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ELEVENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

SECOND SPECIAL SESSION, 2000

C.B. NO. 11-119

A BILL FOR AN ACT

To amend title 51 of the Code of the Federated States of Micronesia by enacting a new chapter 4 to establish minimum safety and health standards in the work place and institutional residences, to reduce personal injuries and illnesses arising out of conditions of employment; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1       Section 1. Title 51 of the Code of the Federated States of  
2 Micronesia is hereby amended by enacting a new chapter 4 entitled  
3 "Occupational Safety and Health Standards".

4       Section 2. Title 51 of the Code of the Federated States of  
5 Micronesia is hereby amended by adding a new subchapter 1 of chapter  
6 4 entitled "General Provisions".

7       Section 3. Title 51 of the Code of the Federated States of  
8 Micronesia is hereby amended by adding a new section 411 of chapter  
9 4 to read as follows:

10           "Section 411. Short title. This act shall be known and  
11           cited as the 'Occupational Safety and Health Act of  
12           2000."

13       Section 4. Title 51 of the Code of the Federated States of  
14 Micronesia is hereby amended by adding a new section 412 of chapter  
15 4 to read as follows:

16           "Section 412. Findings and purpose. The Congress of the  
17           Federated States of Micronesia finds that personal  
18           injuries and illnesses arising out of conditions of  
19           employment impose a substantial burden upon employers and  
20           employees in terms of lost production, wage loss, medical  
21           expenses, and payment of disability and other benefits  
22           under the Workers Compensation Act. The Congress also  
23           finds that industrial accidents can be reduced if certain  
24           minimum standards are established and enforced.  
25           Therefore, the purpose of this act is to assure, so far

1 as possible, every working man and woman in the Federated  
2 States of Micronesia, safe and healthful working  
3 conditions. It is also the intent of this act to permit  
4 and encourage employer and employee efforts to reduce  
5 injury and disease arising out of employment, and to  
6 stimulate efforts to institute new programs which provide  
7 safe and healthful working environments."

8 Section 5. Title 51 of the Code of the Federated States of  
9 Micronesia is hereby amended by adding a new section 413 of chapter  
10 4 to read as follows:

11 "Section 413. Definitions. For the purposes of this act,  
12 the following terms shall mean:

13 (1) 'Attorney General' or 'Secretary' means the  
14 Secretary of the Department of Justice.

15 (2) 'Department' means the Department of Justice.

16 (3) 'Employer' means any person, firm, corporation,  
17 partnership, business trust, legal representative, or  
18 other business entity which engages in any business,  
19 industry, profession, or activity in the Federated States  
20 of Micronesia and employs one or more employees, or who  
21 contracts personal labor of such employee or employees.

22 An 'Employer' includes the Federated States of  
23 Micronesia, its political subdivisions, any government  
24 agency, corporation or authority. For the purpose of  
25 this act, every person having direction, management,

control or custody of any employment, or any employee is  
an 'Employer'.

(4) 'Employee' means any natural person who is required  
or directed or permitted by any employer to engage in any  
employment whether by way of manual labor or otherwise,  
and every person who is engaged in the employment of an  
employer whether by way of manual labor or otherwise.

(5) 'Employment' means the carrying on of any trade,  
business, occupation, or work in which any person is  
engaged to work for hire except domestic service in or  
about a private home.

(6) 'Institutional residence' means any house,  
building, room, or facility leased or owned by an  
employer in which his employee or employees reside.

(7) 'Person' means an individual, partnership,  
association, corporation, business trust, legal  
representative, or any organized group or persons.

(8) 'Safety and health standard' means a standard which  
requires adoption or use of one or more practices, means,  
methods, operations, or processes reasonably necessary or  
appropriate to provide safe or healthful work places or  
institutional residences.

(9) 'Safe' or 'safety' means, as applied to an  
employment or place of employment, such freedom from  
danger to employees as the nature of the employment



1 reasonably permits.

2 (10) 'Safety device' means any practical method of  
3 mitigating or preventing a specific danger.

4 (11) 'Work place' means any plant, yard, premises, room  
5 or other place where an employee or employees are  
6 employed for the performance of labor or service over  
7 which the employer has the right of access or control.  
8 It includes, but is not limited to, any institutional  
9 residence, rooms or barracks either contracted for,  
10 leased, or owned by the employer.

11 (12) 'Working day' means any day including Saturdays,  
12 Sundays or holidays when the employee performs services  
13 as required, directed, or contracted for by the  
14 employer."

15 Section 6. Title 51 of the Code of the Federated States of  
16 Micronesia is hereby amended by adding a new section 414 of chapter  
17 4 to read as follows:

18 "Section 414. Rules and regulations. The Secretary  
19 shall make, adopt, modify, and repeal rules and  
20 regulations governing safety and health standards for  
21 conditions of employment to implement the provisions of  
22 this act in accordance with chapter 1 of title 17 of the  
23 Code of the Federated States of Micronesia. When  
24 promulgated, such regulations shall have the force and  
25 effect of law."



1 Section 7. Title 51 of the Code of the Federated States  
2 of Micronesia is hereby amended by adding a new section 415 of  
3 chapter 4 to read as follows:

4 "Section 415. Administration of this act. The  
5 Department shall be the sole and paramount administrative  
6 agency responsible for the administration of the  
7 provisions of this act."

8 Section 8. Title 51 of the Code of the Federated States of  
9 Micronesia is hereby amended by adding a new subchapter 2 of chapter  
10 4 entitled "Occupational Safety and Health Standards and  
11 Inspections".

12 Section 9. Title 51 of the Code of the Federated States of  
13 Micronesia is hereby amended by adding a new section 421 of chapter  
14 4 to read as follows:

15 "Section 421. Safety and Health Standards.

16 (1) Each employer shall:

17 (a) furnish to each of his employees a place of  
18 employment free from recognized hazards that cause or are  
19 likely to cause serious injury or death to his employees;  
20 and

21 (b) comply with rules, regulations and orders  
22 promulgated under this act.

23 (2) The Secretary, in promulgating rules under the  
24 authority of this act, shall establish safety and health  
25 standards for conditions of employment of general and/or

specific applicability for all industries, businesses, occupations, crafts, trades, and employment subject to the provisions of this act.

(3) Any safety and health standard adopted by rule of the Secretary shall, where appropriate:

(a) prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, the relevant symptoms, the appropriate emergency treatment, and proper conditions and precautions of safe use or exposure;

(b) prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations, and intervals, and in such manner as may be reasonably necessary for the protection of employees; or

(c) prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the Secretary, such examinations may be furnished at the expense of the Department. The results

1 of such examinations or tests shall be furnished only to  
2 the Secretary, or other appropriate agencies of the  
3 Government, and at the request of the employee to his  
4 physician."

5 Section 10. Title 51 of the Code of the Federated States of  
6 Micronesia is hereby amended by adding a new section 422 of chapter  
7 4 to read as follows:

8 "Section 422. Procedure for applying for variances from  
9 Safety and Health Standards.

10 (1) Any employer may apply to the Secretary for a  
11 temporary order granting a variance from any safety and  
12 health standard promulgated by rules or regulations under  
13 the authority of this chapter. Such temporary order  
14 shall be granted only if:

15 (a) the employer files an application which meets  
16 the requirements of subsection 4 of this section;

17 (b) the employer establishes that he is unable to  
18 comply with a safety or health standard because of the  
19 unavailability of professional or technical personnel, or  
20 of materials and equipment needed to come into compliance  
21 with the safety and health standard, or because necessary  
22 construction or alteration of facilities cannot be  
23 completed by the effective date of such safety and health  
24 standard;

25 (c) the employer is taking all available steps to



1 safeguard his employees against the hazards covered by  
2 the safety and health standard; and

3 (d) the employer will put in place an effective  
4 program to comply with such safety and health standard by  
5 the expiration date of the temporary order.

6 (2) Any temporary order issued under the authority of  
7 this subsection shall prescribe the practices, means,  
8 methods, operation, and process the employer must adopt  
9 and use while the order is in effect and state in detail  
10 his program for coming into compliance with the safety  
11 and health standard.

12 (3) The Secretary may issue an interim order to be  
13 effective until determination is made or a decision  
14 rendered if a hearing is demanded. A temporary order may  
15 be in effect for up to six months. A temporary order may  
16 be renewed, but once, and so long as the requirements of  
17 this subsection are met and an application for renewal is  
18 filed at least sixty days prior to the expiration date of  
19 the order. No renewal of a temporary order may remain in  
20 effect for longer than one hundred-eighty days.

21 (4) An application for a temporary order under this  
22 section shall contain:

23 (a) a specification of the safety and health  
24 standard or portion thereof from which the employer seeks  
25 a variance;

1           (b) a representation by the employer, supported by  
2           representations from qualified persons having first hand  
3           knowledge of the facts represented, that he is unable to  
4           comply with the safety and health standard or portion  
5           thereof and a detailed statement of the reasons therefor;

6           (c) a statement of the steps the employer has  
7           taken and will take, with specific dates, to protect  
8           employees against the hazard covered by the standard;

9           (d) a statement as to when the employer expects to  
10          be able to comply with the standard or portion thereof  
11          and what steps he has taken and will take, with dates  
12          specified, to come into compliance with the standard;

13          (e) a certification that the employer has informed  
14          his employees of the application by providing each of  
15          them a copy thereof and by mailing a copy of the  
16          application to the authorized representative of such  
17          employees;

18          (f) a statement setting forth the manner in which  
19          the employees have been so informed; and

20          (g) a statement advising employees of their right  
21          to apply to the Secretary to conduct a hearing upon the  
22          application for a variance."

23          Section 11. Title 51 of the Code of the Federated States  
24          of Micronesia is hereby amended by adding a new section 423 of  
25          chapter 4 to read as follows:

1        "Section 423. Order of variance."

2            (1) Any employer may apply to the Secretary for an  
3        order of variance from any rule or regulation  
4        establishing a safety and health standard promulgated  
5        under this chapter. Affected employees shall be given  
6        notice of each such application and, in the manner  
7        prescribed in subsection 4(g), section 422 of this act,  
8        shall be informed of their right to request a hearing on  
9        any such application.

10          (2) The Secretary shall issue such order if he  
11        determines that:

12            (a) the applicant has demonstrated by a  
13        preponderance of the evidence that the conditions,  
14        practices, means, methods, operations, or processes  
15        proposed to be used by such applicant are as safe and  
16        healthful as those safety and health standards from which  
17        the variance is sought; and

18            (b) the applicant has satisfactorily complied with  
19        the requirements set forth in section 422 of this act.

20          (3) The order so issued shall state the duration  
21        thereof and prescribe the conditions the employer must  
22        maintain, and practices, means, methods, operations, and  
23        processes which he must adopt and utilize to the extent  
24        they differ from the standard in question. The Secretary  
25        may modify or revoke the temporary order granting



variance from any safety and health standard established  
under this act before its expiration date based on good  
cause; provided, that proper notice and an opportunity  
for a hearing were given to the employer."

Section 12. Title 51 of the Code of the Federated States of  
Micronesia is hereby amended by adding a new section 424 of chapter  
4 to read as follows:

"Section 424. Inspection: right of entry.

(1) The Secretary, or his authorized representative, in  
carrying out his duties under this act, upon the  
presentation of appropriate credentials to the owner,  
manager, operator, or agent in charge, is authorized:

(a) to enter without delay and at all reasonable  
times the factory, plant, establishment, construction  
site, or area, work place, or environment where work is  
performed by an employee of an employer;

(b) to inspect, survey, and investigate during  
regular working hours and at other reasonable times, and  
within reasonable limits and in a reasonable manner, any  
such work place and all pertinent conditions, structures,  
machines, apparatus, devices, equipment, and materials  
therein, and to question privately any such employer,  
owner, operator, agent, or employee; and

(c) to inspect, survey, and investigate during any  
reasonable times and within reasonable limits and in a

reasonable manner, any such employer owned, operated,  
leased or contracted barracks, institutional residence,  
employee housing and all pertinent conditions,  
structures, appliances, apparatus, devices, equipment,  
and materials therein, and to question privately any such  
employer, owner, agent, or employee.

(2) In making inspections and making investigations  
under this chapter, the Secretary may issue an order  
requiring the attendance and testimony of witnesses and  
the production of evidence under oath. The Trial  
Division of the Supreme Court of the Federated States of  
Micronesia, upon the application of the Secretary, may  
issue an order requiring the witnesses to appear and to  
produce evidence as and when so ordered, and to give  
testimony relating to the matter under investigation or  
in question. Any failure to obey such order of the court  
may be punished by the court as a contempt of court.  
Witnesses shall be paid the same fees provided under  
chapter 10 of title 6 of the Code of the Federated States  
of Micronesia."

Section 13. Title 51 of the Code of the Federated States of  
Micronesia is hereby amended by adding a new section 425 of chapter  
4 to read as follows:

"Section 425. Inspections: employer and employee  
representatives. The employer and their employees, or

their respective representatives shall be given an  
opportunity to accompany the Secretary or his authorized  
representative during the physical inspection of any work  
place for the purpose of aiding such inspection."

Section 14. Title 51 of the Code of the Federated States of  
Micronesia is hereby amended by adding a new section 426 of chapter  
4 to read as follows:

"Section 426. Compliance by employees.

(1) Each employee shall comply with the provisions of  
this act and all rules, regulations, and orders issued  
pursuant to the authority of this act which are  
applicable to his own actions and conduct in the course  
of his employment.

(2) Any employee, or representative of employees, who  
in good faith believes that a violation of a safety or  
health standard exists and that such violation threatens  
physical harm to employees, or that an imminent danger to  
such employees exists, may request an inspection of the  
work place by giving notice to the Secretary, or his  
authorized representative, of such violation or danger.  
Any such notice shall be reduced to writing, shall set  
forth with reasonable particularity the grounds for the  
notice, and shall be signed by the employee or his  
representative. A copy of the notice shall be provided  
to the employer or his agent no later than at the time of



1 inspection, except that, upon the request of the person  
2 giving such notice, his name and the names of individual  
3 employees referred to therein shall not appear in such  
4 copy or on any record published, released, or made  
5 available pursuant to any provision of this act. If upon  
6 receipt of such notification the Secretary determines  
7 that there are reasonable grounds to believe that such  
8 violation or danger exists, he shall make a special  
9 inspection as soon as practical to determine if such  
10 violation or danger exists. If the Secretary determines  
11 there are no reasonable grounds to believe that a  
12 violation or danger exists, he shall notify the employer  
13 and employee, or the representative of the employee, in  
14 writing of such determination including his reasons for  
15 so concluding.

16 (3) The Secretary shall, by rule, establish procedures  
17 for informal review of any refusal by a representative of  
18 the Secretary to issue a citation with respect to any  
19 such alleged violation, and shall furnish the employee,  
20 or representative of employees requesting such review, a  
21 written statement of the reasons for the Secretary's  
22 final disposition of the case."

23 Section 15. Title 51 of the Code of the Federated States of  
24 Micronesia is hereby amended by adding a new section 427 of chapter  
25 4 to read as follows:

1           "Section 427. Voluntary Compliance Program.

2           (1) In carrying out his responsibilities for the  
3           development of a voluntary compliance program and the  
4           rendering of advisory and consultive services to  
5           employers, the Secretary may grant an employer's  
6           application for advice and consultation, and for the  
7           purpose of affording such consultation and advice, visit  
8           the employer's work place or institutional residence.  
9           Such consultation and advice shall be limited to matters  
10          specified in the request affecting the interpretation and  
11          applicability of safety and health standards to the  
12          conditions, structures, machines, equipment, apparatus,  
13          devices, materials, methods, means, appliances, and  
14          practices in the employer's work place or institutional  
15          residence. The Secretary, in granting any requests for  
16          consultive or advisory service, may provide for an  
17          alternative means of affording consultation and advice  
18          other than on-site consultation.

19          (2) The Secretary, or his authorized representative,  
20          may make recommendations regarding the elimination of any  
21          hazards disclosed within the scope of the on-site  
22          consultation. No visit to an employer's work place or  
23          institutional residence shall be regarded as an  
24          inspection or investigation under the authority of this  
25          act, and no notices or citations shall be issued, nor

1 shall any civil penalties be assessed upon such visit,  
2 nor shall any authorized representative of the Secretary  
3 designated to render advice and consultation with  
4 employers under the voluntary compliance program have any  
5 enforcement authority; provided, that in the event an on-  
6 site visit discloses a serious violation of health and  
7 safety standard as defined in section 438 of this act and  
8 the hazard of such violation is either not abated by the  
9 cooperative action of the employer, the Secretary shall  
10 either invoke the administrative restraining authority  
11 provided in section 432 of this act or seek the issuance  
12 of injunctive process under the authority of section 436  
13 of this act or invoke both such remedies.

14 (3) Nothing in this section shall be construed as  
15 providing immunity to any employer who has made  
16 application for consultive services during the pendency  
17 of the granting of such application from inspections or  
18 investigations conducted under section 422 of this act or  
19 any inspection conducted as a result of a complaint, nor  
20 immunity from inspection under section 422 of this act or  
21 inspections resulting from a complaint subsequent to the  
22 conclusion of the consultive period. This section shall  
23 not be construed as requiring an inspection under section  
24 422 of this act of any work place or institutional  
25 residence which has been visited for consultive purposes.



1 However, in the event of a subsequent inspection, the  
2 Secretary or his authorized representative may, in his  
3 direction, take into consideration any information  
4 obtained during the consultation visit of that work place  
5 or institutional residence in determining the nature of  
6 an alleged violation and the amount of penalties to be  
7 assessed, if any. Such rules and regulations to be  
8 promulgated pursuant to this section shall provide that  
9 in all instances of serious violations as defined in  
10 section 438 of this act which are disclosed in any  
11 consultive period, shall be corrected within a specified  
12 period of time at the expiration of which an inspection  
13 will be conducted under the authority of section 422 of  
14 this act. All employers requesting consultive services  
15 shall be advised of the provisions of this section and  
16 the rules adopted by the Secretary relating to the  
17 voluntary compliance program. The Secretary may provide  
18 by rule for the frequency, manner and method of the  
19 rendering of consultive services to employers, and for  
20 the scheduling and priorities in granting applications  
21 consistent with the availability of personnel, and in  
22 such manner as not to jeopardize the enforcement  
23 requirements of this act."

24 Section 16. Title 51 of the Code of the Federated States of  
25 Micronesia is hereby amended by adding a new subchapter 3 of chapter

1 4 entitled "Violations and Penalties".

2 Section 17. Title 51 of the Code of the Federated States  
3 of Micronesia is hereby amended by adding a new section 431 of  
4 chapter 4 to read as follows:

5 "Section 431. Violations: citations. If upon inspection  
6 or investigation, the Secretary or his authorized  
7 representative believes that an employer has violated a  
8 requirement of section 421 of this act, or any safety or  
9 health standard promulgated by rule adopted by the  
10 Secretary, or the conditions of any order granting a  
11 variance pursuant to this act, he shall, with reasonable  
12 promptness, issue a citation to the employer. Each  
13 citation shall be in writing and shall describe with  
14 particularity the nature of the violation, including a  
15 reference to the provisions of this act, standard, rule,  
16 regulation, or order alleged to have been violated. In  
17 addition, the citation shall fix a reasonable time for  
18 the abatement of the violation. The Secretary may  
19 prescribe procedures for the issuance of notice in lieu  
20 of a citation with respect to de minimis violations,  
21 which have no direct or immediate relationship to safety  
22 or health. Each citation, or a copy thereof, issued  
23 under the authority of this section and a copy of section  
24 421 of this act shall be prominently posted, at or near  
25 each place a violation referred to in the citation

1        occurred. The Secretary shall provide by rule for  
2        procedures to be followed by an employee representative  
3        upon written application to receive copies of citations  
4        and notices issued to any employer having employees, who  
5        are represented by such employee representative. Such  
6        rule may prescribe the form of such application, the time  
7        for renewal of applications, and the eligibility of the  
8        applicant to receive copies of citations and notices. No  
9        citation may be issued under this section after the  
10       expiration of six months following a compliance  
11       inspection, investigation, or survey revealing any such  
12       violation."

13       Section 18. Title 51 of the Code of the Federated States  
14 of Micronesia is hereby amended by adding a new section 432 of  
15 chapter 4 to read as follows:

16       "Section 432. Violations: dangerous conditions;  
17       restraining orders.

18       (1) If upon inspection or investigation, the Secretary,  
19       or his authorized representative, believes that an  
20       employer has violated a requirement of Section 421 of  
21       this act, or any safety or health standard promulgated by  
22       regulations, or any conditions of an order granting a  
23       variance, which violation is such that a danger exists  
24       from which there is a substantial probability that death  
25       or serious physical harm could result to any employee,



1 the Secretary, or his authorized representative, shall  
2 issue a citation and may issue an order immediately  
3 restraining any such condition, practice, method,  
4 process, or means in the work place.

5 (2) Any order issued under subsection 1 of this section  
6 may require such steps to be taken as may be necessary to  
7 avoid, correct, or remove such danger and prohibit the  
8 employment or presence of any individual in locations or  
9 under conditions where such danger exists, except  
10 individuals whose presence is necessary to avoid,  
11 correct, or remove such danger.

12 (3) If any machine or equipment, or any part thereof,  
13 is in violation of a requirement of section 421 of this  
14 act or any safety or health standard promulgated by  
15 regulations, and the operation of such machine or  
16 equipment gives rise to a substantial probability that  
17 death or serious physical harm could result to any  
18 employee, and an order of immediate restraint of use of  
19 such machine or equipment is issued under this  
20 subsection, the use of such machine or equipment is  
21 prohibited, and notice to that effect shall be attached  
22 thereto by the Secretary or his authorized  
23 representative.

24 (4) Whenever the Secretary, or his authorized  
25 representative, concludes that a dangerous condition of

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employment described in subsection 1 of this section  
exists in any work place, he shall promptly inform the  
affected employees and employers of the danger."

Section 19. Title 51 of the Code of the Federated States of  
Micronesia is hereby amended by adding a new section 433 of chapter  
4 to read as follows:

"Section 433. Appeal of citation or order of Secretary.

(1) If, after the inspection or investigation, the  
Secretary or his authorized representative issues a  
citation under the authority of section 431 or section  
432 of this act, the Secretary, within a reasonable time  
after the termination of such inspection or  
investigation, shall notify the employer by personal  
service at his office of the penalty to be assessed under  
the authority of section 437 of this act and shall state  
that the employer has fifteen days within which to notify  
the Secretary that he wishes to appeal the citation or  
assessment of penalty. If the employer fails to file his  
appeal in the Supreme Court within forty-two days after  
he was served the citation or assessment of penalty, the  
citation and the assessment shall be deemed a final order  
of the department and not subject to review by any court  
or agency.

(2) If the Secretary has reason to believe that an  
employer has failed to correct a violation for which a

1 citation has been issued within the period permitted in  
2 the citation for its correction, which period shall not  
3 begin to run until the entry of a final order in the case  
4 of any appeal proceedings under this section initiated by  
5 the employer in good faith and not solely for delay or  
6 avoidance of penalties, the Secretary shall notify the  
7 employer by personal service at his place of business of  
8 such failure to correct the violation and of the penalty  
9 to be assessed under section 437 of this act by reason of  
10 such failure. Additionally, the Secretary shall state  
11 that the employer has forty-two days from the date such  
12 notification and assessment of a penalty is served on him  
13 to notify the Secretary that he wishes to appeal the  
14 Secretary's notification of assessment of penalty. If  
15 the employer fails to appeal the Secretary's notification  
16 and assessment of penalty to the Supreme Court within  
17 forty-two days after such notice thereof is served on  
18 him, the notification and assessment of penalty shall be  
19 deemed a final order, not subject to any further review  
20 by any court or agency.

21 (3) If any employer notifies the Secretary that he  
22 intends to appeal the citation issued under either  
23 section 426 or section 431 of this act, or the assessment  
24 of a penalty issued under subsections 1 or 2 of this  
25 section within fifteen days after the citation or



assessment of penalty was served on him, or if, within fifteen days from the date of issuance of a citation under either section 426 or section 431 of this act, any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the Secretary.

(4) If the Secretary reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within the period of sixty days. The redetermination shall then become final subject to direct appeal to the Supreme Court within forty-two days or as provided by the rules of Appellate Procedure of the Supreme Court.

(5) In the event that the Secretary does not reassume jurisdiction as provided in this section, he shall promptly notify all relevant parties of his intention not to do so. Within forty-two days, the appellant shall file his notice of intention to appeal any such citations, the notice of assessment of penalty and the

notice of intention to appeal the period of time fixed for abatement of a violation. In addition, the appellant shall certify a full copy of the record in such appeal matters to the Appellate Division of the Supreme Court.

(6) The Secretary shall adopt rules of procedure for the reassumption of jurisdiction under subsection 4 of this section affording employers, employees, and employee representatives a notice of the reassumption of jurisdiction by the Secretary, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference.

(7) A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of penalty pending review by the Supreme Court, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the Secretary under the authority of section 431 of this act. The Supreme Court shall thereafter make disposition of the issues in accordance with its Rules of Appellate Procedure.

(8) Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and the abatement has not been completed because of factors beyond his control, the Secretary, after affording an opportunity for a hearing,

1           shall issue an order affirming or modifying the abatement  
2           requirements in such citation."

3           Section 20. Title 51 of the Code of the Federated States  
4 of Micronesia is hereby amended by adding a new section 434 of  
5 chapter 4 to read as follows:

6           "Section 434. Judicial Review.

7           (1) Any person aggrieved by an order of the Secretary  
8           issued under section 433 of this act may obtain a review  
9           of such order in the Appellate Division of the Supreme  
10          Court by filing a written notice of appeal praying that  
11          the order be modified or set aside pursuant to the Rules  
12          of Appellate Procedure of the Supreme Court.

13          (2) The scope of judicial review under subsection 1 of  
14          this section shall be limited to determining whether  
15          there is substantial evidence in the record to support  
16          the conclusion of the Secretary.

17          (3) Upon application of the Secretary, the clerk of  
18          court, unless otherwise ordered by the court, shall  
19          forthwith enter a decree enforcing any unappealed  
20          citation and notice of assessment of penalty which has  
21          become final order under section 433 of this act and  
22          shall transmit a copy of such decree to the Secretary and  
23          the employer named in the Secretary's petition.

24          (4) In any contempt proceeding brought to enforce a  
25          decree of the Supreme Court entered pursuant to this



1 section, the Supreme Court may assess the penalties  
2 provided in section 437 of this act, in addition to  
3 invoking any other available remedies."

4 Section 21. Title 51 of the Code of the Federated States of  
5 Micronesia is hereby amended by adding a new section 435 of chapter  
6 4 to read as follows:

7 "Section 435. Discrimination against employee filing  
8 complaint.

9 (1) No person shall discharge, or in any manner  
10 discriminate against any employee because such employee  
11 has filed any complaint or instituted or caused to be  
12 instituted any proceedings under or related to this act,  
13 or has testified or is about to testify in any such  
14 proceeding or because of the exercise by such employee on  
15 behalf of himself or others of any right afforded under  
16 this act.

17 (2) Any employee who believes that he has been  
18 discharged or otherwise discriminated against by any  
19 person in violation of this section may, within thirty  
20 days after such violation occurs, file a complaint with  
21 the Secretary alleging such discrimination. Upon receipt  
22 of such complaint, the Secretary shall cause such  
23 investigation to be made as he deems appropriate. If  
24 upon such investigation, the Secretary determines that  
25 the provisions of this section have been violated, he

1 shall bring an action in the Trial Division of the  
2 Supreme Court. If the Secretary determines that the  
3 provisions of this section have not been violated, the  
4 employee may institute the action on his own behalf  
5 within thirty days of such determination. In any such  
6 action, the Supreme Court shall have jurisdiction, for  
7 cause shown, to restrain violations of subsection 1 of  
8 this section and order all appropriate relief including  
9 the rehiring or reinstatement of the employee to his  
10 former position with back pay.

11 (3) Within ninety days of the receipt of the  
12 complaint filed under this section, the Secretary  
13 shall notify the complainant of his determination  
14 under subsection 2 of this section."

15 Section 22. Title 51 of the Code of the Federated States  
16 of Micronesia is hereby amended by adding a new section 436 of  
17 chapter 4 to read as follows:

18 "Section 436. Injunctions.

19 (1) In addition to and after having invoked the powers  
20 of restraint vested in the Secretary as provided in  
21 section 431 of this act, the Supreme Court shall have  
22 jurisdiction, upon petition of the Secretary, to enjoin  
23 any condition or practice in any work place from which  
24 there is a substantial probability that death or serious  
25 physical harm could result to any employee immediately or

1 before the imminence of such danger can be eliminated  
2 through the enforcement procedures otherwise provided by  
3 this act. Any order issued under this section may  
4 require such steps to be taken as may be necessary to  
5 avoid, correct, or remove such danger and prohibit the  
6 employment or presence of any individual in locations, or  
7 under conditions where such danger exists, except  
8 individuals whose presence is necessary to avoid,  
9 correct, or remove such danger.

10 (2) Upon filing of any petition, the Supreme Court  
11 shall have jurisdiction to grant such injunctive relief  
12 or temporary restraining order, pending the outcome of  
13 enforcement proceedings pursuant to this act, except that  
14 no temporary restraining order issued without notice  
15 shall be effective for a period longer than five working  
16 days.

17 (3) Whenever and as soon as any authorized  
18 representative of the Secretary concludes that a  
19 condition or practice described in subsection 1 of this  
20 section exists in any work place, he shall inform the  
21 affected employees and employers of the danger and may  
22 recommend to the Secretary that relief be sought under  
23 this section.

24 (4) If the Secretary arbitrarily or capriciously fails  
25 to invoke his restraining authority under section 431 of



this act, or fails to seek relief under this section, any  
employee who may be injured by reason of such failure may  
bring an action against the Secretary in the Trial  
Division of the Supreme Court for a writ of mandamus to  
compel the Secretary to seek such an order and for such  
other relief as may be appropriate."

Section 23. Title 51 of the Code of the Federated States of  
Micronesia is hereby amended by adding a new section 437 of chapter  
4 to read as follows:

"Section 437. Violations: civil penalties.

(1) Any employer who willfully or repeatedly violates  
the requirements of section 434 of this act, of any  
safety or health standard promulgated under the authority  
of this act, of any existing rule or regulation governing  
the conditions of employment promulgated by the  
Department, or of any order issued granting a variance  
under section 423 of this act may be assessed a civil  
penalty not to exceed fifty thousand dollars (\$50,000.00)  
for each violation.

(2) Any employer who has received a citation for a  
serious violation of the requirements of section 424 of  
this act, of any safety or health standard promulgated  
under the authority of this act, of any existing rule or  
regulation governing the conditions of employment  
promulgated by the Department, or of any order issued

1        granting a variance under section 423 of this act as  
2        determined in accordance with subsection 6 of this  
3        section, shall be assessed a civil penalty not to exceed  
4        five thousand dollars (\$5,000.00) for each such  
5        violation.

6        (3) Any employer who has received a citation for a  
7        violation of the requirements of section 424 of this act,  
8        of any safety or health standard promulgated under this  
9        chapter, or any existing rule or regulation governing the  
10       conditions of employment promulgated by the Department,  
11       or of any order issued granting a variance under section  
12       423 of this act of this act, where such violation is  
13       specifically determined not to be of a serious nature as  
14       provided in subsection 6 of this section, may be assessed  
15       a civil penalty not to exceed three thousand dollars  
16       (\$3,000.00) for each such violation, unless such  
17       violation is determined to be de minimis.

18       (4) Any employer who fails to correct a violation for  
19       which a citation has been issued under section 431 or  
20       section 432 within the period permitted for its  
21       correction, which period shall not begin to run until the  
22       date of the final order of the Supreme Court in the case  
23       of any review proceedings under this act initiated by the  
24       employer in good faith and not solely for delay or  
25       avoidance of penalties, may be assessed a civil penalty

1 of not more than five thousand dollars (\$5,000.00) for  
2 each day during which such failure or violation  
3 continues.

4 (5) Any employer who violates any of the posting  
5 requirements of this chapter, or any of the posting  
6 requirements of rules promulgated by the Secretary  
7 pursuant to this act related to employee or employee  
8 representative's rights to notice, including but not  
9 limited to those employee rights to notice as set forth  
10 in this act, shall be assessed a penalty not to exceed  
11 three thousand dollars (\$3,000) for each such violation.  
12 Any employer who violates any of the posting requirements  
13 for the posting of informational, educational, or  
14 training materials promulgated by regulations, may be  
15 assessed a penalty not to exceed one thousand five  
16 hundred dollars (\$1,500.00) for each such violation.

17 (6) For the purposes of this section, a serious  
18 violation shall be deemed to exist in a work place if  
19 there is a substantial probability that death or serious  
20 physical harm could result from a condition which exists,  
21 or from one or more practices, means, methods,  
22 operations, or processes which have been adopted or are  
23 in use in such work place, unless the employer did not,  
24 or could not with the exercise of reasonable diligence,  
25 know of the presence of the violation.



1           (7) The Secretary, or his authorized representative,  
2           shall have authority to assess all civil penalties  
3           provided in this section, giving due consideration to the  
4           appropriateness of the penalty with respect to the number  
5           of affected employees of the employer being charged, the  
6           gravity of the violation, the size of the employer's  
7           business, the good faith of the employer, and the history  
8           of previous violations.

9           (8) Civil penalties imposed under this act shall be  
10          deposited in the General Fund of the National Government  
11          of the Federated States of Micronesia. Civil penalties  
12          may be recovered in a civil action in the name of the  
13          Department in the Supreme Court."

14          Section 24. Title 51 of the Code of the Federated States  
15 of Micronesia is hereby amended by adding a new section 438 of  
16 chapter 4 to read as follows:

17          "Section 438. Violation: criminal penalties.

18           (1) Any person who gives advance notice of any  
19           inspection to be conducted under the authority of this  
20           act, without the consent of the Secretary or his  
21           authorized representative shall, upon conviction, be  
22           guilty of a misdemeanor and be punished by a fine of not  
23           more than one thousand dollars (\$1,000.00) or by  
24           imprisonment for not more than six months, or both.

25           (2) Whoever knowingly makes any false statement,

representation, or certification in any application,  
record, report, plan, or other documentation filed or  
required to be maintained pursuant to this act shall,  
upon conviction, be guilty of a misdemeanor and be  
punished by a fine of not more than five thousand dollars  
(\$5,000.00) or by imprisonment of not more than six  
months or by both.

(3) Any employer who willfully and knowingly violates  
the requirements of section 424 of this act, any safety  
or health standard promulgated under this act, any  
existing rule or regulation governing the safety or  
health conditions of employment, including institutional  
residence, or any order issued granting a variance under  
section 423 of this act and that violation caused death  
to any employee shall, upon conviction, be guilty of a  
felony punishable by a fine of not more than one hundred  
thousand dollars (\$100,000.00) or by imprisonment of not  
more than two years, or both.

(4) Any employer who has been issued an order  
immediately restraining a condition, practice, method,  
process, or means in the work place, pursuant to section  
432 or section 436 of this act, and who nevertheless  
continues such condition, practice, method, process, or  
means, or who continues to use a machine or equipment or  
part thereof to which a notice prohibiting such use has

1 been attached, shall be guilty of a misdemeanor, and upon  
2 conviction shall be punished by a fine of not more than  
3 five thousand dollars (\$5,000.00) or by imprisonment for  
4 not more than six months, or by both.

5 (5) Any employer who shall knowingly remove, displace,  
6 damage, or destroy, or cause to be removed, displaced,  
7 damaged, or destroyed any safety device or safeguard  
8 required to be present and maintained by any safety or  
9 health standard, rule, or order promulgated pursuant to  
10 this act shall, upon conviction, be guilty of a  
11 misdemeanor and be punished by a fine of not more than  
12 one thousand dollars (\$1,000.00) or by imprisonment for  
13 not more than ninety days, or by both.

14 (6) Whenever the Secretary has reasonable cause to  
15 believe that any provision of this section defining a  
16 crime has been violated by an employer, the Secretary  
17 shall cause a record of such alleged violation to be  
18 prepared, a copy of which shall be referred to the  
19 Litigation Division under the Department of Justice, and  
20 the Litigation Division shall, in writing, advise the  
21 Secretary of the disposition he shall make of the alleged  
22 violation."

23 Section 25. Title 51 of the Code of the Federated States of  
24 Micronesia is hereby amended by adding a new subchapter 4 entitled  
25 "Trade Secrets; Records; Statistics."



Section 26. Title 51 of the Code of the Federated States of  
Micronesia is hereby amended by adding a new section 441 of chapter  
4 to read as follows:

"Section 441. Confidentiality of trade secrets.  
All information reported to, or otherwise obtained by the  
Secretary, or his authorized representative, in  
connection with any inspection or proceeding under the  
authority of this chapter, which contains or which might  
reveal a trade secret shall be considered confidential,  
except that such information may be disclosed to other  
officers or employees concerned with carrying out this  
act, or when relevant in any proceeding under this act.  
In any such proceeding the Secretary, or the Supreme  
Court shall issue such orders as may be appropriate to  
protect the confidentiality of trade secrets."

Section 27. Title 51 of the Code of the Federated States  
of Micronesia is hereby amended by adding a new section 442 of  
chapter 4 to read as follows:

"Section 442. Research, experiments and demonstrations  
for safety purposes. The Secretary is authorized to  
conduct, either directly or by grant or contract,  
research, experiments, and demonstrations as may be of  
aid and assistance in the furtherance of the objectives  
and purposes of this act. The Secretary, in his  
discretion is authorized to grant a variance from any

rule or regulation or portion thereof, whenever he  
determines that such variance is necessary to permit an  
employer to participate in an experiment approved by the  
Secretary, which experiment is designed to demonstrate or  
validate new and improved techniques to safeguard the  
health or safety of employees. Any such variance shall  
require that all due regard be given to the health and  
safety of all employees participating in any experiment."

Section 28. Title 51 of the Code of the Federated States  
of Micronesia is hereby amended by adding a new section 443 of  
chapter 4 to read as follows:

"Section 443. Records.

(1) Each employer shall make, keep, preserve, and make  
available to the Secretary, such records regarding his  
activities relating to this act as the Secretary may  
prescribe by regulation as necessary or appropriate for  
the enforcement of this act or for developing information  
with regard to causes and the prevention of occupational  
accidents and illnesses. In order to carry out the  
provisions of this section such regulations may include  
provisions requiring employers to conduct periodic  
inspections. The Secretary shall also issue regulations  
requiring that employers, through the posting of notices  
or other appropriate means, keep their employees informed  
of their protections and obligations under this act,

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including provisions of applicable safety and health standards.

(2) The Secretary shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents, which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been, or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this act and shall



1 inform any employee who is being thus exposed of the  
2 corrective action being taken."

3 Section 29. Title 51 of the Code of the Federated States of  
4 Micronesia is hereby amended by adding a new section 444 of chapter  
5 4 to read as follows:

6 "Section 444. Statistics. In furtherance of the objects  
7 and purposes of this act, the Secretary shall develop and  
8 maintain an effective program of collection, compilation,  
9 and analysis of industrial safety and health statistics.  
10 The Secretary, or his authorized representative, shall  
11 investigate and analyze industrial catastrophes, serious  
12 injuries, and fatalities occurring in any work place or  
13 institutional residence subject to this act, in an effort  
14 to ascertain whether such injury or fatality occurred as  
15 the result of a violation of this act, or any safety and  
16 health standard, rule, or order promulgated pursuant to  
17 this act, or if not, whether a safety and health standard  
18 or rule should be promulgated for application to such  
19 circumstances. The Secretary shall adopt rules relating  
20 to the conducting and reporting of such investigations.  
21 Such investigative reports shall be deemed confidential  
22 and only available upon order of the Supreme Court after  
23 notice to the Secretary and an opportunity for hearing;  
24 provided that such investigative reports shall be made  
25 available, without the necessity of obtaining a court

1        order, to employees of governmental agencies in the  
2        performance of their official duties, to the injured  
3        workman or his legal representative, to the legal  
4        representative of a deceased workman who was the subject  
5        of an investigation, to the employer of the injured or  
6        deceased workman or any other employer or person whose  
7        actions or business operation is the subject of an  
8        investigative report, or to any attorney representing a  
9        party in any pending legal action in which an  
10       investigative report constitutes relevant and material  
11       evidence in such legal action."

12       Section 30. Severability. If any section of this act should  
13 be declared invalid by a court of competent jurisdiction, the  
14 remainder of this act shall not be affected thereby.

15       Section 31. Saving Clause. This act and any repealer  
16 contained herein shall not be construed as affecting any existing  
17 right acquired under contract or acquired under statutes repealed or  
18 under any rule, regulation or order adopted under the statutes.  
19 Repealers contained in this act shall not affect any proceedings  
20 instituted under or pursuant to prior law. The enactment of this  
21 act shall not have the effect of terminating, or in any way  
22 modifying any liability, civil or criminal, which shall already be  
23 in existence at the date this act becomes effective.

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1 Section 30. This act shall become law upon approval by the  
2 President of the Federated States of Micronesia or upon its becoming  
3 law without such approval.

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5 Date: 1/28/2000

Introduced by:

Joseph J. Urusemal  
(by request)

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