



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
LESIAN TAMAYO
AGANA GUAM 96910

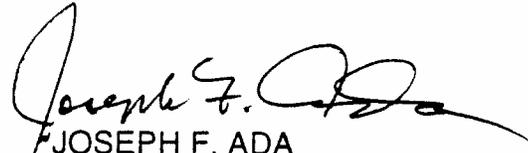
OCT 05 1992

The Honorable Joe T. San Agustin
Speaker, Twenty-First Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 951 which I have signed into law this date as
Public Law 21-140.

Sincerely yours,


JOSEPH F. ADA
Governor
210960

Attachment

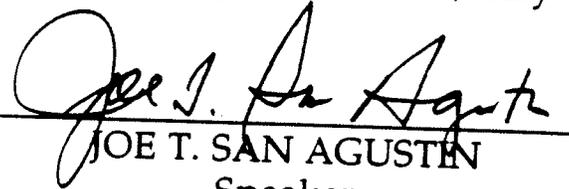
**REFER TO
LEGISLATIVE SECRETARY**

RECEIVED OCT 05 1992
11:15 pm

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

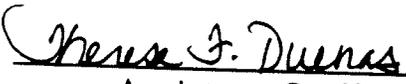
This is to certify that Bill No. 951 (LS), "AN ACT TO IMPOSE PENALTIES FOR NON-PAYMENT OF WAGES AND TO PROTECT WAGE EARNERS, TO ADD NEW §§46040 THROUGH 46049 TO TITLE XLII OF THE GOVERNMENT CODE, TO AMEND §§46031, 46036, 46009, SUBSECTION (1) OF 46015, AND 46034 OF SAID TITLE, AND TO CREATE TWO FULL-TIME POSITIONS WITHIN THE DEPARTMENT OF LABOR TO ENFORCE SAID TITLE," was on the 17th day of September, 1992, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker

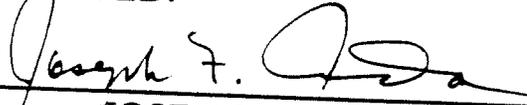
Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 21st day of September, 1992,
at 4:50 o'clock P.M.


Theresa J. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:


JOSEPH F. ADA
Governor of Guam

Date: 21ST 09 1992

Public Law No. 21-140

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 951 (LS)

Introduced by:

D. Parkinson
J. T. San Agustin
G. Mailloux
J. P. Aguon
D. L. G. Shimizu
F. R. Santos
A. C. Blaz
M. C. Ruth
C. T. C. Gutierrez
P. C. Lujan
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
J. G. Bamba
D. F. Brooks
E. R. Dueñas
E. M. Espaldon
M. D. A. Manibusan
M. J. Reidy
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO IMPOSE PENALTIES FOR NON-PAYMENT OF WAGES AND TO PROTECT WAGE EARNERS, TO ADD NEW §§46040 THROUGH 46049 TO TITLE XLII OF THE GOVERNMENT CODE, TO AMEND §§46031, 46036, 46009, SUBSECTION (1) OF 46015, AND 46034 OF SAID TITLE, AND TO CREATE TWO FULL-TIME POSITIONS WITHIN THE DEPARTMENT OF LABOR TO ENFORCE SAID TITLE.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** A new §46040 is added to the Government Code of Guam to
3 read as follows:

4 **"§46040. Additional criminal penalties:**

5 (a) It shall be a felony of the second degree to knowingly and
6 materially alter payroll records to deprive an employee of wages
7 rightfully due.

8 (b) It shall be a felony of the second degree to knowingly and
9 materially falsify payroll records to deprive an employee of wages
10 rightfully due."

11 **Section 2.** A new §46041 is added to the Government Code of Guam to
12 read as follows:

13 **"§46041. Deductions and form of payments.** (a) All deductions
14 taken from an employee's pay by an employer, and all sums payable
15 or paid to the employer from said pay to the employee, shall be
16 shown on the employee's pay statement or check stub, and a copy
17 thereof shall be given to the employee at the time the employee is
18 paid. A copy thereof shall be kept by the employer for three (3) years.

19 (b) All payments made to an employee by an employer shall be
20 in the form of cash or check. It is then the employee's responsibility
21 to cash his or her check. No employer of non-immigrant alien
22 employees may deduct from their pay any funds for transmittal off-
23 island for any purpose whatever.

24 **Section 3.** A new §46042 is added to the Government Code of Guam to
25 read as follows:

26 **"§46042. Statement if wages not paid.** If an employer cannot
27 or does not pay wages rightfully due when due to one (1) or more

1 employees, the employer shall, within five (5) days, exclusive of
2 Saturdays, Sundays, and holidays:

3 (a) Give each employee and the Director of Labor a statement
4 showing the correct hours worked for the pay period in question, the
5 correct wages earned, the correct legal deductions from pay, and
6 correct wages payable. A statement containing errors shall be
7 considered correct if the employer can establish that the error was an
8 honest error made accidentally and in good faith;

9 and, if after ten (10) working days, the wages have still not
10 been paid, then the employer shall:

11 (b) Deliver to the Department of Labor a list of receivables due
12 the employer, a list of all the employer's bank accounts along with
13 copies of the latest bank statements, the name of all officers,
14 directors, and managers of the employer if a corporation, and the
15 names, addresses, and telephone numbers of any person owning
16 more than ten percent (10%) of the employer, along with copies of all
17 time cards and payment records for all employees for the pay periods
18 missed.

19 **Section 4.** A new §46042.1 is added to the Government Code of Guam
20 to read as follows:

21 **"§46042.1. Liens for unpaid wages.** When the Director of
22 Labor finds that an employer has not paid wages due, then, in
23 addition to all other remedies, relief, and liens allowed by law or at
24 equity,

25 (a) The Director of Labor (the "Director") through the
26 Attorney General's Office may promptly file a labor lien on any real
27 property owned by the employer, to be filed at the Department of

1 Land Management, and have served upon the holders of any
2 mortgage thereon a copy of the lien, and

3 (b) The Director through the Attorney General's Office may
4 promptly file a labor lien on any personal property (including
5 accounts receivable) owned by the employer to be filed at the
6 Department of Revenue and Taxation, and

7 (c) The Director through the Attorney General's Office may
8 order the bank accounts of the employer frozen, and

9 (d) Liens and bank accounts frozen by this section shall be
10 released upon posting with the Director a cash bond or a surety bond
11 issued by an insurance company licensed in Guam in an amount
12 equal to wages allegedly owed plus fines, penalties, costs, and
13 attorney's fees, and

14 (e) None of the actions of the Director set out in paragraphs
15 (a) through (d) above may be taken without the approval of the
16 Superior Court set out in an order, which only may be entered
17 without notice when the Director has satisfied the court that funds
18 will be dissipated if notice be given."

19 **Section 5.** A new §46042.2 is added to the Government Code of Guam
20 to read as follows:

21 **"§46042.2. Definitions. (a) Wages.** For purposes of this Title,
22 "wages" (however denominated) means the gross amount owed to
23 the employee, and includes but is not limited to all compensation for
24 labor for which an employee is entitled, including regular pay,
25 overtime pay, commissions, wages as defined in Subsection (6) of
26 §46003 of this Code, wages to which the employee may be entitled
27 based on the Prevailing Wage Rates established pursuant to Section

1 101(a)(15)(H) ii of 8 U.S.C. 1186 (federal immigration law)
2 established by the Governor of Guam or the United States
3 Government, wages based on contract, and all other amounts to
4 which the employee is entitled for labor performed on behalf of an
5 employer. Retirement contributions of both the employer and the
6 employee to a retirement fund or plan, including the Government of
7 Guam Retirement Fund, shall be the property of the retirement fund
8 or plan held in trust for the benefit of the members of the plan or
9 fund, and the employer retains no rights thereto. Actions for non-
10 payment of such contributions or misuse of such funds or plans may
11 be enforced, prohibited and recovered by the Attorney General, the
12 employee, or any member in the same manner as an action for
13 unpaid wages, with the same penalties and attorney's fees. Except
14 for government employees and employees of non-profit
15 organizations enjoying tax-free status, employees cannot do
16 volunteer work at lower than regular pay or without overtime if
17 applicable which work will directly or indirectly benefit his or her
18 employer. This rule does not apply to employers who operate
19 institutions engaged in the care of sick, aged, or mentally ill or
20 defective persons. This exemption permits these institutions to
21 adopt a fourteen- (14-) day workweek instead of a seven- (7-) day
22 workweek and does not require overtime unless an employee is
23 employed more than eight (8) hours per day or in excess of eighty (80)
24 hours in the fourteen- (14-) day workweek.

25 (b) **Local worker.** For purposes of this Title, "local worker" or
26 "local employee" means a U.S. citizen, a permanent resident of the
27 United States, a U.S. national, or a person from the Commonwealth

1 of the Northern Mariana Islands, the Republic of Belau, the
2 Federated States of Micronesia, or the Republic of the Marshall
3 Islands."

4 **Section 6.** A new §46042.3 is added to the Government Code of Guam
5 to read as follows:

6 **"§46042.3. Enforcement of prevailing wages.** The
7 Department of Labor is authorized to conduct, administer, apply,
8 and enforce prevailing wages required to be paid to non-immigrant
9 alien workers under the provisions of Section 101(a)(15)(H) ii of 8
10 U.S.C. 1186 rates for the territory of Guam once they have been
11 established by the Governor of Guam."

12 **Section 7.** A new §46043 is added to the Government Code of Guam to
13 read as follows:

14 **"§46043. Definition of failure to pay wages.** For purposes of
15 this Title, "failure to pay wages" or "unpaid wages" (however
16 denominated) includes but is not limited to:

17 (a) Failure to pay sums due for wages, overtime, and benefits;

18 or

19 (b) Failure to pay sums deducted from pay for payment to
20 another within five (5) days of the day an employee's pay is due. As
21 to child support payments deducted from an employee's pay but not
22 paid in a timely manner by an employer properly served with a court
23 order of wage assignment issued by a Guam court, or authorized by
24 the employee to deduct such payments, any penalties shall accrue to
25 the benefit of the spouse receiving the support, who shall have the
26 authority to enforce such non-payment against the employer; or

27 (c) Underpayment of wages; or

- 1 (d) Understating hours worked; or
2 (e) Improper deduction of sums from wages; or
3 (f) Payment with a check which is dishonored; or
4 (g) Taking illegal kickbacks from employees by an employer or
5 employer's agent; or
6 (h) Any scheme whereby an employer deprives an employee of
7 the employee's rightful wages.

8 "Wages" includes sums payable for work done pursuant to a
9 contract to perform personal services or to perform as an artist or
10 performer. It is against public policy to allow avoidance of wage law
11 enforcement, minimum wage laws, overtime laws, child labor laws,
12 etc. by inducing employees to sign employment contracts."

13 **Section 8.** A new §46044 is added to the Government Code of Guam to
14 read as follows:

15 "§46044. **Fees and costs.** Any employer who fails to pay one (1)
16 or more employee wages when due or who violates any provisions
17 of this Title or who fails to pay overtime or who violates the child
18 labor laws of the territory shall pay all attorney's fees and costs
19 necessary to collect such amounts. The Department of Labor shall be
20 entitled to a collection fee to be paid by the employer in the amount of
21 twelve percent (12%) of wages due and collected by the Department
22 of Labor or the government of Guam on behalf of an employee to
23 offset the costs to the people of Guam to enforce the provisions of
24 this Title."

25 **Section 9.** A new §46045 is added to the Government Code of Guam to
26 read as follows:

27 "§46045. **Penalties.** (a) Except for government entities, any

1 employer who fails to pay one (1) or more employees wages when
2 due or who underpays an employee shall pay punitive damages to
3 the employee of three (3) times the wages due, **unless** the employer
4 can establish, as an affirmative defense in equity, by a preponderance
5 of the evidence, that:

6 (1) In the case of non-payment, the employer did not
7 have the ability to pay the wages due; and

8 (2) The employer complied with all other provisions of
9 this Chapter; and

10 (3) There was no fraud committed against any employee
11 by the employer in the computation of wages; and

12 (4) The employer was in substantial compliance with all
13 territorial and federal laws as to wage and hours matters
14 relating to employees, and that any non-compliance was in
15 good faith; and

16 (5) In the case of non-payment, managers or officers of
17 the employer were not given priority in the disbursement of
18 wages or allowances; and

19 (6) In the case of non-payment, the employer complied
20 with the requirements of §46042 this Code; and

21 (7) The employer comes before the court with clean
22 hands; and

23 (8) In the case of an underpayment, the underpayment
24 was a good faith error with no intent to defraud.

25 (b) Any person participating in any fraud or intentional non-
26 payment or underpayment of wages against any employee or any
27 person knowingly benefiting from any fraud or intentional non-

1 payment or underpayment of wages shall be jointly and severably
2 liable with the employer and others liable for all unpaid wages,
3 penalties, attorney's fees and costs due to any unpaid employee of
4 the employer."

5 **Section 10.** A new §46046 is added to the Government Code of Guam
6 to read as follows:

7 "§46046. **Waivers.** An employee may not waive his right to or
8 compromise wages earned. An employee may waive or compromise
9 penalties, costs and attorney's fees arising from violations of this
10 Chapter only if all wages are paid in full and only if the employee is
11 represented by an attorney and the waiver or compromise is
12 approved in writing by the employee and his attorney."

13 **Section 11.** A new §46047 is added to the Government Code of Guam
14 to read as follows:

15 "§46047. **Representation by Attorney General or a private**
16 **attorney.** The Attorney General or a private attorney may represent
17 employees and/or the Director of Labor in actions for unpaid wages
18 or for violations of this Title. In such violations, the court shall
19 award reasonable attorney's fees of not less than One Hundred
20 Twenty-Five Dollars (\$125) per hour to the government of Guam or
21 the private attorney to be paid by the employer."

22 **Section 12.** A new §46048 is added to the Government Code of Guam
23 to read as follows:

24 "§46048. **Class actions.** The courts shall liberally permit class
25 actions suits against an employer based upon violations of this
26 Chapter."

27 **Section 13.** A new §46049 is added to the Government Code of Guam

1 to read as follows:

2 **"§46049. Changes in employment contracts: discrimination.** If
3 an employment contract for a non-immigrant alien worker to work
4 in Guam has been previously submitted to the Guam Department of
5 Labor, the U.S. Department of Labor, the U.S. Immigration and
6 Naturalization Service, or the U.S. State Department as part of a
7 process to obtain a visa or permission to work in the United States,
8 then any prior or subsequent replacement, modification or
9 amendment thereto is enforceable by the employer and may benefit
10 the employer only if it is legal and not contrary to public policy and
11 only if it is submitted to the Department of Labor, and is approved in
12 writing by the Department of Labor. Such submission and approval
13 are not required if the only modification is to increase the wages of
14 the employee. It shall be a felony of the second degree for an
15 employer to knowingly employ, compensate, or provide preference
16 to non-immigrant workers over local workers, or to discriminate
17 against local workers in the employment or compensation of non-
18 immigrant workers."

19 **Section 14.** §46031 of the Government Code is hereby amended to read
20 as follows:

21 **"§46031. Payment when amount disputed.** In case of a dispute
22 over wages resulting in, or existing at the time of, termination of
23 employment, the employer shall give notice to the employees and the
24 Director of Labor of the amount of wages which he concedes to be
25 due and the same shall be payable without any conditions
26 whatsoever at the time fixed by §46030, and the acceptance by the
27 employees of such payment shall not constitute a release or accord

1 and satisfaction with respect to the disputed amount."

2 **Section 15.** §46036 of the Government Code is hereby repealed and
3 reenacted to read as follows:

4 "§46036. **Claims for wages preferred.** When the business of
5 any person, corporation, company or firm is suspended as a result of
6 a writ of execution or attachment or is placed in the hands of a
7 receiver, trustee or assignee for creditors, then in all such cases
8 claims for wages for each claimant an amount per claimant not to
9 exceed one thousand forty (1040) hours multiplied by the minimum
10 wage in effect on the last day labor was performed by the employee
11 and earned within six (6) months of the date such business is
12 suspended or placed in the hands of a receiver, trustee or assignee
13 for creditors shall be paid in full prior to the payment of taxes or any
14 other debts except a debt secured by a mortgage or security interest
15 duly recorded before the wages were earned."

16 **Section 16.** §46009 of the Government Code is amended to read:

17 "§46009. **Violations: penalty.** Any employer who intentionally
18 hinders or delays the Commissioner or his authorized representative
19 in the performance of his duties in the enforcement of this Chapter;
20 or who intentionally refuses to admit the Director of Labor or his
21 authorized representative to any place of employment; or who fails
22 to keep any record required under the provisions of §46008 or who
23 refuses to make such records accessible or to give information
24 required for the proper enforcement of this Chapter, upon demand,
25 to the Director of Labor or his authorized representative shall be
26 guilty of a misdemeanor."

27 **Section 17.** Subsection (1) of §46015 of the Government Code is

1 amended to read:

2 "(1) **Criminal.** Any employer who intentional violates any
3 provision of this Chapter other than §46040 of the Government
4 Code, or of any rule, regulation or order issued under the authority
5 of this Chapter, or who discharges or in any other manner
6 discriminates against such employee because such employee has
7 made a complaint to his employer, to the Department of Labor or to
8 any other person, or has instituted or caused to be instituted any
9 proceeding under or related to this Chapter, or has testified or is
10 about to testify in any such proceedings, shall be guilty of a
11 misdemeanor. Each day a violation continues shall constitute a
12 separate offense. Failure of an employer to pay an employee any
13 wages shall constitute **prima facie** evidence of a violation of this
14 Chapter."

15 **Section 18.** §46034 of the Government Code is amended to read:

16 "§46034. **Criminal penalty.** Any person who, having the ability
17 to pay, intentionally refuses to pay wages due and payable when
18 demanded or who violates any provision of §§46030 through 46033 of
19 this Title shall be guilty of a misdemeanor."

20 **Section 19.** Two (2) new full-time positions are hereby created within
21 the Wage and Hour Division of the Department of Labor for the purpose of
22 enforcing Title XLII of the Government Code of Guam.

23 **Section 20.** §46006 of the Government Code is amended by deleting
24 subparagraph (h) "Any student enrolled in a public or private school employed
25 during summer vacation or;" and then relettering paragraph (i) to paragraph
26 (h).

27 **Section 21.** §46008 of the Government Code is hereby repealed and

1 reenacted to read:

2 **"§46008. Records of employees.** Every employer shall keep in
3 or about the premises where any employee is employed, a record of
4 the name, address, social security number or, in the case of alien
5 workers, the passport number and occupation of each such
6 employee, of the amount paid each pay period to each such
7 employee, of the hours worked each day and each workweek by each
8 employee, and of such other information, and for such periods of
9 time as the Commissioner, may by regulation prescribe. The
10 Commissioner or his authorized representative, shall have direct
11 access to inspect, copy, or subpoena the possession of such records to
12 conduct all necessary investigation. The Commissioner or his
13 authorized representative, shall have the authority to inspect, copy,
14 and use as evidence all reports, documents, and/or statements of any
15 kind or nature submitted to any department of the government of
16 Guam for the purpose of enforcing the provision of this Chapter.
17 Every employer shall furnish to the Commissioner or his authorized
18 representative such information relating to the employment of
19 workers and in such manner that the Commissioner or his
20 representative can use to interview employees during working hours
21 at the place of employment. The Commissioner shall cause this
22 Chapter to be printed and copies of rules and regulations issued by
23 the Commissioner shall be furnished to employers affected thereby
24 without charge."

25 **Section 22.** §46014 of the Government Code is hereby repealed and
26 reenacted to read:

27 **"§46014. Administrative procedures, guidelines and**

1 regulations. The provisions incorporated in the Federal Labor
2 Standards Act Field Operations Handbook (also known as the "Blue
3 and Red Field Operations Handbook") in effect on the effective date
4 of this act shall serve as the basic set of procedures, guidelines, and
5 regulations governing the application of Fair Labor Standards in
6 Guam, and are hereby adopted as procedures, guidelines and
7 procedures of the Department of Labor to the extent not inconsistent
8 with Guam law, subject to later amendment or repeal by the
9 Director of Labor. In addition, the Administrator of Wages and
10 Hours may adopt such other rules and regulations that may be
11 necessary to implement this Chapter, included, but not limited to,
12 other guidelines in implementing a standard of administration and
13 enforcement not inconsistent with Guam Wage and Hour laws and
14 other labor-related laws. For any occupation, the Director of Labor
15 may make and revise, in accordance with the Administrative
16 Adjudication Law, such administrative regulations as he may deem
17 appropriate to carry out the purposes of this Chapter or necessary to
18 prevent the circumvention or evasion thereof and to safeguard the
19 minimum wage rates thereby established. Such regulations may
20 include, but are not limited to, regulations defining and governing
21 outside salesman; learners and apprentices, their number,
22 proportion, and length of service; part-time pay; prevailing wages;
23 disabled workers adverse wages; handicapped workers; bonuses;
24 overtime pay; special pay for special or extra work; permitted
25 deductions for previously agreed to costs of, or fair value of, board,
26 lodging and other facilities charges to employees or allowances for
27 board, lodging, or other facilities customarily furnished by employers

1 to employees; or allowances for such other such special conditions or
2 circumstances which may be usual in a particular employer-
3 employee relationship. Regulations or revisions thereof pursuant to
4 this section shall be made only after fully complying with the
5 Administrative Adjudication Law."

6 **Section 23.** §46054 of the Government Code is amended to read:

7 "§46054. **Hazardous conditions.** No minor under eighteen (18)
8 years of age shall be employed or permitted to work in any
9 occupation in violation of Federal laws or which has been defined or
10 found and declared, by the Director of Labor or by the Wage and
11 Hour Administration or his authorized representative, as hazardous
12 or detrimental."

13 **Section 24. Severability.** If any part of this Act should be found
14 unconstitutional or contrary to the Organic Act of Guam, only those parts
15 which are unconstitutional or contrary to the Organic Act shall be invalid,
16 and all other parts shall be valid.

6

SEVENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Date: 9/17/92

VOTING SHEET

Bill No. 951

Resolution No. _____

Question: _____

	AYE	NO	NOT VOTING	ABSENT/ OUT DURING ROLL CALL
<u>AGUON, John P.</u>	✓			
<u>ARRIOLA, Elizabeth P.</u>	✓			
<u>BAMBA, J. George</u>	✓			
<u>BLAZ, Anthony C.</u>	✓			
<u>BORDALLO, Madeleine Z.</u>	✓			
<u>BROOKS, Doris F.</u>	✓			
<u>DIERKING, Herminia D.</u>	✓			
<u>DUENAS, Edward R.</u>				✓
<u>ESPALDON, Ernesto M.</u>	✓			
<u>GUTIERREZ, Carl T.C.</u>	✓			
<u>LUJAN, Pilar C.</u>	✓			
<u>MAILLOUX, Gordon</u>	✓			
<u>MANIBUSAN, Marilyn D.A.</u>	✓			
<u>PARKINSON, Don</u>	✓			
<u>REIDY, Michael J.</u>	✓			
<u>RUTH, Martha C.</u>	✓			
<u>SAN AGUSTIN, Joe T.</u>	✓			
<u>SANTOS, Francisco R.</u>	✓			
<u>SHIMIZU, David L.G.</u>	✓			
<u>TANAKA, Thomas V.C.</u>	✓			
<u>UNPINGCO, Antonio R.</u>	✓			

SEP 01 '92

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 951 (LS)

Introduced by:

D. Parkinson 
J. T. San Agustin 

AN ACT TO IMPOSE PENALTIES FOR NON-PAYMENT OF WAGES AND TO PROTECT WAGE EARNERS, TO ADD NEW §§46040 THROUGH 46049 TO TITLE XLII OF THE GOVERNMENT CODE, TO AMEND §§46031, 46036, 46009, SUBSECTION (1) OF 46015, AND 46034 OF SAID TITLE, AND TO CREATE TWO FULL-TIME POSITIONS WITHIN THE DEPARTMENT OF LABOR TO ENFORCE SAID TITLE.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. A new §46040 is added to the Government Code of Guam to
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7 rightfully due.

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9 materially falsify payroll records to deprive an employee of wages
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11 Section 2. A new §46041 is added to the Government Code of Guam to
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1 taken from an employee's pay by an employer, and all sums payable
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3 shown on the employee's pay statement or check stub, and a copy
4 thereof shall be given to the employee at the time the employee is
5 paid. A copy thereof shall be kept by the employer for three (3) years.

6 (b) All payments made to an employee by an employer shall be
7 in the form of cash or check. It is then the employee's responsibility
8 to cash his or her check. No employer of non-immigrant alien
9 employees may deduct from their pay any funds for transmittal off-
10 island for any purpose whatever.

11 **Section 3.** A new §46042 is added to the Government Code of Guam to
12 read as follows:

13 **"§46042. Statement if wages not paid.** If an employer cannot
14 or does not pay wages rightfully due when due to one (1) or more
15 employees, the employer shall, within five (5) days, exclusive of
16 Saturdays, Sundays, and holidays:

17 (a) Give each employee and the Director of Labor a statement
18 showing the correct hours worked for the pay period in question, the
19 correct wages earned, the correct legal deductions from pay, and
20 correct wages payable. A statement containing errors shall be
21 considered correct if the employer can establish that the error was an
22 honest error made accidentally and in good faith;

23 and, if after ten (10) working days, the wages have still not
24 been paid, then the employer shall:

25 (b) Deliver to the Department of Labor a list of receivables due
26 the employer, a list of all the employer's bank accounts along with

1 copies of the latest bank statements, the name of all officers,
2 directors, and managers of the employer if a corporation, and the
3 names, addresses, and telephone numbers of any person owning
4 more than ten percent (10%) of the employer, along with copies of all
5 time cards and payment records for all employees for the pay periods
6 missed.

7 **Section 4.** A new §46042.1 is added to the Government Code of Guam
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9 "§46042.1. Liens for unpaid wages. When the Director of
10 Labor finds that an employer has not paid wages due, then, in
11 addition to all other remedies, relief, and liens allowed by law or at
12 equity,

13 (a) The Director of Labor (the "Director") through the
14 Attorney General's Office may promptly file a labor lien on any real
15 property owned by the employer, to be filed at the Department of
16 Land Management, and have served upon the holders of any
17 mortgage thereon a copy of the lien, and

18 (b) The Director through the Attorney General's Office may
19 promptly file a labor lien on any personal property (including
20 accounts receivable) owned by the employer to be filed at the
21 Department of Revenue and Taxation, and

22 (c) The Director through the Attorney General's Office may
23 order the bank accounts of the employer frozen, and

24 ~~[(d) If any unpaid employee or employees of the employer are~~
25 ~~working on a construction project, the Director through the Attorney~~
26 ~~General's Office may promptly file a labor lien against the project to~~

1 ~~be filed at the Department of Land Management, and have served~~
2 ~~upon the owners of record a copy of the lien.]~~

3 (d) Liens and bank accounts frozen by this section shall be
4 released upon posting with the Director a cash bond or a surety bond
5 issued by an insurance company licensed in Guam in an amount
6 equal to wages allegedly owed plus fines, penalties, costs, and
7 attorney's fees, and

8 (e) None of the actions of the Director set out in paragraphs
9 (a) through (d) above may be taken without the approval of the
10 Superior Court set out in an ex parte or other order, which only may
11 be entered without notice when the Director has satisfied the court
12 that funds will be dissipated if notice be given."

13 **Section 5.** A new §46042.2 is added to the Government Code of Guam
14 to read as follows:

15 "§46042.2. **Definitions.** (a) **Wages.** For purposes of this Title,
16 "wages" (however denominated) means the gross amount owed to
17 the employee, and includes but is not limited to all compensation for
18 labor for which an employee is entitled, including regular pay,
19 overtime pay, commissions, wages as defined in Subsection (6) of
20 §46003 of this Code, wages to which the employee may be entitled
21 based on the Prevailing Wage Rates established pursuant to Section
22 101(a)(15)(H) ii of 8 U.S.C. 1186 (federal immigration law)
23 established by the Governor of Guam or the United States
24 Government, wages based on contract, and all other amounts to
25 which the employee is entitled for labor performed on behalf of an

1 employer. Retirement contributions of both the employer and the
2 employee to a retirement fund or plan, including the Government of
3 Guam Retirement Fund, shall be the property of the retirement fund
4 or plan held in trust for the benefit of the members of the plan or
5 fund, and the employer retains no rights thereto. Actions for non-
6 payment of such contributions or misuse of such funds or plans may
7 be enforced, prohibited and recovered by the Attorney General, the
8 employee, or any member in the same manner as an action for
9 unpaid wages, with the same penalties and attorney's fees. Except
10 for government employees and employees of non-profit
11 organizations enjoying tax-free status, employees cannot do
12 volunteer work at lower than regular pay or without overtime if
13 applicable which work will directly or indirectly benefit his or her
14 employer. This rule does not apply to employers who operate
15 institutions engaged in the care of sick, aged, or mentally ill or
16 defective persons. This exemption permits these institutions to
17 adopt a fourteen- (14-) day workweek instead of a seven- (7-) day
18 workweek and does not require overtime unless an employee is
19 employed more than eight (8) hours per day or in excess of eighty (80)
20 hours in the fourteen- (14-) day workweek.

21 (b) **Local worker.** For purposes of this Title, "local worker" or
22 "local employee" means a U.S. citizen, a permanent resident of the
23 United States, a U.S. national, or a person from the Commonwealth
24 of the Northern Mariana Islands, the Republic of Belau, the
25 Federated States of Micronesia, or the Republic of the Marshall
26 Islands."

1 Section 6. A new §46042.3 is added to the Government Code of Guam
2 to read as follows:

3 "§46042.3. **Enforcement of prevailing wages.** The
4 Department of Labor is authorized to conduct, administer, apply,
5 and enforce prevailing wages required to be paid to non-immigrant
6 alien workers under the provisions of Section 101(a)(15)(H) ii of 8
7 U.S.C. 1186 rates for the territory of Guam once they have been
8 established by the Governor of Guam."

9 Section 7. A new §46043 is added to the Government Code of Guam to
10 read as follows:

11 "§46043. **Definition of failure to pay wages.** For purposes of
12 this Title, "failure to pay wages" or "unpaid wages" (however
13 denominated) includes but is not limited to:

14 (a) Failure to pay sums due for wages, overtime, and benefits;
15 or

16 (b) Failure to pay sums deducted from pay for payment to
17 another within five (5) days of the day an employee's pay is due. As
18 to child support payments deducted from an employee's pay but not
19 paid in a timely manner by an employer properly served with a court
20 order of wage assignment issued by a Guam court, or authorized by
21 the employee to deduct such payments, any penalties shall accrue to
22 the benefit of the spouse receiving the support, who shall have the
23 authority to enforce such non-payment against the employer; or

24 (c) Underpayment of wages; or

25 (d) Understating hours worked; or

26 (e) Improper deduction of sums from wages; or

- 1 (f) Payment with a check which is dishonored; or
2 (g) Taking illegal kickbacks from employees by an employer or
3 employer's agent; or
4 (h) Any scheme whereby an employer deprives an employee of
5 the employee's rightful wages.

6 "Wages" includes sums payable for work done pursuant to a
7 contract to perform personal services or to perform as an artist or
8 performer. It is against public policy to allow avoidance of wage law
9 enforcement, minimum wage laws, overtime laws, child labor laws,
10 etc. by inducing employees to sign employment contracts."

11 **Section 8.** A new §46044 is added to the Government Code of Guam to
12 read as follows:

13 "**§46044. Fees and costs.** Any employer who fails to pay one (1)
14 or more employee wages when due or who violates any provisions
15 of this Title or who fails to pay overtime or who violates the child
16 labor laws of the territory shall pay all attorney's fees and costs
17 necessary to collect such amounts. The Department of Labor shall be
18 entitled to a collection fee to be paid by the employer in the amount of
19 twelve percent (12%) of wages due and collected by the Department
20 of Labor or the government of Guam on behalf of an employee to
21 offset the costs to the people of Guam to enforce the provisions of
22 this Title."

23 **Section 9.** A new §46045 is added to the Government Code of Guam to
24 read as follows:

25 "**§46045. Penalties.** (a) Except for government entities, any
26 employer who fails to pay one (1) or more employees wages when

1 due or who underpays an employee shall pay punitive damages to
2 the employee of three (3) times the wages due, **unless** the employer
3 can establish, as an affirmative defense in equity, by a preponderance
4 of the evidence, that:

5 (1) In the case of non-payment, the employer did not have the
6 ability to pay the wages due; and

7 (2) The employer complied with all other provisions of this
8 Chapter; and

9 (3) There was no fraud committed against any employee by the
10 employer in the computation of wages; and

11 (4) The employer was in substantial compliance with all
12 territorial and federal laws as to wage and hours matters relating to
13 employees, and that any non-compliance was in good faith; and

14 (5) In the case of non-payment, managers or officers of the
15 employer were not given priority in the disbursement of wages or
16 allowances; and

17 (6) In the case of non-payment, the employer complied with
18 the requirements of §46042 this Code; and

19 (7) The employer comes before the court with clean hands; and

20 (8) In the case of an underpayment, the underpayment was a
21 good faith error with no intent to defraud.

22 (b) Any person participating in any fraud or intentional non-
23 payment or underpayment of wages against any employee or any
24 person knowingly benefiting from any fraud or intentional non-
25 payment or underpayment of wages shall be jointly and severably
26 liable with the employer and others liable for all unpaid wages,

1 penalties, attorney's fees and costs due to any unpaid employee of
2 the employer."

3 **Section 10.** A new §46046 is added to the Government Code of Guam
4 to read as follows:

5 "§46046. **Waivers.** An employee may not waive his right to or
6 compromise wages earned. An employee may waive or compromise
7 penalties, costs and attorney's fees arising from violations of this
8 Chapter only if all wages are paid in full and only if the employee is
9 represented by an attorney and the waiver or compromise is
10 approved in writing by the employee and his attorney."

11 **Section 11.** A new §46047 is added to the Government Code of Guam
12 to read as follows:

13 "§46047. **Representation by Attorney General or a private**
14 **attorney.** The Attorney General or a private attorney may represent
15 employees and/or the Director of Labor in actions for unpaid wages
16 or for violations of this Title. In such violations, the court shall
17 award reasonable attorney's fees of not less than One Hundred
18 Twenty-Five Dollars (\$125) per hour to the government of Guam or
19 the private attorney to be paid by the employer."

20 **Section 12.** A new §46048 is added to the Government Code of Guam
21 to read as follows:

22 "§46048. **Class actions.** The courts shall liberally permit class
23 actions suits against an employer based upon violations of this
24 Chapter."

25 **Section 13.** A new §46049 is added to the Government Code of Guam
26 to read as follows:

1 **"§46049. Changes in employment contracts: discrimination.** If
2 an employment contract for a non-immigrant alien worker to work
3 in Guam has been previously submitted to the Guam Department of
4 Labor, the U.S. Department of Labor, the U.S. Immigration and
5 Naturalization Service, or the U.S. State Department as part of a
6 process to obtain a visa or permission to work in the United States,
7 then any prior or subsequent replacement, modification or
8 amendment thereto is enforceable by the employer and may benefit
9 the employer only if it is legal and not contrary to public policy and
10 only if it is submitted to the Department of Labor, and is approved in
11 writing by the Department of Labor. Such submission and approval
12 are not required if the only modification is to increase the wages of
13 the employee. It shall be a felony of the second degree for an
14 employer to knowingly employ, compensate, or provide preference
15 to non-immigrant workers over local workers, or to discriminate
16 against local workers in the employment or compensation of non-
17 immigrant workers."

18 **Section 14.** §46031 of the Government Code is hereby amended to read
19 as follows:

20 **"§46031. Payment when amount disputed.** In case of a dispute
21 over wages resulting in, or existing at the time of, termination of
22 employment, the employer shall give notice to the employees and the
23 Director of Labor of the amount of wages which he concedes to be
24 due and the same shall be payable without any conditions
25 whatsoever at the time fixed by §46030, and the acceptance by the
26 employees of such payment shall not constitute a release or accord

1 and satisfaction with respect to the disputed amount."

2 **Section 15.** §46036 of the Government Code is hereby repealed and
3 reenacted to read as follows:

4 "§46036. **Claims for wages preferred.** When the business of
5 any person, corporation, company or firm is suspended as a result of
6 a writ of execution or attachment or is placed in the hands of a
7 receiver, trustee or assignee for creditors, then in all such cases
8 claims for wages for each claimant an amount per claimant not to
9 exceed one thousand forty (1040) hours multiplied by the minimum
10 wage in effect on the last day labor was performed by the employee
11 and earned within six (6) months of the date such business is
12 suspended or placed in the hands of a receiver, trustee or assignee
13 for creditors shall be paid in full prior to the payment of taxes or any
14 other debts except a debt secured by a mortgage or security interest
15 duly recorded before the wages were earned."

16 **Section 16.** §46009 of the Government Code is amended to read:

17 "§46009. **Violations: penalty.** Any employer who intentionally
18 hinders or delays the Commissioner or his authorized representative
19 in the performance of his duties in the enforcement of this Chapter;
20 or who intentionally refuses to admit the Director of Labor or his
21 authorized representative to any place of employment; or who fails
22 to keep any record required under the provisions of §46008 or who
23 refuses to make such records accessible or to give information
24 required for the proper enforcement of this Chapter, upon demand,
25 to the Director of Labor or his authorized representative shall be
26 guilty of a misdemeanor."

1 **Section 17.** Subsection (1) of §46015 of the Government Code is
2 amended to read:

3 "(1) **Criminal.** Any employer who intentional violates any
4 provision of this Chapter other than §46040 of the Government
5 Code, or of any rule, regulation or order issued under the authority
6 of this Chapter, or who discharges or in any other manner
7 discriminates against such employee because such employee has
8 made a complaint to his employer, to the Department of Labor or to
9 any other person, or has instituted or caused to be instituted any
10 proceeding under or related to this Chapter, or has testified or is
11 about to testify in any such proceedings, shall be guilty of a
12 misdemeanor. Each day a violation continues shall constitute a
13 separate offense. Failure of an employer to pay an employee any
14 wages shall constitute **prima facie** evidence of a violation of this
15 Chapter."

16 **Section 18.** §46034 of the Government Code is amended to read:

17 "§46034. **Criminal Penalty.** Any person who, having the ability
18 to pay, intentionally refuses to pay wages due and payable when
19 demanded or who violates any provision of §§46030 through 46033 of
20 this Title shall be guilty of a misdemeanor."

21 **Section 19.** Two (2) new full-time positions are hereby created within
22 the Wage and Hour Division of the Department of Labor for the purpose of
23 enforcing Title XLII of the Government Code of Guam.

24 **Section 20.** §46006 of the Government Code is amended by deleting
25 subparagraph (h) "Any student enrolled in a public or private school employed
26 during summer vacation or;" and then relettering paragraph (i) to paragraph

1 (h).

2 Section 21. §46008 of the Government Code is hereby repealed and
3 reenacted to read:

4 "§46008. Records of employees. Every employer shall keep in
5 or about the premises where any employee is employed, a record of
6 the name, address, social security number or, in the case of alien
7 workers, the passport number and occupation of each such
8 employee, of the amount paid each pay period to each such
9 employee, of the hours worked each day and each workweek by each
10 employee, and of such other information, and for such periods of
11 time as the Commissioner, may by regulation prescribe. The
12 Commissioner or his authorized representative, shall have direct
13 access to inspect, copy, or subpoena the possession of such records to
14 conduct all necessary investigation. The Commissioner or his
15 authorized representative, shall have the authority to inspect, copy,
16 and use as evidence all reports, documents, and/or statements of any
17 kind or nature submitted to any department of the government of
18 Guam for the purpose of enforcing the provision of this Chapter.
19 Every employer shall furnish to the Commissioner or his authorized
20 representative such information relating to the employment of
21 workers and in such manner that the Commissioner or his
22 representative can use to interview employees during working hours
23 at the place of employment. The Commissioner shall cause this
24 Chapter to be printed and copies of rules and regulations issued by
25 the Commissioner shall be furnished to employers affected thereby
26 without charge."

1 Section 22. §46014 of the Government Code is hereby repealed and
2 reenacted to read:

3 "§46014. **Administrative procedures, guidelines and**
4 **regulations.** The provisions incorporated in the Federal Labor
5 Standards Act Field Operations Handbook (also known as the "Blue
6 and Red Field Operations Handbook") in effect on the effective date
7 of this act shall serve as the basic set of procedures, guidelines, and
8 regulations governing the application of Fair Labor Standards in
9 Guam, and are hereby adopted as procedures, guidelines and
10 procedures of the Department of Labor to the extent not inconsistent
11 with Guam law, subject to later amendment or repeal by the
12 Director of Labor. In addition, the Administrator of Wages and
13 Hours may adopt such other rules and regulations that may be
14 necessary to implement this Chapter, included, but not limited to,
15 other guidelines in implementing a standard of administration and
16 enforcement not inconsistent with Guam Wage and Hour laws and
17 other labor-related laws. For any occupation, the Director of Labor
18 may make and revise, in accordance with the Administrative
19 Adjudication Law, such administrative regulations as he may deem
20 appropriate to carry out the purposes of this Chapter or necessary to
21 prevent the circumvention or evasion thereof and to safeguard the
22 minimum wage rates thereby established. Such regulations may
23 include, but are not limited to, regulations defining and governing
24 outside salesman; learners and apprentices, their number,
25 proportion, and length of service; part-time pay; prevailing wages;
26 disabled workers adverse wages; handicapped workers; bonuses;

1 overtime pay; special pay for special or extra work; permitted
2 deductions for previously agreed to costs of, or fair value of, board,
3 lodging and other facilities charges to employees or allowances for
4 board, lodging, or other facilities customarily furnished by employers
5 to employees; or allowances for such other such special conditions or
6 circumstances which may be usual in a particular employer-
7 employee relationship. Regulations or revisions thereof pursuant to
8 this section shall be made only after fully complying with the
9 Administrative Adjudication Law."

10 **Section 23.** §46054 of the Government Code is amended to read:

11 "§46054. **Hazardous conditions.** No minor under eighteen (18)
12 years of age shall be employed or permitted to work in any
13 occupation in violation of Federal laws or which has been defined or
14 found and declared, by the Director of Labor or by the Wage and
15 Hour Administration or his authorized representative, as hazardous
16 or detrimental."

17 **Section 24. Severability.** If any part of this Act should be found
18 unconstitutional or contrary to the Organic Act of Guam, only those parts
19 which are unconstitutional or contrary to the Organic Act shall be invalid,
20 and all other parts shall be valid.



Territory of Guam
Federated Guam

LEGISLATIVE SECRETARY

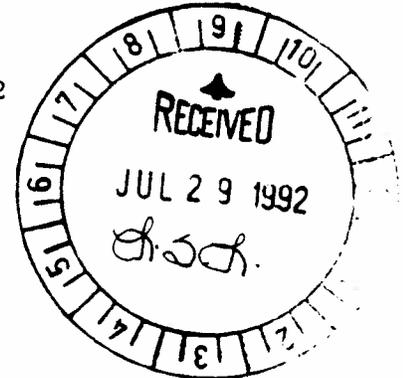
OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT

Received By Richard C. Lopez

Time 6:25 p.m.

Date 7/28/92

July 28, 1992



The Honorable Joe T. San Agustin
Speaker
Twenty First Guam Legislature
Agana, Guam 96910

Dear Mr. Speaker:

Returned herewith is Substitute Bill No. 758 which I have vetoed only because of the provisions of Section 4 which jeopardizes the ownership of property and security of lienholders. Although I believe that the Legislature did not intend the possible consequences of this section, I request correction prior to implementation of all of the other provisions of this worthwhile legislation.

Section 4 (d) would allow the director to place a labor lien on an innocent landowner's construction project for a contractor's failure to pay employee wages on a previous project. For example, it is very possible that Mr. Cruz in Merizo having obtained a \$80,000 construction loan from Guam Housing Corporation could have a million dollar labor lien placed on his property for the failure of his contractor to pay wages to workers on a hotel construction project. If this happens then Mr. Cruz could lose his property because of the lien and the Guam Housing Corporation will lose its security. Further, it is possible that a contractor may have more than one claim against it for back wages which further endangers the homeowners and lenders risk of loss.

Imagine the risk banks, savings and loan associations and even Guam Housing Corporation would take in lending for projects under this legislation. Lending activity would certainly be greatly curtailed. Loans would probably not be given to families seeking home construction or renovation loans to have work done by small contractors who have difficulty obtaining bonds.

This section not only harms landowners and lenders but the employees who the legislation seeks to protect. For example, if Mr. Cruz' construction project is stopped due to a labor lien for unpaid wages by the contractor to workers on the hotel project, all sums due to Mr. Cruz' construction workers will be paid to the unpaid employees and there will be no funds to pay the workers on Mr. Cruz's project. Although intended to help one group of



Commonwealth Now!

Mr. Speaker
July 28, 1992
Page Two

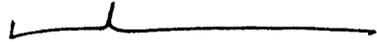
workers, this bill may in fact cause payless days for another group.

Section 4 requires the posting of a surety bond as a prerequisite to release of the labor lien. However, if the construction company does not post a bond then an innocent landowner like Mr. Cruz apparently has no other recourse than to pay off the lien in order to be freed from it.

Surely the Legislature did not intend to cause harm to innocent landowners but only to reach the profits of the contractor from subsequent work. The homebuilder like Mr. Cruz should not risk loss of his property or the materials or labor paid for by him for the work on his land. Existing law requires each landowner to be at risk for work and materials benefitting his or her project and not all of the wages due to employees for the contractor's other projects.

Rest assured that if the Legislature corrects the provisions of Section 4 of this Bill and resubmits it, it will be signed into law without delay. Si Yu'os Ma'ase.

Cordially,

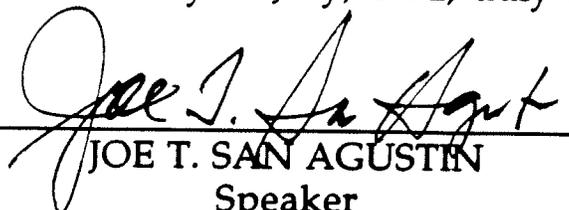

FRANK F. BLAS
Governor of Guam,
Acting

210907

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

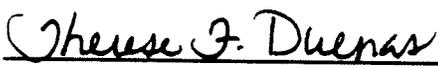
This is to certify that Substitute Bill No. 758 (LS), "AN ACT TO IMPOSE PENALTIES FOR NON-PAYMENT OF WAGES AND TO PROTECT WAGE EARNERS, TO ADD NEW §§46040 THROUGH 46049 TO TITLE XLII OF THE GOVERNMENT CODE, TO AMEND §§46031, 46036, 46009, SUBSECTION (1) OF 46015, AND 46034 OF SAID TITLE, AND TO CREATE TWO FULL-TIME POSITIONS WITHIN THE DEPARTMENT OF LABOR TO ENFORCE SAID TITLE," was on the 10th day of July, 1992, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker

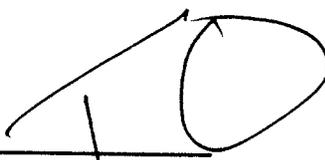
Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 10th day of July, 1992,
at 4:53 o'clock P.M.


Assistant Staff Officer
Governor's Office

APPROVED:


FRANK F. BLAS
Governor of Guam
Acting
Date: _____
Public Law No. _____

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 758 (LS)

As substituted by the Committee
on Youth, Senior Citizens and
Cultural Affairs and as further
substituted by the Committee
on Rules

Introduced by:

D. Parkinson
J. T. San Agustin
G. Mailloux

J. P. Aguon
D. L. G. Shimizu
F. R. Santos
A. C. Blaz
M. C. Ruth
C. T. C. Gutierrez
P. C. Lujan
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
J. G. Bamba
D. F. Brooks
E. R. Dueñas
E. M. Espaldon
M. D. A. Manibusan
M. J. Reidy
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO IMPOSE PENALTIES FOR NON-PAYMENT
OF WAGES AND TO PROTECT WAGE EARNERS, TO
ADD NEW §§46040 THROUGH 46049 TO TITLE XLII OF
THE GOVERNMENT CODE, TO AMEND §§46031,
46036, 46009, SUBSECTION (1) OF 46015, AND 46034 OF
SAID TITLE, AND TO CREATE TWO FULL-TIME
POSITIONS WITHIN THE DEPARTMENT OF LABOR

TO ENFORCE SAID TITLE.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** A new §46040 is added to the Government Code of Guam to
3 read as follows:

4 **"§46040. Additional criminal penalties:**

5 (a) It shall be a felony of the second degree to knowingly and
6 materially alter payroll records to deprive an employee of wages
7 rightfully due.

8 (b) It shall be a felony of the second degree to knowingly and
9 materially falsify payroll records to deprive an employee of wages
10 rightfully due."

11 **Section 2.** A new §46041 is added to the Government Code of Guam to
12 read as follows:

13 **"§46041. Deductions and form of payments.** (a) All deductions
14 taken from an employee's pay by an employer, and all sums payable
15 or paid to the employer from said pay to the employee, shall be
16 shown on the employee's pay statement or check stub, and a copy
17 thereof shall be given to the employee at the time the employee is
18 paid. A copy thereof shall be kept by the employer for three (3) years.

19 (b) All payments made to an employee by an employer shall be
20 in the form of cash or check. It is then the employee's responsibility
21 to cash his or her check. No employer of non-immigrant alien
22 employees may deduct from their pay any funds for transmittal off-
23 island for any purpose whatever.

24 **Section 3.** A new §46042 is added to the Government Code of Guam to
25 read as follows:

26 **"§46042. Statement if wages not paid.** If an employer cannot

1 or does not pay wages rightfully due when due to one (1) or more
2 employees, the employer shall, within five (5) days, exclusive of
3 Saturdays, Sundays, and holidays:

4 (a) Give each employee and the Director of Labor a statement
5 showing the correct hours worked for the pay period in question, the
6 correct wages earned, the correct legal deductions from pay, and
7 correct wages payable. A statement containing errors shall be
8 considered correct if the employer can establish that the error was an
9 honest error made accidentally and in good faith;

10 and, if after ten (10) working days, the wages have still not
11 been paid, then the employer shall:

12 (b) Deliver to the Department of Labor a list of receivables due
13 the employer, a list of all the employer's bank accounts along with
14 copies of the latest bank statements, the name of all officers,
15 directors, and managers of the employer if a corporation, and the
16 names, addresses, and telephone numbers of any person owning
17 more than ten percent (10%) of the employer, along with copies of all
18 time cards and payment records for all employees for the pay periods
19 missed.

20 **Section 4.** A new §46042.1 is added to the Government Code of Guam
21 to read as follows:

22 **"§46042.1. Liens for unpaid wages.** When the Director of
23 Labor finds that an employer has not paid wages due,

24 (a) The Director of Labor (the "Director") through the
25 Attorney General's Office may promptly file a labor lien on any real
26 property owned by the employer, to be filed at the Department of
27 Land Management, and have served upon the holders of any

1 mortgage thereon a copy of the lien.

2 (b) The Director through the Attorney General's Office may
3 promptly file a labor lien on any personal property (including
4 accounts receivable) owned by the employer to be filed at the
5 Department of Revenue and Taxation.

6 (c) The Director through the Attorney General's Office may
7 order the bank accounts of the employer frozen.

8 (d) If any unpaid employee or employees of the employer are
9 working on a construction project, the Director through the Attorney
10 General's Office may promptly file a labor lien against the project to
11 be filed at the Department of Land Management, and have served
12 upon the owners of record a copy of the lien.

13 (e) Liens and bank accounts frozen by this section shall be
14 released upon posting with the Director a cash bond or a surety bond
15 issued by an insurance company licensed in Guam in an amount
16 equal to wages allegedly owed plus fines, penalties, costs, and
17 attorney's fees.

18 (f) None of the actions of the Director set out in paragraphs
19 (a) through (e) above may be taken without the approval of the
20 Superior Court set out in an *ex parte* order, which only may be
21 entered without notice when the Director has satisfied the court that
22 funds will be dissipated if notice be given."

23 **Section 5.** A new §46042.2 is added to the Government Code of Guam
24 to read as follows:

25 "§46042.2. **Definitions.** (a) **Wages.** For purposes of this Title,
26 "wages" (however denominated) means the gross amount owed to
27 the employee, and includes but is not limited to all compensation for

1 labor for which an employee is entitled, including regular pay,
2 overtime pay, commissions, wages as defined in Subsection (6) of
3 §46003 of this Code, wages to which the employee may be entitled
4 based on the Prevailing Wage Rates established pursuant to Section
5 101(a)(15)(H) ii of 8 U.S.C. 1186 (federal immigration law)
6 established by the Governor of Guam or the United States
7 Government, wages based on contract, and all other amounts to
8 which the employee is entitled for labor performed on behalf of an
9 employer. Retirement contributions of both the employer and the
10 employee to a retirement fund or plan, including the Government of
11 Guam Retirement Fund, shall be the property of the retirement fund
12 or plan held in trust for the benefit of the members of the plan or
13 fund, and the employer retains no rights thereto. Actions for non-
14 payment of such contributions or misuse of such funds or plans may
15 be enforced, prohibited and recovered by the Attorney General, the
16 employee, or any member in the same manner as an action for
17 unpaid wages, with the same penalties and attorney's fees. Except
18 for government employees and employees of non-profit
19 organizations enjoying tax-free status, employees cannot do
20 volunteer work at lower than regular pay or without overtime if
21 applicable which work will directly or indirectly benefit his or her
22 employer. This rule does not apply to employers who operate
23 institutions engaged in the care of sick, aged, or mentally ill or
24 defective persons. This exemption permits these institutions to
25 adopt a fourteen- (14-) day workweek instead of a seven- (7-) day
26 workweek and does not require overtime unless an employee is
27 employed more than eight (8) hours per day or in excess of eighty (80)

1 hours in the fourteen- (14-) day workweek.

2 (b) **Local worker.** For purposes of this Title, "local worker" or
3 "local employee" means a U.S. citizen, a permanent resident of the
4 United States, a U.S. national, or a person from the Commonwealth
5 of the Northern Mariana Islands, the Republic of Belau, the
6 Federated States of Micronesia, or the Republic of the Marshall
7 Islands."

8 **Section 6.** A new §46042.3 is added to the Government Code of Guam
9 to read as follows:

10 "**§46042.3. Enforcement of prevailing wages.** The
11 Department of Labor is authorized to conduct, administer, apply,
12 and enforce prevailing wages required to be paid to non-immigrant
13 alien workers under the provisions of Section 101(a)(15)(H) ii of 8
14 U.S.C. 1186 rates for the territory of Guam once they have been
15 established by the Governor of Guam."

16 **Section 7.** A new §46043 is added to the Government Code of Guam to
17 read as follows:

18 "**§46043. Definition of failure to pay wages.** For purposes of
19 this Title, "failure to pay wages" or "unpaid wages" (however
20 denominated) includes but is not limited to:

21 (a) Failure to pay sums due for wages, overtime, and benefits;
22 or

23 (b) Failure to pay sums deducted from pay for payment to
24 another within five (5) days of the day an employee's pay is due. As
25 to child support payments deducted from an employee's pay but not
26 paid in a timely manner by an employer properly served with a court
27 order of wage assignment issued by a Guam court, or authorized by

1 the employee to deduct such payments, any penalties shall accrue to
2 the benefit of the spouse receiving the support, who shall have the
3 authority to enforce such non-payment against the employer; or

4 (c) Underpayment of wages; or

5 (d) Understating hours worked; or

6 (e) Improper deduction of sums from wages; or

7 (f) Payment with a check which is dishonored; or

8 (g) Taking illegal kickbacks from employees by an employer or
9 employer's agent; or

10 (h) Any scheme whereby an employer deprives an employee of
11 the employee's rightful wages.

12 "Wages" includes sums payable for work done pursuant to a
13 contract to perform personal services or to perform as an artist or
14 performer. It is against public policy to allow avoidance of wage law
15 enforcement, minimum wage laws, overtime laws (child labor laws)
16 etc. by inducing employees to sign employment contracts."

17 **Section 8.** A new §46044 is added to the Government Code of Guam to
18 read as follows:

19 "§46044. **Fees and costs.** Any employer who fails to pay one (1)
20 or more employee wages when due or who violates any provisions
21 of this Title or who fails to pay overtime or who violates the child
22 labor laws of the territory shall pay all attorney's fees and costs
23 necessary to collect such amounts. The Department of Labor shall be
24 entitled to a collection fee to be paid by the employer in the amount of
25 twelve percent (12%) of wages due and collected by the Department
26 of Labor or the government of Guam on behalf of an employee to
27 offset the costs to the people of Guam to enforce the provisions of

1 this Title."

2 **Section 9.** A new §46045 is added to the Government Code of Guam to
3 read as follows:

4 "§46045. **Penalties.** (a) Except for government entities, any
5 employer who fails to pay one (1) or more employees wages when
6 due or who underpays an employee shall pay punitive damages to
7 the employee of three (3) times the wages due, **unless** the employer
8 can establish, as an affirmative defense in equity, by a preponderance
9 of the evidence, that:

10 (1) In the case of non-payment, the employer did not have the
11 ability to pay the wages due; and

12 (2) The employer complied with all other provisions of this
13 Chapter; and

14 (3) There was no fraud committed against any employee by the
15 employer in the computation of wages; and

16 (4) The employer was in substantial compliance with all
17 territorial and federal laws as to wage and hours matters relating to
18 employees, and that any non-compliance was in good faith; and

19 (5) In the case of non-payment, managers or officers of the
20 employer were not given priority in the disbursement of wages or
21 allowances; and

22 (6) In the case of non-payment, the employer complied with
23 the requirements of §46042 this Code; and

24 (7) The employer comes before the court with clean hands; and

25 (8) In the case of an underpayment, the underpayment was a
26 good faith error with no intent to defraud.

27 (b) Any person participating in any fraud or intentional non-

1 payment or underpayment of wages against any employee or any
2 person knowingly benefiting from any fraud or intentional non-
3 payment or underpayment of wages shall be jointly and severably
4 liable with the employer and others liable for all unpaid wages,
5 penalties, attorney's fees and costs due to any unpaid employee of
6 the employer."

7 **Section 10.** A new §46046 is added to the Government Code of Guam
8 to read as follows:

9 "§46046. **Waivers.** An employee may not waive his right to or
10 compromise wages earned. An employee may waive or compromise
11 penalties, costs and attorney's fees arising from violations of this
12 Chapter only if all wages are paid in full and only if the employee is
13 represented by an attorney and the waiver or compromise is
14 approved in writing by the employee and his attorney."

15 **Section 11.** A new §46047 is added to the Government Code of Guam
16 to read as follows:

17 "§46047. **Representation by Attorney General or a private**
18 **attorney.** The Attorney General or a private attorney may represent
19 employees and/or the Director of Labor in actions for unpaid wages
20 or for violations of this Title. In such violations, the court shall
21 award reasonable attorney's fees of not less than One Hundred
22 Twenty-Five Dollars (\$125) per hour to the government of Guam or
23 the private attorney to be paid by the employer."

24 **Section 12.** A new §46048 is added to the Government Code of Guam
25 to read as follows:

26 "§46048. **Class actions.** The courts shall liberally permit class
27 actions suits against an employer based upon violations of this

1 Chapter."

2 Section 13. A new §46049 is added to the Government Code of Guam
3 to read as follows:

4 "§46049. **Changes in employment contracts: discrimination.** If
5 an employment contract for a non-immigrant alien worker to work
6 in Guam has been previously submitted to the Guam Department of
7 Labor, the U.S. Department of Labor, the U.S. Immigration and
8 Naturalization Service, or the U.S. State Department as part of a
9 process to obtain a visa or permission to work in the United States,
10 then any replacement, modification or amendment thereto is
11 enforceable by the employer and may benefit the employer only if it is
12 legal and not contrary to public policy and only if it is submitted to
13 the Department of Labor, and is approved in writing by the
14 Department of Labor. Such submission and approval are not
15 required if the only modification is to increase the wages of the
16 employee. It shall be a felony of the second degree for an employer
17 to knowingly employ, compensate, or provide preference to non-
18 immigrant workers over local workers, or to discriminate against
19 local workers in the employment or compensation of non-immigrant
20 workers."

21 Section 14. §46031 of the Government Code is hereby amended to read
22 as follows:

23 "§46031. **Payment when amount disputed.** In case of a dispute
24 over wages resulting in, or existing at the time of, termination of
25 employment, the employer shall give notice to the employees and the
26 Director of Labor of the amount of wages which he concedes to be
27 due and the same shall be payable without any conditions

1 whatsoever at the time fixed by §46030, and the acceptance by the
2 employees of such payment shall not constitute a release or accord
3 and satisfaction with respect to the disputed amount."

4 **Section 15.** §46036 of the Government Code is hereby repealed and
5 reenacted to read as follows:

6 "§46036. **Claims for wages preferred.** When the business of
7 any person, corporation, company or firm is suspended as a result of
8 a writ of execution or attachment or is placed in the hands of a
9 receiver, trustee or assignee for creditors, then in all such cases
10 claims for wages for each claimant an amount per claimant not to
11 exceed one thousand forty (1040) hours multiplied by the minimum
12 wage in effect on the last day labor was performed by the employee
13 and earned within six (6) months of the date such business is
14 suspended or placed in the hands of a receiver, trustee or assignee
15 for creditors shall be paid in full prior to the payment of taxes or any
16 other debts except a debt secured by a mortgage or security interest
17 duly recorded before the wages were earned."

18 **Section 16.** §46009 of the Government Code is amended to read:

19 "§46009. **Violations: penalty.** Any employer who intentionally
20 hinders or delays the Commissioner or his authorized representative
21 in the performance of his duties in the enforcement of this Chapter;
22 or who intentionally refuses to admit the Director of Labor or his
23 authorized representative to any place of employment; or who fails
24 to keep any record required under the provisions of §46008 or who
25 refuses to make such records accessible or to give information
26 required for the proper enforcement of this Chapter, upon demand,
27 to the Director of Labor or his authorized representative shall be

1 guilty of a misdemeanor."

2 **Section 17.** Subsection (1) of §46015 of the Government Code is
3 amended to read:

4 "(1) **Criminal.** Any employer who intentional violates any
5 provision of this Chapter other than §46040 of the Government
6 Code, or of any rule, regulation or order issued under the authority
7 of this Chapter, or who discharges or in any other manner
8 discriminates against such employee because such employee has
9 made a complaint to his employer, to the Department of Labor or to
10 any other person, or has instituted or caused to be instituted any
11 proceeding under or related to this Chapter, or has testified or is
12 about to testify in any such proceedings, shall be guilty of a
13 misdemeanor. Each day a violation continues shall constitute a
14 separate offense. Failure of an employer to pay an employee any
15 wages shall constitute **prima facie** evidence of a violation of this
16 Chapter."

17 **Section 18.** §46034 of the Government Code is amended to read:

18 "§46034. **Criminal Penalty.** Any person who, having the ability
19 to pay, intentionally refuses to pay wages due and payable when
20 demanded or who violates any provision of §§46030 through 46033 of
21 this Title shall be guilty of a misdemeanor."

22 **Section 19.** Two (2) new full-time positions are hereby created within
23 the Wage and Hour Division of the Department of Labor for the purpose of
24 enforcing Title XLII of the Government Code of Guam.

25 **Section 20.** §46006 of the Government Code is amended by deleting
26 subparagraph (h) "Any student enrolled in a public or private school employed
27 during summer vacation or;" and then relettering paragraph (i) to paragraph

1 (h).

2 **Section 21.** §46008 of the Government Code is hereby repealed and
3 reenacted to read:

4 **"§46008. Records of employees.** Every employer shall keep in
5 or about the premises where any employee is employed, a record of
6 the name, address, social security number or, in the case of alien
7 workers, the passport number and occupation of each such
8 employee, of the amount paid each pay period to each such
9 employee, of the hours worked each day and each workweek by each
10 employee, and of such other information, and for such periods of
11 time as the Commissioner, may by regulation prescribe. The
12 Commissioner or his authorized representative, shall have direct
13 access to inspect, copy, or subpoena the possession of such records to
14 conduct all necessary investigation. The Commissioner or his
15 authorized representative, shall have the authority to inspect, copy,
16 and use as evidence all reports, documents, and/or statements of any
17 kind or nature submitted to any department of the government of
18 Guam for the purpose of enforcing the provision of this Chapter.
19 Every employer shall furnish to the Commissioner or his authorized
20 representative such information relating to the employment of
21 workers and in such manner that the Commissioner or his
22 representative can use to interview employees during working hours
23 at the place of employment. The Commissioner shall cause this
24 Chapter to be printed and copies of rules and regulations issued by
25 the Commissioner shall be furnished to employers affected thereby
26 without charge."

27 **Section 22.** §46014 of the Government Code is hereby repealed and

1 reenacted to read:

2 **"§46014. Administrative procedures, guidelines and**
3 **regulations.** The provisions incorporated in the Federal Labor
4 Standards Act Field Operations Handbook (also known as the "Blue
5 and Red Field Operations Handbook") in effect on the effective date
6 of this act shall serve as the basic set of procedures, guidelines, and
7 regulations governing the application of Fair Labor Standards in
8 Guam, and are hereby adopted as procedures, guidelines and
9 procedures of the Department of Labor to the extent not inconsistent
10 with Guam law, subject to later amendment or repeal by the
11 Director of Labor. In addition, the Administrator of Wages and
12 Hours may adopt such other rules and regulations that may be
13 necessary to implement this Chapter, included, but not limited to,
14 other guidelines in implementing a standard of administration and
15 enforcement not inconsistent with Guam Wage and Hour laws and
16 other labor-related laws. For any occupation, the Director of Labor
17 may make and revise, in accordance with the Administrative
18 Adjudication Law, such administrative regulations as he may deem
19 appropriate to carry out the purposes of this Chapter or necessary to
20 prevent the circumvention or evasion thereof and to safeguard the
21 minimum wage rates thereby established. Such regulations may
22 include, but are not limited to, regulations defining and governing
23 outside salesman; learners and apprentices, their number,
24 proportion, and length of service; part-time pay; prevailing wages;
25 disabled workers adverse wages; handicapped workers; bonuses;
26 overtime pay; special pay for special or extra work; permitted
27 deductions for previously agreed to costs of, or fair value of, board,

1 lodging and other facilities charges to employees or allowances for
2 board, lodging, or other facilities customarily furnished by employers
3 to employees; or allowances for such other such special conditions or
4 circumstances which may be usual in a particular employer-
5 employee relationship. Regulations or revisions thereof pursuant to
6 this section shall be made only after fully complying with the
7 Administrative Adjudication Law."

8 **Section 23.** §46054 of the Government Code is amended to read:

9 "§46054. **Hazardous conditions.** No minor under eighteen (18)
10 years of age shall be employed or permitted to work in any
11 occupation in violation of Federal laws or which has been defined or
12 found and declared, by the Director of Labor or by the Wage and
13 Hour Administration or his authorized representative, as hazardous
14 or detrimental."

15 **Section 24. Severability.** If any part of this Act should be found
16 unconstitutional or contrary to the Organic Act of Guam, only those parts
17 which are unconstitutional or contrary to the Organic Act shall be invalid,
18 and all other parts shall be valid.