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 Micronesia is hereby amended by enacting a new chapter 4 entitled "Occupational Safety and Health Standards".

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

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

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

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

"Section 412. Findings and purpose. The Congress of the Federated States of Micronesia finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of disability and other benefits under the Workers Compensation Act. The Congress also finds that industrial accidents can be reduced if certain minimum standards are established and enforced. Therefore, the purpose of this act is to assure, so far
as possible, every working man and woman in the Federated
States of Micronesia, safe and healthful working
conditions. It is also the intent of this act to permit
and encourage employer and employee efforts to reduce
injury and disease arising out of employment, and to
stimulate efforts to institute new programs which provide
safe and healthful working environments."

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

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

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

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

(3) 'Employer' means any person, firm, corporation,
partnership, business trust, legal representative, or
other business entity which engages in any business,
industry, profession, or activity in the Federated States
of Micronesia and employs one or more employees, or who
contracts personal labor of such employee or employees.
An 'Employer' includes the Federated States of
Micronesia, its political subdivisions, any government
agency, corporation or authority. For the purpose of
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...
reasonably permits.

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

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

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

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

"Section 414. Rules and regulations. The Secretary shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment to implement the provisions of this act in accordance with chapter 1 of title 17 of the Code of the Federated States of Micronesia. When promulgated, such regulations shall have the force and effect of law."
Section 7. Title 51 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 415 of chapter 4 to read as follows:

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

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

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

"Section 421. Safety and Health Standards.

(1) Each employer shall:

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

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

(2) The Secretary, in promulgating rules under the authority of this act, shall establish safety and health 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 apprized 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
of such examinations or tests shall be furnished only to
the Secretary, or other appropriate agencies of the
Government, and at the request of the employee to his
physician."

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

'Section 422. Procedure for applying for variances from
Safety and Health Standards.

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

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

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

(c) the employer is taking all available steps to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The order so issued shall state the duration thereof and prescribe the conditions the employer must maintain, and practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. The Secretary 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
inspection, except that, upon the request of the person
giving such notice, his name and the names of individual
employees referred to therein shall not appear in such
copy or on any record published, released, or made
available pursuant to any provision of this act. If upon
receipt of such notification the Secretary determines
that there are reasonable grounds to believe that such
violation or danger exists, he shall make a special
inspection as soon as practical to determine if such
violation or danger exists. If the Secretary determines
there are no reasonable grounds to believe that a
violation or danger exists, he shall notify the employer
and employee, or the representative of the employee, in
writing of such determination including his reasons for
so concluding.

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

Section 15. Title 51 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 427 of chapter
4 to read as follows:
"Section 427. Voluntary Compliance Program.

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

(2) The Secretary, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place or institutional residence shall be regarded as an inspection or investigation under the authority of this act, and no notices or citations shall be issued, nor
shall any civil penalties be assessed upon such visit,
nor shall any authorized representative of the Secretary
designated to render advice and consultation with
employers under the voluntary compliance program have any
enforcement authority; provided, that in the event an on-
site visit discloses a serious violation of health and
safety standard as defined in section 438 of this act and
the hazard of such violation is either not abated by the
cooperative action of the employer, the Secretary shall
either invoke the administrative restraining authority
provided in section 432 of this act or seek the issuance
of injunctive process under the authority of section 426
of this act or invoke both such remedies.

(3) Nothing in this section shall be construed as
providing immunity to any employer who has made
application for consultive services during the pendency
of the granting of such application from inspections or
investigations conducted under section 422 of this act or
any inspection conducted as a result of a complaint, nor
immunity from inspection under section 422 of this act or
inspections resulting from a complaint subsequent to the
conclusion of the consultive period. This section shall
not be construed as requiring an inspection under section
422 of this act of any work place or institutional
residence which has been visited for consultive purposes.
However, in the event of a subsequent inspection, the Secretary or his authorized representative may, in his direction, take into consideration any information obtained during the consultation visit of that workplace or institutional residence in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in section 438 of this act which are disclosed in any consultive period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of section 422 of this act. All employers requesting consultive services shall be advised of the provisions of this section and the rules adopted by the Secretary relating to the voluntary compliance program. The Secretary may provide by rule for the frequency, manner and method of the rendering of consultive services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such manner as not to jeopardize the enforcement requirements of this act."

Section 16. Title 51 of the Code of the Federated States of Micronesia is hereby amended by adding a new subchapter 3 of chapter
entitled "Violations and Penalties".

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

"Section 431. Violations: citations. If upon inspection
or investigation, the Secretary or his authorized
representative believes that an employer has violated a
requirement of section 421 of this act, or any safety or
health standard promulgated by rule adopted by the
Secretary, or the conditions of any order granting a
variance pursuant to this act, he shall, with reasonable
promptness, issue a citation to the employer. Each
citation shall be in writing and shall describe with
particularity the nature of the violation, including a
reference to the provisions of this act, standard, rule,
regulation, or order alleged to have been violated. In
addition, the citation shall fix a reasonable time for
the abatement of the violation. The Secretary may
prescribe procedures for the issuance of notice in lieu
of a citation with respect to de minimis violations,
which have no direct or immediate relationship to safety
or health. Each citation, or a copy thereof, issued
under the authority of this section and a copy of section
421 of this act shall be prominently posted, at or near
each place a violation referred to in the citation
The Secretary shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees, who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices. No citation may be issued under this section after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation."

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

"Section 432. Violations; dangerous conditions; restraining orders.

(1) If upon inspection or investigation, the Secretary, or his authorized representative, believes that an employer has violated a requirement of Section 421 of this act, or any safety or health standard promulgated by regulations, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee,
the Secretary, or his authorized representative, shall
issue a citation and may issue an order immediately
restraining any such condition, practice, method,
process, or means in the work place.

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

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

(4) Whenever the Secretary, or his authorized
representative, concludes that a dangerous condition of
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
citation has been issued within the period permitted in
the citation for its correction, which period shall not
begin to run until the entry of a final order in the case
of any appeal proceedings under this section initiated by
the employer in good faith and not solely for delay or
avoidance of penalties, the Secretary shall notify the
employer by personal service at his place of business of
such failure to correct the violation and of the penalty
to be assessed under section 437 of this act by reason of
such failure. Additionally, the Secretary shall state
that the employer has forty-two days from the date such
notification and assessment of a penalty is served on him
to notify the Secretary that he wishes to appeal the
Secretary's notification of assessment of penalty. If
the employer fails to appeal the Secretary's notification
and assessment of penalty to the Supreme Court within
fourty-two days after such notice thereof is served on
him, the notification and assessment of penalty shall be
deemed a final order, not subject to any further review
by any court or agency.

(3) If any employer notifies the Secretary that he
intends to appeal the citation issued under either
section 426 or section 431 of this act, or the assessment
of a penalty issued under subsections 1 or 2 of this
section within fifteen days after the citation or
assessments of penalty were 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
employees or representatives 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,
shall issue an order affirming or modifying the abatement requirements in such citation."

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

"Section 434, Judicial Review.

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

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

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

(4) In any contempt proceeding brought to enforce a decree of the Supreme Court entered pursuant to this
section, the Supreme Court may assess the penalties
provided in section 437 of this act, in addition to
invoking any other available remedies.'

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

"Section 435. Discrimination against employee filing
complaint.

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

(2) Any employee who believes that he has been
discharged or otherwise discriminated against by any
person in violation of this section may, within thirty
days after such violation occurs, file a complaint with
the Secretary alleging such discrimination. Upon receipt
of such complaint, the Secretary shall cause such
investigation to be made as he deems appropriate. If
upon such investigation, the Secretary determines that
the provisions of this section have been violated, he
shall bring an action in the Trial Division of the
Supreme Court. If the Secretary determines that the
provisions of this section have not been violated, the
employee may institute the action on his own behalf
within thirty days of such determination. In any such
action, the Supreme Court shall have jurisdiction, for
cause shown, to restrain violations of subsection 1 of
this section and order all appropriate relief including
the rehiring or reinstatement of the employee to his
former position with back pay.

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

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

"Section 436. Injunctions.

(1) In addition to and after having invoked the powers
of restraint vested in the Secretary as provided in
section 431 of this act, the Supreme Court shall have
jurisdiction, upon petition of the Secretary, to enjoin
any condition or practice in any work place from which
there is a substantial probability that death or serious
physical harm could result to any employee immediately or
before the imminence of such danger can be eliminated
through the enforcement procedures otherwise provided by
this act. Any order issued under this section may
require such steps to be taken as may be necessary to
avoid, correct, or remove such danger and prohibit the
employment or presence of any individual in locations, or
under conditions where such danger exists, except
individuals whose presence is necessary to avoid,
correct, or remove such danger.

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

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

(4) If the Secretary arbitrarily or capriciously fails
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
granting a variance under section 423 of this act as
determined in accordance with subsection 6 of this
section, shall be assessed a civil penalty not to exceed
five thousand dollars ($5,000.00) for each such
violation.

(3) Any employer who has received a citation for a
violation of the requirements of section 424 of this act,
of any safety or health standard promulgated under this
chapter, or 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 of this act, where such violation is
specifically determined not to be of a serious nature as
provided in subsection 6 of this section, may be assessed
a civil penalty not to exceed three thousand dollars
($3,000.00) for each such violation, unless such
violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for
which a citation has been issued under section 431 or
section 432 within the period permitted for its
correction, which period shall not begin to run until the
date of the final order of the Supreme Court in the case
of any review proceedings under this act initiated by the
employer in good faith and not solely for delay or
avoidance of penalties, may be assessed a civil penalty
of not more than five thousand dollars ($5,000.00) for each day during which such failure or violation continues.

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

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, or could not with the exercise of reasonable diligence, know of the presence of the violation.
(7) The Secretary, or his authorized representative, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer’s business, the good faith of the employer, and the history of previous violations.

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

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

"Section 438. Violation; criminal penalties.

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

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

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

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

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

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

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

"Section 444. Statistics. In furtherance of the objects and purposes of this act, the Secretary shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The Secretary, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any workplace or institutional residence subject to this act, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this act, or any safety and health standard, rule, or order promulgated pursuant to this act, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The Secretary shall adopt rules relating to the conducting and reporting of such investigations. Such investigative reports shall be deemed confidential and only available upon order of the Supreme Court after notice to the Secretary and an opportunity for hearing; provided that such investigative reports shall be made available, without the necessity of obtaining a court
order, to employees of governmental agencies in the
performance of their official duties, to the injured
workman or his legal representative, to the legal
representative of a deceased workman who was the subject
of an investigation, to the employer of the injured or
deceased workman or any other employer or person whose
actions or business operation is the subject of an
investigative report, or to any attorney representing a
party in any pending legal action in which an
investigative report constitutes relevant and material
evidence in such legal action."

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

Section 31. **Saving Clause.** This act and any repealer
contained herein shall not be construed as affecting any existing
right acquired under contract or acquired under statutes repealed or
under any rule, regulation or order adopted under the statutes.
Repealers contained in this act shall not affect any proceedings
instituted under or pursuant to prior law. The enactment of this
act shall not have the effect of terminating, or in any way
modifying any liability, civil or criminal, which shall already be
in existence at the date this act becomes effective.
Section 30. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 1/29/2000

Introduced by: [Signature]

Joseph S. Urismal (by request)