record of the cost of that specific item and shall, upon the written request of any buyer or potential buyer, furnish such buyer or potential buyer with the cost of the item inquired about. The information given by the seller shall be in writing and shall be furnished to the buyer or potential buyer within a reasonable time, not exceeding 30 days.

Source: D.L. No. 3L-72-73 §10, 10/30/73

§3-110. Finances. — There is hereby authorized for appropriation from the general fund of Pohnpei a sum or sums to be determined annually in the Comprehensive Budget Act to carry out the purposes of this chapter. The sums herein authorized for appropriation shall be administered and expended by the Governor solely for the purposes of the administration of this chapter. The Governor shall report to the Pohnpei Legislature on or before October 15 each year on all matters concerning the expenditure of the sums authorized for appropriation by this chapter for the previous fiscal year. Any balance of the sums appropriated for a

fiscal year under the authorization of this chapter not expended or obligated for expenditure on September 30 of that fiscal year shall revert to the general fund of Pohnpei.

Source: D.L. No. 3L-72-73 §11, 10/30/73; S.L. No. 2L-203-83 §1, 10/1/83

Extended legislative history: D.L. No. 2L-236-71 creates the Price Control Commission; D.L. No. 2L-236-71 §2(b) was amended by D.L. No. 3L-17-72 §1, 5/25/72; D.L. No. 3L-72-73 §1, 10/30/73 repealed D.L. No. 2L-236-71, as amended, and established a new Price Control Commission; D.L. No. 3L-72-73 §6 was amended by D.L. No. 4L-154-78 §1, 9/14/78, S.L. No. 1L-71-86 §4-8, 4/1/86 and S.L. No. 5L-14-00 §3-15, 10/1/00; D.L. No. 3L-72-73 §11 was amended by S.L. No. 2L-203-83 §1, 10/1/83.

CHAPTER 4 USURY

Section

4-101 “Defined”; actions to recover usurious amounts

4-102 Crediting of usurious interest to principal

4-103 Prohibited transactions

§4-101. “Defined”; actions to recover usurious amounts. – No action shall be maintained in any court of the state of Pohnpei to recover a higher rate of interest than two percent (2%) per month on the balance due upon any contract made in the state of Pohnpei on or after February 15, 1965 involving a principal sum of three hundred dollars or less, nor to recover a higher rate of interest than one percent (1%) per month on the balance due on any such contract involving a principal sum of over three hundred dollars.

Source: Code 1966, §1103; Code 1970, tit. 33, §251; 33 TTC §251 (1980)

§4-102. Crediting of usurious interest to principal. – Payments of money or property made by way of usurious interest, whether made in advance or not, as to the excess of interest above the rate allowed by law at the time of making the contract, shall be taken to be payments made on account of principal, and judgment shall be rendered for no more than the balance found due, after deducting the excess of interest so paid.

Source: Code 1966, §1104; Code 1970, tit. 33, §252; 33 TTC §252 (1980)

§4-103. Prohibited transactions. – Any person who directly or indirectly receives any interest, discount, or consideration for or upon the loan or forbearance to enforce the payment of money, goods and things in action, greater than two percent (2%) per month shall be guilty of usury, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both.

Source: Code 1966, §1105; Code 1970, tit. 33, §253; 33 TTC §253 (1980)

Note: Article IX, §2(i) of the FSM Constitution expressly delegates the power to "establish usury limits on major loans" to the FSM Congress.

TRADE REGULATION

CHAPTER 5 WEIGHTS AND MEASURES ACT

Section

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§5-101. Short title. — This chapter is known and may be cited as the “Weights and Measures Act of 2006.”

Source: S.L. No. 6L-80-06 §1, 1/31/07

§5-102. Definitions. — As used in this chapter, unless the context clearly requires otherwise:

(1) “Weights and measures” means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices.

(2) “Weight” as used in connection with any commodity, means net weight; except where the label declares that the product is sold by drained weight, the term means net drained weight.

(3) “Correct” as used in connection with weights and measures, means conformance to all applicable requirements of this chapter.

(4) “Primary standards” means the physical standards of the United States of America, unless some other primary standard is prescribed by the Administrator, which serve as the legal reference from which all other standards and weights and measures are derived.

(5) “Secondary standards” means the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(6) “Administrator” means the Administrator of the Office of Economic Affairs.

(7) “Person” means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations including governmental agencies.

(8) “Sale” from bulk means the sale of commodities when the quantity is determined at the time of sale.

(9) “Package” means any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.

(10) “Office” means the Office of Economic Affairs.

Source: S.L. No. 6L-80-06 §2, 1/31/07

§5-103. Systems of weights and measures. — The customary system of weights and measures used in the United States of America and the metric system of weights and measures are jointly recognized and either one or both of these systems shall be used for all commercial and governmental purposes in the state of Pohnpei. The definitions of basic units of weights and measures, the tables of weights and measures and weights and measures equivalents as published by the National Bureau of Standards of the United States of America, unless some other definition is promulgated by the Administrator, are

recognized and shall govern weighing and measuring equipment and transactions in the state of Pohnpei.

Source: S.L. No. 6L-80-06 §3, 1/31/07

§5-104. Physical standards. — Weights and measures that are traceable to the United States prototype standards supplied by the United States federal government or otherwise approved as being satisfactory by the Administrator, shall be the state of Pohnpei's primary standards of weights and measures and shall be maintained in such calibration as prescribed by the Administrator. All secondary standards may be prescribed by the Administrator and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the Administrator.

Source: S.L. No. 6L-80-06 §4, 1/31/07

§5-105. Technical requirements for weighing and measuring devices. — The specifications, tolerances and other technical requirements for weighing and measuring devices as adopted by the United States's National Conference on Weights and Measures and published in the United States National Bureau of Standards Handbook 44, 'Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices', and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the state of Pohnpei, except insofar as modified or rejected by regulation.

Source: S.L. No. 6L-80-06 §5, 1/31/07

§5-106. Weights and measures administration. — Administration of the requirements of this chapter shall fall within the responsibilities of the Office of Economic Affairs. The Office is charged with, but not limited to, performing the following functions:

(1) Assuring that weights and measures in commercial and governmental service within the state of Pohnpei are suitable for their intended use, properly installed, accurate and are so maintained by their owner or user;

(2) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within the state of Pohnpei;

(3) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and related meteorological certificate capabilities of the weights and measures facilities of the office;

(4) Promoting uniformity, to the extent such conformance is practicable and desirable, between weights and measures requirements in the state of Pohnpei and those of other states and FSM national government agencies; and

(5) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

Source: S.L. No. 6L-80-06 §6, 1/31/07

§5-107. Testing required. — Every scale or device used to determine the weight, measure or count of any commodity or thing offered or exposed for sale on the basis of weight, measure or count, or used in computing the basic charge or payment for services rendered on the basis of weight, measure or count shall be inspected and certified at least every three months.

Source: S.L. No. 6L-80-06 §7, 1/31/07

§5-108. Powers and duties of the Administrator. — The Administrator shall:

(1) Maintain traceability of the state of Pohnpei standards to United States government standards, or such other standards as may be prescribed by FSM law or by the Administrator;

(2) Enforce the provisions of this chapter;

(3) Issue reasonable regulations for the enforcement of this chapter, which regulations shall have the force and effect of law and which:

(a) Shall specifically provide for the accurate measurement of gasoline and other petroleum products; and

(b) Shall provide for appropriate fees;

(c) May provide for the licensing of public weigh masters to perform the testing required by §5-107 and such other services as may be deemed appropriate by the Administrator; and

(d) May contain such other provisions deemed necessary and proper by the Administrator for the proper enforcement and administration of this chapter;

(4) Establish labeling requirements, establish requirements for the presentation of cost-per-unit information, establish standards of weight, measure or count, and reasonable standards of fill for any packaged commodity and may establish requirements for open dating information;

(5) Grant any exemptions from the provisions of this chapter or any regulations promulgated pursuant thereto and when appropriate to the maintenance of good weighing and measuring practices within the state of Pohnpei;

(6) Conduct investigations to ensure compliance with this chapter;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of this chapter;

(8) Test annually the standards of weights and measures used within the state of Pohnpei and approve the same when found to be correct;

(9) Inspect and test weights and measures kept, offered or exposed for sale;

(10) Test all weights and measures used in checking the receipt or disbursement or supplies in every institution for the maintenance of which funds are appropriated by the Legislature;

(11) Approve for use and mark such weights and measures as he finds to be correct and shall reject and mark as rejected, such weights and measures as he finds to be incorrect;

(12) May seize weights and measures that have been rejected and not corrected within the time specified or if used or disposed of in a matter not specifically authorized. The Administrator shall condemn and may seize the weights and measures found to be incorrect that are not capable of being made correct;

(13) Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or regulations promulgated pursuant thereto. In carrying out the provisions of this section, the Administrator shall employ recognized sampling procedures;

(14) Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever he determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion; and

(15) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.

Source: S.L. No. 6L-80-06 §8, 1/31/07

§5-109. Special police powers. — When necessary for enforcement of this chapter or regulations promulgated pursuant thereto, the Administrator is:

(1) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained;

(2) Empowered to issue stop-use, hold and removal orders with respect to any weights and measures commercially used and stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale; and

With respect to the enforcement of this chapter, the Administrator or his duly authorized designee vested with special police powers may arrest any violator of this chapter in accordance with law.

Source: S.L. No. 6L-80-06 §9, 1/31/07

§5-110. Misrepresentation of quantity. — No person shall sell, offer or expose for sale less than the quantity of commodity or service he represents, nor take any more than the quantity of commodity or service he represents when he furnishes the weight or measure by means of which the quantity is determined.

Source: S.L. No. 6L-80-06 §10, 1/31/07

§5-111. Misrepresentation of pricing. — No person shall misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

Source: S.L. No. 6L-80-06 §11, 1/31/07

§5-112. Violations. — Any person who, by oneself, or by the person's servant or agent, or as the servant or agent of another person, knowingly violates any provision of this chapter shall be guilty of a misdemeanor punishable by imprisonment of not more than 30 days, a fine of not more than \$200, or both such imprisonment and fine; PROVIDED that, for conviction of a third or subsequent offense, the punishment shall be imprisonment of not less than 3 days or more than 30 days, or a fine of not less than \$100 or more than \$500, or both such imprisonment and fine.

Source: S.L. No. 6L-80-06 §12, 1/31/07

§5-113. Injunction. — The Administrator is authorized to apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter.

Source: S.L. No. 6L-80-06 §13, 1/31/07

§5-114. Presumptive evidence. — Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.

Source: S.L. No. 6L-80-06 §14, 1/31/07

§5-115. Regulations to be unaffected by repeal of prior enabling statute. — The adoption of this chapter or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this chapter or modified or revoked by the Administrator.

Source: S.L. No. 6L-80-06 §15, 1/31/07

§5-116. Cooperation; uniformity of regulations. — The Administrator may cooperate and enter into agreements with any other state agency, or any national or municipal agency, with similar statutory functions, for the purpose of carrying out this chapter, and to establish uniformity, to the extent that it is reasonably possible, with other government enactments or regulations consistent with this chapter.

Source: S.L. No. 6L-80-06 §16, 1/31/07

§5-117. Nonapplicability. — This chapter shall not apply to electric or water public utility meters, or advance payment telephone cards, and shall be construed not to apply to such meters or advance payment telephone cards.

Source: S.L. No. 6L-80-06 §17, 1/31/07

TITLE 40
[RESERVED]

TRADE REGULATION

(Next page is Title 41, Division VI divider)