

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session
VOTING RECORD

Bill No. 87-36 (COR) As amended by the Committee on Education, Self-Determination and Historic Preservation, Infrastructure, Border Safety, Federal and Foreign Affairs and Maritime Transportation; and further amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building May 28, 2021					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator V. Anthony Ada	√					
Senator Frank Blas Jr.	√					
Senator Joanne Brown	√					
Senator Christopher M. Dueñas	√					
Senator James C. Moylan	√					
Vice Speaker Tina Rose Muña Barnes	√					
Senator Telen Cruz Nelson	√					
Senator Sabina Flores Perez	√					
Senator Clynton E. Ridgell	√					
Senator Joe S. San Agustin	√					
Senator Amanda L. Shelton	√					
Senator Telo T. Taitague	√					
Senator Jose "Pedo" Terlaje	√					
Speaker Therese M. Terlaje	√					
Senator Mary Camacho Torres	√					

TOTAL

15

0

Aye

Nay

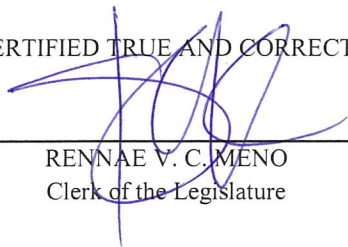
Not Voting/
Abstained

Out During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

I MINA 'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
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Bill No. 87-36 (COR)

As amended by the Committee on Education,
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*

Introduced by:

Mary Camacho Torres
Telena Cruz Nelson
Tina Rose Muña Barnes
Joe S. San Agustin
Jose "Pedo" Terlaje

**AN ACT TO *ADD* A NEW ARTICLE 4 TO CHAPTER 73
OF DIVISION 7, TITLE 5, GUAM CODE ANNOTATED;
AND TO *AMEND* § 6603(c) AND *REPEAL* § 6604 OF
ARTICLE 6, CHAPTER 6, TITLE 11, GUAM CODE
ANNOTATED, RELATIVE TO AUTHORIZING ASSET
FORFEITURE FOR THE GUAM CUSTOMS AND
QUARANTINE AGENCY, AND ESTABLISHING A
CUSTOMS FORFEITURE FUND.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the forfeiture of criminally-derived assets is an effective law enforcement tool
4 that punishes criminals, deters illegal activity, and protects the community. By
5 denying access to ill-gotten profits, asset forfeiture discourages society from
6 engaging in criminal acts to achieve financial gains knowing any property or profits
7 can be seized and forfeited. Furthermore, asset forfeiture is critical to weaken

1 criminal enterprises that thrive from jurisdictions with limited statutory authority to
2 take property.

3 *I Liheslaturan Guåhan* further finds that the Guam Customs and Quarantine
4 Agency (CQA), which is under the jurisdiction of the government of Guam (*see* 19
5 C.F.R. § 7.2(b)), presently lacks statutory authority to take possession and title to
6 property under asset forfeiture. While CQA has benefited from equitable sharing
7 from asset forfeitures obtained through joint-operations with federal partners, there
8 is no local procedure to enforce asset forfeiture for cases under the direct jurisdiction
9 of the agency.

10 *I Liheslaturan Guåhan* further recognizes the need to provide additional
11 resources for the exclusive use of the Guam Customs and Quarantine Agency, to
12 include, but not be limited to, personnel, facilities, and equipment, as the lack of
13 funding for these resources inhibits Guam Customs officers from effectively
14 performing their jobs, hampers efforts to intercept illegal cargo, and compromises
15 community safety.

16 *I Liheslaturan Guåhan* further finds that the University of Guam Regional
17 Center for Public Policy (UOG-RCPP) published a study on February 13, 2019 to
18 address gaps in the operations of the Guam Customs and Quarantine Agency. The
19 study, which conducted interviews with key CQA officials, recommended
20 legislation to establish a local fund that mirrored existing statutes on the Special
21 Assets Forfeiture Fund for the Guam Police Department (Chapter 79 of Title 10
22 Guam Code Annotated). *I Liheslaturan Guåhan* therefore declares in its considered
23 judgment, for the public good and the general welfare of the people of Guam, that
24 the enactment of the proposed legislation, contained herein, would enable the Guam
25 Customs and Quarantine Agency to properly perform their duties and
26 responsibilities and protect the island.

1 It is, therefore, the intent of *I Liheslaturan Guåhan* to ensure that CQA is
2 granted asset forfeiture authority similar to that which is given to other law
3 enforcement entities such as the Guam Police Department, the U.S. Immigration and
4 Customs Enforcement, and the CNMI Division of Customs Service. The creation of
5 a local asset forfeiture fund would set aside proceeds from property such as the sale
6 of vessels, conveyances, merchandise, articles used to conceal or transport material
7 instruments, as well as tainted cash, to be utilized for additional personnel, training,
8 enhancement of facilities, and purchasing of equipment, as well as other needs of
9 the agency.

10 **Section 2.** A new Article 4 is hereby *added* to Chapter 73 of Division 7,
11 Title 5, Guam Code Annotated to read as follows:

12 **“ARTICLE 4**

13 **CUSTOMS FORFEITURE FUND AND ASSET FORFEITURE**

- 14 § 73401. Creation of Fund.
15 § 73402. Items Subject to Forfeiture.
16 § 73403. Procedure.
17 § 73404. Custody.
18 § 73405. Assets Forfeited.
19 § 73406. Deposit.
20 § 73407. Expenditure.
21 § 73408. Report.

22 **§ 73401. Creation of Fund.**

23 There is hereby created, separate and apart from other funds of the
24 government of Guam, a fund to be known as the Customs Forfeiture Fund (Fund),
25 which shall be divided into two (2) accounts: one (1) account to be known as the
26 Customs Local Forfeiture Account (CLFA); and another account to be known as the
27 Customs Federal Shared Assets Forfeiture Account (CFSAFA). The Fund shall not

1 be commingled with the General Fund and shall be kept in a separate bank account,
2 administered by the Director of Guam Customs and Quarantine Agency (Director).
3 The Fund shall be expended as authorized by the Director.

4 **§ 73402. Items Subject to Forfeiture.**

5 Notwithstanding any other provision of law, or rule or regulation, the
6 following shall be subject to forfeiture and no property right shall exist in them:

7 (a) all controlled substances which have been or are intended to be
8 manufactured, distributed, dispensed, acquired or held in violation of the
9 provisions of Articles 4 or 6 of Chapter 67, Title 9, Guam Code Annotated;

10 (b) all raw materials, products, and equipment of any kind which are
11 used, or intended for use, in manufacturing, compounding, processing,
12 delivering, importing, or exporting in violation of the provisions of Articles 4
13 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11 GCA; or
14 Chapter 47 of Title 9 GCA;

15 (c) all property which is used, or intended for use, as a container for
16 property described in Subsections (a) and (b) of this Section;

17 (d) all conveyances, including aircraft, vehicles, or vessels, which
18 are used, or are intended for use, to transport, or in any manner to facilitate
19 the transportation, sale, receipt, possession, or concealment of property
20 described in Subsections (a) or (b) of this Section, except that:

21 (1) no conveyance used by any person as a common carrier in
22 the transaction of business as a common carrier shall be forfeited under
23 the provisions of this Article, unless it shall appear that the owner or
24 other person in charge of such conveyance was a consenting party or
25 colluded to a violation of Articles 4 or 6 of Chapter 67, Title 9 GCA;
26 Article 6 of Chapter 6, Title 11 GCA; or Chapter 47 of Title 9 GCA;

1 (2) no conveyance shall be forfeited under the provisions of
2 this Section by reason of any act or omission established by the owner
3 thereof to have been committed or omitted without his or her
4 knowledge or consent; and

5 (3) a forfeiture of a conveyance encumbered by a bona fide
6 security interest of the secured party if he or she neither had knowledge
7 of nor consented to the act or omission;

8 (e) all books, records, and research, including formulas, microfilm,
9 tapes, and data, which are used, or intended for use, in violation of Articles 4
10 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11 GCA; or
11 Chapter 47 of Title 9 GCA;

12 (f) all moneys, negotiable instruments, securities, or other things of
13 value furnished or intended to be furnished by any person in exchange for a
14 controlled substance in violation of Articles 4 or 6 of Chapter 67, Title 9 GCA,
15 and all proceeds traceable to such an exchange, and all moneys, negotiable
16 instruments, securities used, or intended to be used, to facilitate any violation
17 of Articles 4 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11
18 GCA; or Chapter 47 of Title 9 GCA, shall be forfeited to the Guam Customs
19 and Quarantine Agency making the seizure;

20 (g) all firearms which are visible, carried during, or used in
21 furtherance of a violation of Articles 4 or 6 of Chapter 67, Title 9 GCA; Article
22 6 of Chapter 6, Title 11 GCA; or Chapter 47 of Title 9 GCA;

23 (h) all land and real property used by the owner with his or her
24 knowledge or consent which contributed to or facilitated violation of the
25 provisions of Articles 4 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter
26 6, Title 11 GCA; or Chapter 47 of Title 9 GCA; and

1 (i) all land or real property that was purchased, traded, or acquired
2 by persons using profits or proceeds generated in violation of the provisions
3 of Articles 4 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11
4 GCA, or Chapter 47 of Title 9 GCA.

5 **§ 73403. Procedure.**

6 Notwithstanding any other provision of law, or rule or regulation, any
7 property subject to forfeiture under this Chapter may be seized by Guam Customs
8 and Quarantine Agency upon process issued by the Superior Court of Guam, except
9 that seizure without such process may be made when:

10 (a) the seizure is incident to an arrest or a search during a border
11 crossing or port of entry;

12 (b) the seizure is incident to an arrest or a search under a search
13 warrant or an inspection under an administrative inspection warrant;

14 (c) the property subject to seizure has been the subject of a prior
15 judgment in a criminal injunction or forfeiture proceeding based upon this
16 Article;

17 (d) Guam Customs and Quarantine Agency has probable cause to
18 believe that the property is directly or indirectly dangerous to health or safety;
19 or

20 (e) Guam Customs and Quarantine Agency has probable cause to
21 believe that the property has been used or intended to be used in violation of
22 Articles 4 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11
23 GCA, or Chapter 47 of Title 9 GCA.

24 (f) In the event of seizure pursuant to this Section, proceedings
25 under § 73404 of this Article shall be promptly instituted.

26 **§ 73404. Custody.**

1 Property taken or detained under this Section shall not be repleviable, but shall
2 be deemed to be in the custody of the Guam Customs and Quarantine Agency only
3 to the orders and decrees of the court. Whenever property is seized under the
4 provisions of this Article, Guam Customs and Quarantine Agency may:

5 (a) place the property under seal; or

6 (b) remove the property to a place designated by the Director or
7 his/her designee.

8 **§ 73405. Assets Forfeited.**

9 Whenever property is forfeited under this Article, the Guam Customs and
10 Quarantine Agency may:

11 (a) retain the property for official use;

12 (b) subject to any other applicable laws, sell any forfeited property which
13 is not required to be destroyed by law and which is not harmful to the public;

14 (c) require the property to be taken into custody and removed for
15 disposition in accordance with law; or

16 (d) forward it to any local or federal agency for disposition (including
17 delivery for medical or scientific use to any local agency under regulations of the
18 Attorney General of Guam, or any federal agency under regulations of the Attorney
19 General of the United States).

20 **§ 73406. Deposit.**

21 (a) There shall be deposited into the CLFA all proceeds from the sale of
22 property forfeited under any local law enforced or administered by the Guam
23 Customs and Quarantine Agency, including, but not limited to, 5 GCA Chapter 73;
24 9 GCA §§ 67.401.9, 67.601, 67.602, and 67.604; 9 GCA §§ 47.20, 47.30, and 47.40;
25 and 11 GCA §§ 6602 and 6603.

26 (b) All proceeds from the sale of forfeited property received by the Guam
27 Customs and Quarantine Agency from any cooperative agreement or memorandum

1 of understanding between the Guam Customs and Quarantine Agency and any other
2 government of Guam entity shall also be deposited into the CLFA.

3 (c) All proceeds from the sale of forfeited property received by the Guam
4 Customs and Quarantine Agency from any cooperative agreement or memorandum
5 of understanding between the Guam Customs and Quarantine Agency and the
6 federal government shall be deposited into the CFSAFA.

7 **§ 73407. Expenditure.**

8 (a) The CLFA shall be exclusively used for the following purposes:

9 (1) the payment, upon the approval of the Director, of any expenses
10 necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or
11 dispose of property under seizure, detention, or forfeited pursuant to law
12 enforced or administered by the Guam Customs and Quarantine Agency, or
13 of any other necessary expense incident to the seizure, detention, forfeiture,
14 or disposal of such property;

15 (2) for the training and professional development of personnel;

16 (3) to develop and maintain facilities utilized by the Guam Customs
17 and Quarantine Agency;

18 (4) for the purchase of equipment for the Guam Customs and
19 Quarantine Agency; or as deemed necessary by the Director.

20 (b) The CFSAFA shall be expended as authorized by the federal
21 government guidelines that govern the acquisition, use, and reporting of forfeited
22 assets.

23 **§ 73408. Report.**

24 The Director shall transmit to the Governor of Guam and the Speaker of the
25 Guam Legislature, no later than thirty (30) days after the end of each fiscal year, a
26 detailed report of each account of the Fund as follows:

1 (a) the estimated total value of property forfeited under any law
2 enforced or administered by the Guam Customs and Quarantine Agency with
3 respect to which funds were not deposited into the Fund;

4 (b) each account's beginning balance on October 1st of each year;

5 (c) sources of receipts (seized cash, conveyances, and others);

6 (d) the net amount realized from the year's operations, the amount
7 of seized cash being held as evidence, and the amount of money legally
8 allowed to be carried over to the following year;

9 (e) a year-end report of each account balance;

10 (f) a report for such fiscal year, containing financial statements,
11 reviewed by the Public Auditor, and an audited report every three (3) years,
12 including profit and loss information with respect to forfeited property (by
13 category), and financial information on forfeited property transactions; and

14 (g) any other pertinent information.”

15 **Section 3.** § 6603(c) of Article 6, Chapter 6, Title 11, Guam Code
16 Annotated, is hereby *amended* to read as follows:

17 “(c) Any individual who imports tobacco products outside the
18 exemptions identified in this Article shall be imposed a fine of three (3) times
19 the taxable assessment, which shall be determined using the tax rate
20 established in § 26603 of Article 6, Chapter 26, Title 11, Guam Code
21 Annotated, by the Officer of the Customs and Quarantine Agency at the port
22 of entry. The commodity shall be seized, and the violator of this Section shall
23 be fined an additional three (3) times the value of the current value of the
24 commodity for the cost of storage, destruction, and administrative fees for
25 tobacco exceeding the exemption pursuant to 9 GCA § 47.70. This fee shall be
26 deposited in the Customs Local Forfeiture Account (CLFA).”

1 **Section 4.** § 6604 of Article 6, Chapter 6, Title 11, Guam Code Annotated,
2 is hereby *repealed*.

3 **Section 5. Rules and Regulations.** The Director of the Guam Customs and
4 Quarantine Agency, subject to the Administrative Adjudication Law, shall
5 promulgate and adopt rules and regulations to implement the provisions of this Act,
6 including provisions establishing the procedure for collection of penalties and for
7 periodic review of the costs for providing storage, destruction, and administrative
8 fees.

9 **Section 6. Severability.** If any provision of this Act or its application to any
10 person or circumstance is found to be invalid or contrary to law, such invalidity shall
11 not affect other provisions or applications of this Act that can be given effect without
12 the invalid provision or application, and to this end the provisions of this Act are
13 severable.