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TWELFTH GUAM LEGISLATURE
1974 (SECOND) Regular Session

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1974 (SECOND) Regular Session


ATTORNEY GENERAL'S OFFICE

Bill No. 898

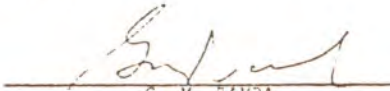
Introduced by Committee on Labor
and Industrial
Relations.

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Bill No. 898, "An Act to repeal and reenact Sections 48057 and 48064 and Chapter II of Title XLVI of the Government Code, in order to make technical amendments to the Occupational Safety and Health Act of Guam", was on the 10th day of October, 1974, duly and regularly passed.


F. T. RAMIREZ
Speaker

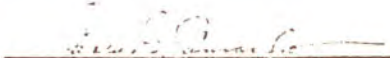
ATTESTED:


G. M. BAMBA
Legislative Secretary

This Act was received by the Governor this 29th day
of October, 1974 at 4:35 o'clock P.M.


KEITH L. ANDREWS
Attorney General of Guam

APPROVED:


CARLOS G. CASPACHO
Governor of Guam

DATED: NOV 8 1974
11:50 am

P.L. 12-185


1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Section 48057 of the Government Code of Guam
3 is hereby repealed and a new Section 48057 is hereby reenacted
4 to read as follows:
5 "Section 48057. Power to enter, inspect places, pro-
6 hibition of advance notice, record keeping and other
7 requirements.
8 (a) In order to carry out the purposes of this Title,
9 the Director, or his authorized representative upon
10 presenting appropriate credentials to the owner, operator,
11 or agent in charge is authorized:
12 (i) To enter without delay and at reasonable
13 times any factory, plant, establishment, construction
14 site, or other area, workplace or environment where
15 work is performed by an employee of an employer; and
16 where such entry or inspection is refused, the Director,
17 shall have the authority through appropriate legal
18 process in the Superior Court of Guam, to compel such
19 entry and inspection; and
20 (ii) To inspect and investigate during regular
21 working hours and at other reasonable times, and
22 within reasonable limits and in a reasonable manner,
23 any such place of employment and all pertinent con-
24 ditions, structures, machines, apparatus, devices,
25 equipment, and materials therein, and to question

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1 privately any such employer, owner, operator, agent
2 or employee.

3 (b) In making his inspections and investigations under
4 this Title the Director may require the attendance and
5 testimony of witnesses and the production of evidence under
6 oath. In a case of contumacy, failure or refusal of any
7 person to obey such an order, the Superior Court of Guam,
8 upon the application by the Director shall have jurisdiction
9 to issue such person an order requiring such person to
10 appear to produce evidence if, as, and when so ordered,
11 and to give testimony relating to the matter under investi-
12 gation or in question. Any failure to obey such order of the
13 Court may be punished by said Court as a contempt thereof.

14 (c) Records. (1) Each employer shall make, keep
15 and preserve, and make available to the Department, such
16 records regarding his activities relating to this Title as
17 the Department may prescribe by regulation as necessary or
18 appropriate for the enforcement of this Title or for
19 developing information regarding the causes and prevention
20 of occupational accidents, diseases, and illnesses. Such
21 regulations may include provisions requiring employers to
22 conduct periodic inspections. The Department shall also
23 issue regulations requiring that employers, through posting
24 of notices or other appropriate means, keep their employees
25 informed of their protections and obligations under this
26 Title, including the provisions of all applicable standards.

27 (2) The Department shall prescribe regulations
28 requiring employers to maintain accurate records of,
29 and to make periodic reports on, work-related deaths,
30 injuries, and illnesses other than minor injuries
31 requiring only first-aid treatment and which do not
32 involve medical treatment, loss of consciousness,
33 restriction of work or motion, or transfer to

1 another job.

2 (3) The Department shall issue regulations
3 requiring employers to maintain accurate records of
4 employee exposures to potentially toxic materials or
5 harmful physical agents which are required to be
6 monitored or measured under this Title. Such regula-
7 tions shall provide employees or their representatives
8 with an opportunity to observe such monitoring or
9 measuring, and to have access to the records thereof.
10 Such regulations shall also make appropriate provision
11 for each employee or former employee to have access to
12 such records as will indicate his own exposure to
13 toxic materials or harmful physical agents. Each
14 employer shall promptly notify any employee who has
15 been or is being exposed to toxic materials or harmful
16 physical agents in concentrations or at levels which
17 exceed those prescribed by an applicable occupational
18 safety and health standard promulgated under this
19 Title and shall inform any employee who is being
20 thus exposed of the corrective action being taken.

21 (d) Any information obtained by the Director shall be
22 obtained with a minimum burden upon employers, especially
23 those operating small businesses. Unnecessary duplication
24 of efforts in obtaining information shall be reduced to
25 the maximum extent feasible.

26 (e) Subject to regulations issued by the Director, a
27 representative of the employer and a representative
28 authorized by his employees shall be given an opportunity
29 to accompany the Director or his authorized representative
30 during the physical inspection of any workplace under this
31 section for the purpose of aiding such inspection. Where
32 there is no authorized employee representative, the

1 Director or his authorized representative shall consult
2 with a reasonable number of employees concerning matters
3 of health and safety in the workplace.

4 (f) (1) Any employee or representative of employees
5 who believes that a violation of a safety or health standard
6 exists that threatens physical harm, or that an imminent
7 danger exists, may request an inspection by giving notice
8 to the Director or his authorized representative of such
9 violation or danger. Any such notice shall be reduced to
10 writing, shall set forth with reasonable particularity the
11 grounds for the notice, and shall be signed by the
12 employee or representative of employee, and a copy
13 shall be provided the employer or his agent no later than
14 at the time of inspection, except that, upon the request
15 of the person giving such notice, his name and the names
16 of individual employees referred to therein shall not appear
17 in such copy or in any record published, released or made
18 available pursuant to Subsection (h) of this section. If
19 upon receipt of such notification the Director determines
20 there are reasonable grounds to believe such violation or
21 danger exists, he shall make a special inspection in
22 accordance with the provisions of this section as soon as
23 practicable, to determine if such violation or danger
24 exists. If the Director determines there are no reasonable
25 grounds to believe that a violation or danger exists, he
26 shall notify the employee or representative of employees
27 in writing of such determination.

28 (2) Prior to or during any inspection of a work-
29 place, any employee or representative of employees
30 employed in such a workplace may notify the Director
31 or any representative of the Director responsible for
32 conducting the inspection, in writing, of any violation

1 of this Title which he has reason to believe exists
2 in such workplace. The Director shall, by regulation,
3 establish procedures for informal review of any
4 refusal by a representative of the Director to issue
5 a citation with respect to any such alleged violation
6 and shall furnish the employee or representative of
7 employees requesting such review a written statement
8 of the reasons for the Director's final disposition of
9 the case.

10 (g) No person shall give advance notice of any inspec-
11 tion to be conducted under this Title, without authority
12 from the Director or his authorized representative, except
13 as provided by 29 C.F.R. Part 1903.6. Any person who gives
14 such advance notice shall, upon conviction, be punished by
15 a fine of not more than One Thousand Dollars (\$1,000) or
16 by imprisonment for not more than six (6) months, or both.

17 (h) The Director is authorized to compile, analyze,
18 and publish either in summary or detailed form, all reports
19 or information obtained under this section.

20 (i) (i) If upon inspection or investigation, the
21 Director or his authorized representative believes that an
22 employer has violated a requirement of Section 48203 of this
23 Title, or any standard, rule or order promulgated pursuant
24 to Section 48205 of this Title, or of any regulations
25 prescribed pursuant to this Title, he shall with reasonable
26 promptness issue a citation to the employer. Each citation
27 shall be in writing and shall describe with particularity
28 the nature of the violation, including a reference to the
29 provision of the Title, standard, rule, regulation or order
30 alleged to have been violated. In addition, the citation
31 shall fix a reasonable time for the abatement of the
32 violation. The Director may prescribe procedures for

1 the issuance of a notice in lieu of a citation with respect
2 to de minimis violations which have no direct or immediate
3 relationship to safety or health.

4 (ii) Each citation issued under this section, or
5 a copy or copies thereof, shall be prominently posted,
6 as prescribed in regulations issued by the Department,
7 at or near such place a violation referred to in the
8 citation occurred.

9 (iii) No citation may be issued under this
10 section after the expiration of six (6) months
11 following the occurrence of any violation.

12 (j) (i) If, after an inspection or investigation,
13 the Director issues a citation under this section he shall,
14 within a reasonable time after the termination of such
15 inspection or investigation, notify the employer by
16 certified mail of the penalty, if any, proposed to be
17 assessed under Section 48064 and that the employer has
18 Twenty (20) calendar days within which to notify the
19 Director that he wishes to contest the citation or proposed
20 assessment of penalty by serving upon the Director a copy of
21 the petition filed with the Superior Court for a review of
22 the citation or proposed assessment of penalty. If, within
23 Twenty (20) calendar days from the receipt of the notice
24 issued by the Director the employer fails to notify the
25 Director that he intends to contest the citation or proposed
26 assessment of penalty and no notice is filed by any
27 employee or representative of employees under Subsection
28 (iii) within such time, the citation and the assessments,
29 as proposed, shall be deemed a final order of the Superior
30 Court not subject to review by any court or agency.

31 (ii) If the Director has reason to believe that
32 an employer has failed to correct a violation for

1 which a citation has been issued within the period
2 permitted for its correction (which period shall not
3 begin to run until the entry of a final order by the
4 Superior Court in the case of any review proceedings
5 under this section initiated by the employer in good
6 faith and not solely for delay or avoidance of
7 penalties), the Director shall notify the employer
8 by certified mail of such failure and of the penalty
9 proposed to be assessed under Section 48064 by reason
10 of such failure, and that the employer has twenty (20)
11 calendar days within which to notify the Director
12 that he wishes to contest the Director's notification
13 or the proposed assessment of penalty by serving upon
14 the Director a copy of the petition filed with the
15 Superior Court for a review of the notification or the
16 proposed assessment of penalty. If, within twenty (20)
17 calendar days from the receipt of notification issued
18 by the Director, the employer fails to notify the
19 Director that he intends to contest the notification
20 or proposed assessment of penalty, the notification and
21 assessment, as proposed, shall be deemed a final order
22 of the Superior Court not subject to review by any
23 court or agency.

24 (iii) An employee or representative of employees
25 shall notify the Director within twenty (20) calendar
26 days of the issuance of a citation under Subsection (i),
27 that he intends to contest the period of time fixed
28 in the citation for the abatement of the violation as
29 unreasonable, by mailing the Director a copy of the
30 petition filed with the Superior Court for a review
31 of the abatement period fixed in the citation.

32 A copy of the filed petition shall be prominently

1 posted at or near each place a violation referred to
2 in the citation occurred.

3 (iv) Upon such filing, the Superior Court shall,
4 have jurisdiction of the matter and shall afford an
5 opportunity for a hearing (in accordance with the
6 Superior Court's procedures). The Superior Court shall
7 after a hearing, issue its order, based on findings
8 of fact affirming, modifying, or vacating the
9 Director's citation, or proposed penalty, or direct-
10 ing other appropriate relief, and such order shall
11 become final thirty (30) days after its issuance.

12 Upon a showing by an employer of a good faith
13 effort to comply with the abatement requirements of
14 citation, and that abatement has not been completed
15 because of factors beyond his reasonable control, the
16 Superior Court after an opportunity for a hearing as
17 provided in this subsection, shall issue an order
18 affirming or modifying the abatement requirements in
19 such citation.

20 The rules of procedure prescribed by the Superior
21 Court shall provide affected employees or representa-
22 tives of affected employees an opportunity to parti-
23 cipate as parties to hearings under this subsection.

24 (k) (i) Any person adversely affected or aggrieved by
25 any order of the Superior Court under this section may
26 obtain a review of such order in the Supreme Court of Guam
27 by filing in such court within sixty (60) days following
28 the issuance of such order a written petition praying that
29 the order be modified or set aside. A copy of such petition
30 shall be forthwith transmitted by the Clerk of the Supreme
31 Court to the Superior Court, to the Director, and to the
32 other parties, and thereupon the Superior Court shall file

1 in the Supreme Court the record in the proceeding as pro-
2 vided by the Supreme Court's rules of procedures. Upon
3 such filing, the Court shall have jurisdiction of the
4 proceeding and of the question determined therein, and
5 shall have power to grant such temporary relief or
6 restraining order as it deems just and proper, and to make
7 and enter upon the pleadings, testimony, and proceedings
8 set forth in such record a decree affirming, modifying, or
9 setting aside in whole or in part, the order of the
10 Superior Court and enforcing the same to the extent that
11 such order is affirmed or modified. The commencement of
12 proceedings under this subsection shall not, unless ordered
13 by the Court, operate as a stay of the order of the
14 Superior Court. No objection that has not been urged before
15 the Superior Court shall be considered by the Court, unless
16 the failure or neglect to urge such objection shall be
17 excused because of extraordinary circumstances. The
18 findings of the Superior Court with respect to questions
19 of fact, if supported by substantial evidence on the record
20 considered as a whole, shall be conclusive. If any party
21 shall apply to the Court for leave to adduce additional
22 evidence and shall show to the satisfaction of the Court
23 that such additional evidence is material and that there
24 were reasonable grounds for the failure to adduce such
25 evidence in the hearing before the Superior Court, the
26 Court may order such additional evidence to be taken
27 before the Superior Court and to be made a part of the
28 record. The Superior Court may modify its findings as to
29 the facts, or make new findings, by reason of additional
30 evidence so taken and filed, and it shall file such
31 modified or new findings, which findings with respect to
32 questions of fact, if supported by substantial evidence

1 on the record considered as a whole, shall be conclusive,
2 and its recommendations, if any, for the modification or
3 setting aside of its original order. Upon the filing of
4 the record with it, the jurisdiction of the Court shall
5 be exclusive and its judgment and decree shall be final,
6 except that the same shall be subject to review by the
7 Supreme Court of the United States, as provided in Section
8 1254 of Title 28 U.S.C.

9 (ii) The Director may also obtain review or
10 enforcement of any final order of the Superior Court
11 by filing a petition for such relief in the Supreme
12 Court of Guam, and the provisions of Subparagraph (i)
13 shall govern such proceedings to the extent applicable.
14 If no petition for review, as provided in Subparagraph
15 (i) is filed within sixty (60) days after service of
16 the Superior Court's order, the Superior Court's
17 findings of fact and order shall be conclusive in
18 connection with any petition for enforcement which
19 is filed by the Director after the expiration of such
20 sixty (60) day period. In any such case, as well as in
21 the case of a non-contested citation or notification
22 by the Director which has become a final order of the
23 Superior Court under Subparagraph (i) or (ii) of
24 Subsection (j), the Clerk of the Court, unless other-
25 wise ordered by the Court, shall forthwith enter a
26 decree enforcing the order and shall transmit a copy
27 of such decree to the Director and the employer named
28 in the petition. In any contempt proceeding brought
29 to enforce a decree of the Supreme Court entered
30 pursuant to this subparagraph or Subparagraph (i), the
31 Supreme Court may assess the penalties provided in
32 Section 48064 in addition to invoking any other

1 available remedies.

2 (1) All information reported or otherwise obtained
3 by the Director or his authorized representative in
4 connection with any inspection or proceeding under this
5 Title which contains or might reveal a trade secret
6 (referred to in Section 1905 of Title 18 of the United
7 States Code) shall be considered confidential except
8 that such information may be disclosed to other officers
9 or employees concerned with carrying out this Title or
10 when relevant in any proceeding under this Title. In any
11 such proceeding, the Director, the Superior Court, or the
12 Supreme Court, shall issue such orders as may be appro-
13 priate to protect the confidentiality of trade secrets."

14 Section 2. Section 48064 of the Government Code of Guam
15 is hereby repealed and a new Section 48064 is hereby reenacted
16 to read as follows:

17 "Section 48064. Penalties. (a) It shall be unlawful
18 for any employer to hinder the Director or his authorized
19 representative in the performance of his functions, powers,
20 duties or to otherwise violate any provision of this Title,
21 any regulation or standard prescribed or adopted pursuant
22 to this Title.

23 (b) Any employer who commits an unlawful act as
24 defined by Subparagraph (a) for which no penalty is other-
25 wise provided, may be assessed a civil penalty of not
26 more than One Thousand Dollars (\$1,000.00) for each viola-
27 tion.

28 (c) The Director shall have authority to assess all
29 civil penalties provided in this section, giving due
30 consideration to the appropriateness of the penalty with
31 respect to the size of the business of any employer being
32 charged, the gravity of the violation, the good faith of

1 the person charged, and any history of previous violations.

2 (d) Civil penalties owed under this Title shall be
3 paid to the Director for deposit in the General Fund and
4 may be recovered in a civil action brought in the Superior
5 Court by the Director or the Attorney General, but all such
6 litigation shall be subject to the control of the Attorney
7 General.

8 (e) Any employer who wilfully or repeatedly violates
9 the requirements of Section 48203 of this Title, any
10 standard, rule, or order promulgated pursuant to Section
11 48205 of this Title, or regulations prescribed pursuant to
12 this Title may be assessed a civil penalty of not more than
13 Ten Thousand Dollars (\$10,000.00) for each violation.

14 (f) Any employer who fails to correct a violation for
15 which a citation has been issued under Section 48057
16 within the period permitted for its correction may be
17 assessed a civil penalty of not more than One Thousand
18 Dollars (\$1,000.00) for each day during which such failure
19 or violation continues.

20 (g) Any employer who wilfully violates any standard,
21 rule, or order promulgated pursuant to Section 48205, or
22 any regulations prescribed pursuant to this Title, and
23 that violation caused death to any employee, shall upon
24 conviction be punished by a fine of not more than Ten
25 Thousand Dollars (\$10,000.00) or by imprisonment for not
26 more than six (6) months, or by both, except that if the
27 conviction is for a violation committed after a first
28 conviction of such person, punishment will be a fine of
29 not more than Twenty Thousand Dollars (\$20,000.00) or
30 imprisonment for not more than one (1) year, or by both.

31 (h) Whoever knowingly makes any false statement,
32 representation or certification in any application, record,

1 report, plan, or other document filed or required to be
2 maintained pursuant to this Title shall, upon conviction,
3 be punished by a fine of not more than Ten Thousand
4 Dollars (\$10,000.00), or by imprisonment for not more
5 than six (6) months, or by both.

6 (i) Whoever forcibly resists, opposes, impedes,
7 intimidates, or interferes with any officer or employee of
8 the Department, while engaged in or on account of the
9 performance of his official duties, shall be fined not
10 more than One Thousand Dollars (\$1,000.00) or imprisoned
11 for not more than three (3) years, or both.

12 (j) Whoever kills a person engaged in or on account
13 of the performance of investigative, inspection, or law
14 enforcement functions as provided for by this Title, shall
15 be punished by imprisonment for any term of years, or for
16 life.

17 (k) Whoever, in the commission of any such acts
18 referred to in Subsections (i) and (j) of this section uses
19 a deadly or dangerous weapon, shall be fined not more than
20 Ten Thousand Dollars (\$10,000.00), or imprisoned for not
21 more than ten (10) years or both.

22 (l) Any employer who violates any of the posting
23 requirements prescribed by the Occupational Safety and
24 Health Act of Guam, shall be assessed a civil penalty of
25 up to One Thousand Dollars (\$1,000.00) for each violation.

26 (m) For purposes of this section, a serious violation
27 shall be deemed to exist in a place of employment if there
28 is a substantial probability that death or serious physical
29 harm could result from a condition which exists or from one
30 or more practices, means, methods, operations, or processes
31 which have been adopted or are in use, in such place of
32 employment unless the employer did not, and could not with

1 the exercise of reasonable diligence know of the presence
2 of the violation.

3 (n) Any employer who has received a citation for a
4 serious violation of the requirements of Section 48203 or
5 of any standard, rule, or order promulgated pursuant to
6 Section 48205 or any regulations prescribed pursuant to
7 this Title shall be assessed a civil penalty of up to One
8 Thousand Dollars (\$1,000) for each such violation.

9 (o) Any employer who has received a citation for a
10 violation of the requirements of Section 48203 or of any
11 standard, rule, or order promulgated pursuant to Section
12 48205 or of regulations prescribed pursuant to this Title
13 and such violation is specifically determined not to be of
14 a serious nature, may be assessed a civil penalty of up
15 to One Thousand Dollars (\$1,000) for each such violation.

16 (p) No person shall discharge or in any
17 manner discriminate against any employee because such
18 employee has filed any complaint or instituted or caused
19 to be instituted any proceeding or because of the exercise
20 by such employee on behalf of himself or others of any
21 right afforded by this Title. Any employee who believes
22 that he has been discharged or otherwise discriminated
23 against by any person in violation of this subsection may,
24 within thirty (30) days after such violation occurs, file
25 a complaint with the Director alleging such discrimination.
26 Upon receipt of such complaint, the Director shall cause
27 such investigation to be made as he deems appropriate.
28 If upon such investigation, the Director determines that
29 the provisions of this subsection have been violated, he
30 shall bring an action in the Superior Court against such
31 person. In any such action the Superior court shall have
32 jurisdiction, for cause shown, to restrain violations of

1 this subsection and order all appropriate relief including
2 rehiring or reinstatement of the employee of his former
3 position with back pay.

4 Within ninety (90) days of the receipt of a complaint
5 filed under this subsection the Director shall notify the
6 complainant of his determination under Subsection (q) of
7 this section.

8 (q) Procedures to counteract imminent dangers.

9 (1) The Director shall have the power, after a
10 duly authorized investigation, and his review thereof,
11 to restrain any conditions or practices in any place
12 of employment which are such that a danger exists
13 which could reasonably be expected to cause death or
14 serious physical harm immediately or before the
15 imminence of such danger can be eliminated through
16 the enforcement procedures otherwise provided by this
17 Title. Any order issued by the Director under this
18 section may require such steps to be taken as may be
19 necessary to avoid, correct, or remove such imminent
20 danger and prohibit the employment or presence of any
21 individual in locations or under conditions where
22 such imminent danger exists, except individuals whose
23 presence is necessary to avoid, correct, or remove
24 such imminent danger or to maintain the capacity of a
25 continuous process operation to resume normal opera-
26 tion without a complete cessation of operations, or
27 where a cessation of operations is necessary to
28 permit such to be accomplished in a safe and orderly
29 manner.

30 (2) The Director may file a petition with the
31 Superior Court enforcing any order issued under this
32 section, and said court shall have jurisdiction to

1 grant such injunctive relief or temporary restraining
2 order pending the outcome of an enforcement proceeding
3 pursuant to this Title. No temporary restraining
4 order issued without notice shall be effective for a
5 period longer than five (5) days.

6 (3) Whenever, and as soon as an inspector con-
7 cludes that conditions or practices described above
8 exist in any place of employment, he shall inform the
9 affected employees and employers of the danger and
10 that he is recommending to the Director that relief
11 be sought.

12 (4) If the Director arbitrarily or capriciously
13 fails to seek relief under this section, any employee
14 who may be injured by reason of such failure, or the
15 representative of such employees, may bring an action
16 against the Director in the Superior Court for a writ
17 of mandamus to compel the Director to issue an order
18 and for such further relief as may be appropriate.

19 (5) Exemption. For the purposes enumerated
20 under this section, no civil penalties shall be
21 assessed against the territory of Guam or any
22 political subdivision thereof."

23 Section 3. Chapter II of Title XLVI of the Government Code
24 of Guam is hereby repealed and a new Chapter II is hereby
25 reenacted to read as follows:

26 "CHAPTER II
27 Occupational Safety and Health Act of Guam
28 Section 48200. Title. This Chapter may be cited as the
29 'Occupational Safety and Health Act of Guam'.
30 Section 48201. Acknowledgment and declaration of
31 intent. The government of Guam hereby acknowledges that
32 the provisions of the Act of Congress of December 29, 1970,

1 as now in effect or as hereafter amended, referred to as
2 the Williams-Steiger Occupational Safety and Health Act
3 of 1970 (P.L. 91-596) are applicable to the territory of
4 Guam and declares that the government of Guam shall observe
5 and comply with the requirements of said Act. It is the
6 intent of the Legislature that the territory of Guam shall,
7 in accordance with Section 18(b) of said Act, assume
8 responsibility for development and enforcement within the
9 territory of Guam of Occupational Safety and Health
10 standards relating to any Occupational Safety and Health
11 issue with respect to which a Federal standard has been
12 promulgated; and to assume responsibility for development
13 and enforcement over any occupational safety and health
14 issue with respect to which no Federal standard is in
15 effect under Section 6 of Public Law 91-596. This Act
16 shall apply with respect to employment performed in a
17 workplace in the territory of Guam. Nothing in this Act
18 shall apply to working conditions of employees with
19 respect to which other Federal agencies, and territorial
20 agencies acting under Section 274 of the Atomic Energy Act
21 of 1954, as amended (42 U.S.C. 2021), exercise statutory
22 authority to prescribe or enforce standards or regulations
23 affecting occupational safety or health. The Director shall
24 within three (3) years after the effective date of this Act,
25 report to the Legislature his recommendations for legisla-
26 tion to avoid unnecessary duplication and to achieve
27 coordination between this Act and other Federal laws or
28 territorial laws. This Act will take effect immediately
29 upon approval of the territory's 18(b) plan and shall
30 apply with respect to employment performed in a workplace
31 in the territory of Guam.

32 Section 48202. Definitions. (1) 'Person' means one or

1 more individuals, partnerships, associations, corporations,
2 business trusts, legal representatives, or any organized
3 group of persons.

4 (2) 'Employer' means a person engaged in a business
5 who has employees, and includes the territory of Guam or
6 any political subdivision thereof.

7 (3) 'Employee' means an employee of an employer
8 including any person who is suffered or permitted to work
9 in the employer's business.

10 (4) 'Territory' means the island of Guam in the
11 Marianas Islands as defined in the Organic Act of Guam, as
12 amended (Title 48, Sections 1421 et seq., U.S.C.A.).

13 (5) 'Occupational Safety and Health Standard' means
14 a standard which requires conditions, or the adoption or
15 use of one or more practices, means, methods, operations,
16 or processes, reasonably necessary or appropriate to
17 provide safe or healthful employment and places of employ-
18 ment.

19 (6) 'Federal standard', includes 'national consensus
20 standard' or 'established federal standard', as defined in
21 Section 3 of the Occupational Safety and Health Act of
22 1970 (P.L. 91-596).

23 (7) 'Department' means the Department of Labor.

24 (8) 'Director' means the Director of Labor, or his
25 authorized representative.

26 (9) 'Court' means the Superior Court of Guam.

27 (10) 'Appellate Court' means the Supreme Court of Guam.

28 Section 48203. Duties. Each employer (1) shall
29 furnish to each of his employees employment and a place
30 of employment which are free from recognized hazards that
31 are causing or are likely to cause death or serious
32 physical harm to his employees;

1 (2) shall comply with Occupational Safety and Health
2 Standards promulgated under this Act, and all applicable
3 rules issued thereunder.

4 Each employee shall comply with Occupational
5 Safety and Health Standards and all rules, regulations and
6 orders issued pursuant to this Act which are applicable to
7 his own actions and conduct.

8 Section 48204. Agency responsible for occupational
9 safety and health. The Department is hereby designated as
10 the agency of Guam responsible for developing and adminis-
11 tering a plan in accordance with the provisions of Section
12 18(c) of said Act, and in accordance with any rules,
13 regulations, standards, or guidelines relating to such
14 plans promulgated or published by the United States Depart-
15 ment of Labor pursuant to said Act. The Department is
16 hereby vested with the authority to enter into an agree-
17 ment with the United States Department of Labor which
18 provides for interim enforcement of Occupational Safety
19 and Health Standards by the territory of Guam pursuant
20 to Section 18(h) of said Act.

21 Section 48205. Authority of agency with respect to
22 occupational safety and health. (a) The Department is
23 hereby vested with the authority to make, update, publish,
24 and enforce, for the purpose of the Section 18(b) plan,
25 Occupational Safety and Health Standards for the territory
26 of Guam which meet the indices of equal effectiveness as
27 published by the United States Department of Labor. The
28 Division of Occupational Safety and Health within the
29 Department, as the designated representative of the
30 Department, shall enforce these standards. With respect to
31 such standards no notice and opportunity to be heard need
32 be given, if such standards have been afforded the

1 opportunity for a hearing at the Federal level before
2 adoption as a Federal standard pursuant to Section 6 of
3 the Williams-Steiger Occupational Safety and Health Act
4 of 1970.

5 (b) The Director, in promulgating standards dealing
6 with toxic materials or harmful physical agents under this
7 subsection, shall set the standard which most adequately
8 assures, to the extent feasible, on the basis of the best
9 available evidence, that no employee will suffer material
10 impairment or health or function capacity even if such
11 employee has regular exposure to the hazard dealt with by
12 such standard for the period of his working life. Develop-
13 ment of standards under this subsection shall be based
14 upon research, demonstrations, experiments, and such other
15 information as may be appropriate. In addition to the
16 attainment of the highest degree of health and safety
17 protection for the employee, other considerations shall be
18 the latest available scientific data in the field, the
19 feasibility of the standards, and experience gained under
20 this and other health and safety laws. Whenever practicable,
21 the standard promulgated shall be expressed in terms of
22 objective criteria and of the performance desired.

23 (c) Nothing in this section shall be construed to
24 limit the authority of the Department to make, update,
25 publish, and enforce standards for application in the
26 territory of Guam for such other occupational safety and
27 health issues with respect to which no Federal standard is
28 in effect; provided, however, that notice and an opport-
29 unity for a hearing must be given to such additional
30 standards.

31 (d) The Department has the authority to make, update,
32 publish and enforce standards that are different from

1 Federal standards, but which will be at least as effective
2 as Federal standards for application in the territory of
3 Guam.

4 (e) The government of Guam will, to the extent
5 permitted by law, establish and maintain an effective and
6 comprehensive occupational safety and health program appli-
7 cable to all government of Guam employees, which program
8 shall be as effective as the standards contained in an
9 approved plan.

10 Section 48206. Temporary emergency standards. The
11 Director shall provide for emergency temporary standards to
12 take immediate effect, upon publication, if he determines

13 (a) That employees are exposed to grave danger from
14 exposure to substances or agents determined to be toxic
15 or physically harmful or from new hazards, and (b) that
16 such emergency standard is necessary to protect employees
17 from such danger.

18 Such emergency temporary standard shall be effective
19 until superseded by a permanent standard promulgated in
20 accordance with the procedures prescribed in this sub-
21 section.

22 The Director shall promulgate a permanent standard,
23 no later than six (6) months after publication of the
24 emergency temporary standard, after notice of an opport-
25 unity for a hearing on the permanent standard is held

26 Section 48207. Temporary variance order. (a) Any
27 employer may apply to the Director for a temporary order
28 granting a variance from a standard or any provision thereof
29 promulgated under Section 48205. Such temporary order shall
30 be granted only if the employer files an application which
31 meets the requirements of clause (b) hereof and establishes
32 that:

33 (i) He is unable to comply with a standard by its

1 effective date because of unavailability of profes-
2 sional or technical personnel or of materials and
3 equipment needed to come into compliance with the
4 standard or because necessary construction or altera-
5 tion of facilities cannot be completed by the effec-
6 tive date;

7 (ii) He is taking all available steps to safe-
8 guard his employees against the hazards covered by
9 the standard; and

10 (iii) He has an effective program for coming into
11 compliance with the standard as quickly as practicable.

12 Any temporary order issued under this paragraph
13 shall prescribe the practices, means, methods,
14 operations, and processes which the employer must
15 adopt and use while the order is in effect and state
16 in detail his program for coming into compliance with
17 the standard. Such a temporary order may be granted
18 only after notice to employees and an opportunity for
19 a hearing; provided, however, that the Director may
20 issue one interim order to be effective until a
21 decision is made on the basis of the hearing. No
22 temporary order may be in effect for longer than the
23 period needed by the employer to achieve compliance
24 with the standard, or one (1) year, whichever is
25 shorter, except that such an order may be renewed
26 not more than twice.

27 (I) So long as the requirements of this
28 paragraph are met; and

29 (II) If an application for renewal is filed
30 at least ninety (90) days prior to the expiration
31 date of the order no interim renewal of an order
32 may remain in effect for longer than one hundred

1 eighty (180) days.

2 (b) An application for a temporary order under
3 this paragraph shall contain:

4 (i) A specification of the standard or
5 portion thereof from which the employer seeks a
6 variance;

7 (ii) A representation by the employer,
8 supported by representations from qualified
9 persons having first-hand knowledge of the facts
10 represented, that he is unable to comply with the
11 standard or portions thereof and a detailed state-
12 ment of the reasons therefor;

13 (iii) A statement of the steps he has taken
14 and will take (with specific dates) to protect
15 employees against the hazard covered by the
16 standard;

17 (iv) A statement of when he expects to be
18 able to comply with the standard and what steps
19 he has taken and what steps he will take (with
20 dates specified) to come into compliance with the
21 standard; and

22 (v) A certification that he has informed his
23 employees of the application by giving a copy
24 thereof to their authorized representative, posting
25 a statement giving a summary of the application and
26 specifying where a copy may be examined at the place
27 or places where notices to employees are normally
28 posted, and by other appropriate means.

29 A description of how employees have been informed
30 shall be contained in the certification. The information
31 to employees shall also inform them of their right to
32 petition the Director for a hearing.

1 Section 48208. Variance rule. Any affected employer
2 may apply to the Director for a rule or order for a
3 variance from a standard promulgated under this section.
4 Affected employees shall be given notice of each such
5 application and an opportunity to participate in a
6 hearing. The Director shall issue such rule or order if
7 he determines on the record, after opportunity for an
8 inspection where appropriate and a hearing, that the
9 proponent of the variance has demonstrated by a prepon-
10 derance of the evidence that the conditions, practices,
11 means, methods, operations or processes used or proposed
12 to be used by an employer will provide employment and
13 places of employment to his employees which are as safe
14 and healthful as those which would prevail if he complied
15 with the standard. The rule or order so issued shall
16 prescribe the conditions the employer must maintain, and
17 the practices, means, methods, operations, and processes
18 which he must adopt and utilize to the extent they differ
19 from the standard in question. Such rule or order may be
20 modified or revoked upon application by an employer,
21 employees, or by the Director on his own motion, in the
22 manner prescribed by this subsection at any time after
23 six (6) months from its issuance.

24 Section 48209. Labels, protective equipment, medical
25 equipment. Any standard promulgated under Section 48205
26 shall prescribe the use of labels or other appropriate
27 forms of warning as are necessary to ensure that
28 employees are apprised of all hazards to which they are
29 exposed, relevant symptoms and appropriate emergency
30 treatment, and proper conditions and precautions of safe
31 use or exposure. Where appropriate, such standards shall
32 also prescribe suitable protective equipment and control

1 or technological procedures to be used in connection
2 with such hazards and shall provide for monitoring or
3 measuring employee exposure at such locations and
4 intervals, and in such manner as may be necessary for
5 the protection of employees. In addition, where appro-
6 priate, any such standard shall prescribe the type and
7 frequency of medical examinations or other tests which
8 shall be made available by the employer or at his cost,
9 to employees exposed to such hazards in order to most
10 effectively determine whether the health of such employees
11 is adversely affected by such exposure. The results of
12 such examinations or tests shall be furnished only to the
13 Director, and, at the request of the employee to his
14 physician. The Director, may by rule promulgated, after
15 notice and an opportunity to be heard make appropriate
16 modifications in the foregoing requirements relating to
17 the use of labels or other forms of warning, monitoring
18 or measuring and medical examinations, as may be warranted
19 by experience, information, or medical technological
20 developments acquired subsequent to the promulgation of
21 the relevant standard.

22 Section 48210. Authority of Director. There is
23 hereby granted to the Director the authority to adopt,
24 to prescribe, to publish and to enforce any such rules,
25 regulations, or procedures as he may deem necessary to
26 carry out his responsibility under this Act. The Director
27 may bring an action in court to enforce any of his orders
28 or to restrain or prevent any person from committing any
29 unlawful act as defined by this Act.

30 Section 48211. Division of Occupational Safety and
31 Health. (a) There is hereby established within the
32 Department a division of Occupational Safety and Health

1 whose functions it shall be to investigate and inquire
2 into the causes of injuries or sickness and to assist
3 in the preparation of such occupational safety and
4 health standards as are necessary to aid in the pre-
5 vention of such injuries or sickness. Further, the
6 Division of Occupational Safety and Health shall be
7 responsible for distributing to employers in the
8 territory information regarding any occupational safety
9 and health standards and the duties of the employer with
10 respect to reporting to the Department all information
11 required to assist the Department in administering and
12 enforcing such occupational safety and health standards.
13 The Division of Occupational Safety and Health shall also
14 be responsible for assisting in the preparation of any
15 reports the Department is required to file with the United
16 States Department of Labor. In this connection, the
17 Director shall make such reports to the Secretary of
18 Labor in accordance with 29 CFR Part 1902.3(L), and as the
19 Secretary shall from time to time require. Finally, the
20 Director shall provide for the establishment and super-
21 vision of programs to encourage voluntary compliance by
22 employers and employees by such means as conducting
23 training and consultation with employers and employees.
24 (b) The Director may appoint an Industrial Hygienist,
25 a Safety Officer, Safety Inspectors, an Administrative
26 Assistant, and such additional officers and personnel in
27 the Division of Occupational Safety and Health as may be
28 required to perform its functions. Such officers and
29 personnel shall have full authority to act in the name
30 of the Director to the extent authorized by him."