

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 13 (LS)

Introduced by:

Ray Tenorio

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**AN ACT TO ADD A NEW ARTICLE 14 TO CHAPTER 5 OF
5GCA RELATIVE TO THE REQUIRING GOVERNMENT
CONTRACTORS TO MAINTAIN AND CERTIFY A DRUG-
FREE WORK PLACE.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 14 is *added* to Chapter 5 of 5GCA to read:

“Article 14

Contractors’ Drug-Free Workplace Act

§51400. Legislative Purpose. This Article will prohibit any Government of Guam agency from entering into a contract involving an expenditure of Twenty Five Thousand Dollars (\$25,000) or more with any contractor or individual who does not certify a drug-free workplace, and establishes several conditions and requirements that have to be met in order to certify a drug-free workplace. The Article provides that a Government of Guam agency may suspend, terminate, or debar a contractor if that contractor makes a false certification of, or fails to carry out the requirements for, a drug-free workplace.

§51401. Title. This Article shall be known and may be cited as the *Contractors’ Drug-Free Workplace Act*.

1 **§51402. Definitions.** As used in this Article:

2
3 (A) "Contractor" means:

4
5 (1) any person engaged in the business of constructing, altering,
6 repairing, dismantling, or demolishing buildings, roads, bridges,
7 viaducts, sewers, water mains, streets, disposal plants, airport and
8 port facilities, water filters, tanks, towers, and wells, pipelines,
9 utilities and every other type of structure, project, development, or
10 improvement coming within the definition of real or personal
11 property, including, but not limited to, constructing, altering, or
12 repairing property to be held either for sale or rental when the
13 contract involves an expenditure by an agency of at least Twenty Five
14 Thousand Dollars (\$25,000); or

15
16 (2) any person supplying goods, materials, services, or supplies
17 pursuant to a contract or lease on behalf of an agency when the
18 contract involves an expenditure by the agency of at least Twenty
19 Five Thousand Dollars (\$25,000).

20
21 (B) "Controlled substance" means any substance regulated by Chapter 63 of
22 9GCA (Guam Controlled Substance Act).

23
24 (C) "Conviction" means a plea of guilty or a finding of guilt, including a
25 plea of nolo contendere, and a sentence imposed by any judicial body

1 charged with a responsibility to determine violations of the federal or Guam
2 criminal drug statutes.

3
4 (D) "Criminal drug statute" means any criminal statute of Guam or the
5 United States involving the manufacture, sale, distribution, dispensation,
6 use, or possession of any controlled substance or marijuana.

7
8 (E) "Drug-free workplace" means a site for the performance of work done in
9 connection with a specific contract referred to in Subsection (A) with a
10 person, the employees of which persons are prohibited from engaging in the
11 unlawful manufacture, sale, distribution, dispensation, possession, or use of
12 any controlled substance or marijuana in accordance with the requirements
13 of this Article.

14
15 (F) "Employee" means the employee of a contractor directly engaged in the
16 performance of work pursuant to the provisions of the contract referred to in
17 subsection (A).

18
19 (G) "Individual" means a contractor who has no more than one employee,
20 including the contractor.

21
22 (H) "Marijuana" means the substance as defined in Chapter 63 of 9GCA
23 (Guam Controlled Substance Act).

24
25 (I) "Person" means a corporation, a partnership, a business trust, an
26 association, a firm, or any other legal entity except an individual.

1
2 (J) "Principal representative" means the governing board or the executive
3 head of an agency who is authorized to enter into a contract with a
4 contractor on behalf of the agency.

5
6 (K) "Agency" means any authority, department, division, board, bureau,
7 commission, public corporation, instrumentality, branch other agency of the
8 Government of Guam.

9
10 (L) "Subcontractor" means a person hired by a contractor on an independent
11 basis rather than as an employee and who performs work for the contractor
12 under a contract as provided under Subsection (A)

13
14 **§51403. Drug-Free Workplace Requirements of Contractors.**

15
16 (A) The principal representative of an agency shall not enter into a contract
17 with any contractor, other than an individual, unless the contractor certifies
18 to the principal representative that:

19
20 (1) a drug-free workplace will be provided for the contractor's
21 employees during the performance of the contract; and

22
23 (2) each contractor who hires a subcontractor to work in a drug-free
24 workplace shall secure from that subcontractor the following written
25 certification: As part of the subcontracting agreement with
26 (contractor), (subcontractor) certifies to the contractor that a drug-free

1 workplace will be provided for the subcontractor's employees during
2 the performance of this contract pursuant to Paragraph (7),
3 Subsection (B) of this Section.
4

5 (B) A contractor may satisfy the requirement for providing a drug-free
6 workplace for employees by:
7

8 (1) publishing a statement notifying employees that the unlawful
9 manufacture, sale, distribution, dispensation, possession, or use of a
10 controlled substance or marijuana is prohibited in the contractor's
11 workplace and specifying the actions that will be taken against
12 employees for violations of such prohibition;
13

14 (2) establishing a drug-free awareness program to inform employees
15 about:
16

17 (a) the dangers of drug abuse in the workplace;

18 (b) the contractor's policy of maintaining a drug-free
19 workplace;

20 (c) any available drug counseling, rehabilitation, and employee
21 assistance programs; and

22 (d) the penalties that may be imposed upon employees for drug
23 abuse violations;
24

25 (3) providing each employee with a copy of the statement provided
26 for in Paragraph (1) of this Subsection;

1
2 (4) notifying each employee in the statement provided for in
3 Paragraph (1) of this Subsection that as a condition of employment,
4 the employee shall:

5
6 (a) abide by the terms of the statement; and

7 (b) notify the contractor of any criminal drug statute conviction
8 for a violation occurring in the workplace within five days of
9 the conviction;

10
11 (5) notifying the contracting principal representative within 10 days
12 after receiving from an employee or a subcontractor a notice of
13 conviction as provided under Subparagraph (b) of Paragraph (4) of
14 this Subsection or after otherwise receiving actual notice of such a
15 conviction;

16
17 (6) making a good faith effort on a continuing basis to provide a drug-
18 free workplace for employees; and

19
20 (7) requiring that such contractor include in any agreement or contract
21 with a subcontractor a provision that such subcontractor will provide
22 a drug-free workplace for his employees by complying with the
23 provisions of Paragraph (1), (2), (3), (4), and (6) of this Subsection
24 and by notifying the contractor of any criminal drug statute
25 conviction for a violation occurring in the workplace involving the
26 subcontractor or its employees within five days of receiving notice of

1 the conviction. The contractor will notify the contracting principal
2 representative pursuant to Paragraph (5) of this Subsection.
3

4 **§51404. Drug-Free Contractors.** The principal representative of an agency shall
5 not enter into a contract with an individual or a person as a contractor unless the
6 contact includes a certification by the individual or person that the individual or
7 person will not engage in the unlawful manufacture, sale, distribution,
8 dispensation, possession, or use of a controlled substance or marijuana during the
9 performance of the contract.
10

11 **§51405. Suspension, Termination, Debarment.** The principal representative of
12 an agency may suspend, terminate, or debar the contractor if the agency
13 determines that:
14

15 (A) the contractor or individual has made false certification under
16 Subsection (A) of §51403; or
17

18 (B) the contractor has violated such certification by failing to carry out the
19 requirements of Subsection (B) of §51403.
20

21 **§51406. Additional Programs.** This Article establishes minimum standards for
22 contractors and does not prevent them from implementing additional procedures
23 and policies having the objectives of achieving and maintaining a drug free
24 workplace.
25

1 **§51407. Severability.** If any provision of this Article or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect other
3 provisions or applications of the Article which can be given effect without the
4 invalid provision or application, and to that end the provisions of this Article are
5 declared to be severable.”

6
7 **Section 2. Effective Date:** This Act shall be effective One hundred eighty (180)
8 days from the date of Enactment.