

CHAPTER 41
TOXIC SUBSTANCES EXPOSURE COMPENSATION ACT

- § 41101. Legislative Findings.
- § 41102. Policy.
- § 41103. Definitions.
- § 41104. Liability for Exposure to Toxic Substances.
- § 41105. Application of this Chapter.
- § 41106. Severability.
- § 41107. Title.

§ 41101. Legislative Findings.

The Legislature finds that:

(1) Residents of Guam are being constantly exposed to a large number of dangerous chemical substances and mixtures;

(2) Among the many chemical substances and mixtures which are being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk or injury to human health or the environment;

(3) Individuals have a well-grounded fear of injury or illness arising from exposure to such dangerous chemical substances and mixtures;

(4) Because of the toxicity of certain chemical substances and mixtures, no definite testing of the effects of these chemical substances and mixtures on humans is available;

(5) Tests conducted on animals indicate that certain chemical substances and mixtures are very harmful to animals and may cause harm to humans;

(6) The effective protection of the physical and mental health of Guam's residents and their ability to enjoy life requires that those exposed to certain chemical substances and mixtures be compensated by those responsible for the manufacture and distribution of those substances; and

(7) For a variety of reasons, including lack or ambiguity of data, the long lead time between exposure and illness, and the presence of disease from other causes, case law in other jurisdictions has created an unacceptable burden on persons exposed to toxic substances to prove causation and the likelihood of harm.

10 GCA HEALTH AND SAFETY
CH. 41 TOXIC SUBSTANCES EXPOSURE COMPENSATION ACT

SOURCE: Added by P.L. 20-182:1.

§ 41102. Policy.

It is declared to be the policy of Guam that:

(a) The statutory and common law of Guam shall facilitate the compensation of those exposed to certain chemical substances and mixtures;

(b) Persons exposed to toxic substances shall be entitled to compensation for all damages arising from exposure to such substances.

SOURCE: Added by P.L. 20-182:1.

§ 41103. Definitions.

As used in this Chapter, the following terms are defined to mean:

(1) *Toxic substances* shall mean polychlorinated biphenols, dioxins, furans or halogenated chlorofluoroalkanes.

(2) *Exposure* shall mean any contact from any source with skin, eyes, ears, hair or other part of the human body, including but not limited to contact through ingestion or breathing.

(3) *Federally permitted levels of exposure* shall mean the maximum levels of exposure of humans as determined by federally regulatory agencies, including but not limited to the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. In the case of conflicting maximum permissible exposure levels, the lowest maximum permissible exposure level shall apply. For exposure in the work place, the eight-hour work place exposure level shall be considered the "federally permitted level of exposure". If no eight-hour work place exposure level exists, the lowest applicable maximum permissible exposure level shall apply.

(4) *Persons* shall mean and include individuals, governmental entities, including but not limited to the United States or the government of Guam, whichever the case may be, and corporations, partnerships and other business entities.

SOURCE: Added by P.L. 20-182:1.

§ 41104. Liability for Exposure to Toxic Substances.

(1) Any person who has been exposed to toxic substances at a level above federally permitted levels of exposure shall be entitled to bring an action for damage against:

(a) The manufacturer of the toxic substances or any person who incorporates a toxic substance in the manufacture of a product. Such persons shall be strictly liable for all damages resulting from human exposure to toxic substances at levels above federally permitted levels of exposure.

(b) Any other person who is responsible for the claimant's exposure to the toxic substances. Such other persons shall be liable for damages under this Chapter if their negligence results in the claimant's exposure to toxic substances.

(i) Persons responsible for exposure shall include any person who controls the toxic substance after its manufacture or who controls any product which contains a toxic substance; provided, that such person is negligent in the use, storage, disposal, cleanup or other control of the toxic substance. Violations of federal cleanup regulations shall constitute negligence per se for the purposes of this Chapter.

(2) *Recoverable damages* shall include injury, increased risk of illness or injury, lost income, medical expenses, pain and suffering, emotional distress (attributed to the exposure), loss of ability to enjoy life, loss of consortium, loss of ability to procreate, medical expenses for treatment or monitoring, and any other direct or indirect effects of exposure.

(3) Punitive damages shall be recoverable under this Chapter against any person who conceals the harmful effects of toxic substance or against any person who acts with reckless indifference to human health in the manufacture, use, storage or cleanup of toxic substances.

(4) Persons who recover damages under this Chapter shall receive interest on all amounts recovered, from the date of injury until the date paid, at the rates set out in 26 U.S.C. §6621(a)(1), plus attorneys' fees, and costs of suit.

(5) In proving increased likelihood of injury, the following rules shall apply:

10 GCA HEALTH AND SAFETY
CH. 41 TOXIC SUBSTANCES EXPOSURE COMPENSATION ACT

(a) Once a showing of exposure of a toxic substance above federally permitted levels has been made, the parties responsible for the exposure shall have the burden of disproving an increased likelihood of disease or injury to the exposed person;

(b) All doubts shall be resolved in favor of the exposed person; and

(c) Studies indicating harmful effects of exposure on animals shall create a presumption that exposure of humans will also be harmful and will cause similar results.

(6) A cause of action for exposure under this Chapter shall accrue at the time of exposure, regardless of whether physical manifestation of injury has occurred. Any action under this Chapter must be brought within four (4) years of the date of the last exposure, or within two (2) years of the date of discovery of the harm caused by the exposure, whichever is later.

SOURCE: Added by P.L. 20-182:1.

§ 41105. Application of this Chapter.

This Chapter shall apply to all claims which are not reduced to final judgment as of the effective date of this Chapter.

SOURCE: Added by P.L. 20-182:1.

§ 41106. Severability.

If any provision of this Chapter, or the application of any provision of this Chapter to any person or circumstances is held invalid, the application of such provision to other circumstances and the remainder of this Chapter shall not be affected thereby."

SOURCE: Added by P.L. 20-182:1.

§ 41107. Title.

This Chapter may be cited as the *Toxic Substance Exposure Compensation Act of 1990* .

SOURCE: Added by P.L. 20-182:1.
