I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
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.	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, DIVISION 7, TITLE 5, GUAM CODE ANNOTATED, AND TO AMEND § 6603(c), ARTICLE 6, CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, AND TO FURTHER REPEAL § 6604, ARTICLE 6, CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING ASSET FORFEITURE FOR THE GUAM CUSTOMS & QUARANTINE AGENCY AND TO FURTHER ESTABLISHING A CUSTOMS LOCAL FORFEITURE ACCOUNT.	3/18/21 1:17 p.m.	3/19/21	Committee on Education, Self-Determination and Historic Preservation, Infrastructure, Border Safety, Federal and Foreign Affairs, and Maritime Transportation	5/18/21 11:00 a.m.	5/25/21 2:20 p.m.	Request: 3/22/21 3/29/21	
SESSION DATE		**TITLE**	**DATE PASSED**	**TRANSMITTED**	**DUE DATE**	**PUBLIC LAW NO.**	**DATE SIGNED**	**NOTES**	
5/21/21		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.	5/28/21	6/1/21	6/12/21	36-36	6/11/21	Received: 6/11/21 Mess and Comm. Doc. No. 36GL-21-0685	

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

June 11, 2021

Doc Type: 36GL-21-0685
OFFICE OF THE SPEAKER
THERESE M. TERLAJE
06 11 2021
Time: 4:53pm
Received:

HONORABLE THERESE M. TERLAJE
Speaker
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Bill No. 87-36 (COR) - 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.

Buenas yan Hafa Adai Madame Speaker:

In many ways, the Customs and Quarantine Agency ("CQA") is a first line of defense against illegal activity on our island. Its mandate includes enforcing provisions of law prohibiting the importation of illegal goods and materials. Through its participation in joint-operations with federal and local law enforcement, CQA has reaped the benefits of allowances in federal law for the utilization of assets forfeited as part of illegal activities. Bill 87-36 will permit CQA to avail of similar benefits as a result of local enforcement activities. The asset forfeiture fund created as a result of this legislation will serve as a resource to help satisfy CQA's operational and training needs. Bill No. 87-36 is now ***Public Law No. 36-36***.

Senseremente,

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

COMMITTEE ON RULES
RECEIVED:
June 11, 2021
5:29 P.M.

Enclosure(s): Bill No. 87-36 (COR) *nka P.L. 36-36*

cc: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*
Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 87-36 (COR), "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,"** was on the 28th day of May 2021, duly and regularly passed.

Therese M. Tenaje
Therese M. Tenaje
Speaker

Attested:

Amanda L. Shelton
Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 1st day of June, 2021, at 1:45 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 6/11/2021

Public Law No. 36-36

2021-13804
RCVD AT CENTRAL FILES
JUN 1 '21 PM1:45
Elaine Tajalle

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

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.

Introduced by: Mary Camacho Torres
Telena Cruz Nelson
Tina Rose Muña Barnes
Joe S. San Agustin
Jose "Pedo" Terlaje
V. Anthony Ada
Frank Blas Jr.
Joanne Brown
Christopher M. Dueñas
James C. Moylan
Sabina Flores Perez
Clynton E. Ridgell
Amanda L. Shelton
Telo T. Taitague
Therese M. 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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the forfeiture of criminally-derived assets is an effective law enforcement tool

that punishes criminals, deters illegal activity, and protects the community. By denying access to ill-gotten profits, asset forfeiture discourages society from engaging in criminal acts to achieve financial gains knowing any property or profits can be seized and forfeited. Furthermore, asset forfeiture is critical to weaken criminal enterprises that thrive from jurisdictions with limited statutory authority to take property.

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

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

I Liheslaturan Guåhan further finds that the University of Guam Regional Center for Public Policy (UOG-RCPP) published a study on February 13, 2019 to address gaps in the operations of the Guam Customs and Quarantine Agency. The study, which conducted interviews with key CQA officials, recommended legislation to establish a local fund that mirrored existing statutes on the Special Assets Forfeiture Fund for the Guam Police Department (Chapter 79 of Title 10 Guam Code Annotated). *I Liheslaturan Guåhan* therefore declares in its considered judgment, for the public good and the general welfare of the people of Guam, that

the enactment of the proposed legislation, contained herein, would enable the Guam Customs and Quarantine Agency to properly perform their duties and responsibilities and protect the island.

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

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

"ARTICLE 4

CUSTOMS FORFEITURE FUND AND ASSET FORFEITURE

§ 73401. Creation of Fund.
§ 73402. Items Subject to Forfeiture.
§ 73403. Procedure.
§ 73404. Custody.
§ 73405. Assets Forfeited.
§ 73406. Deposit.
§ 73407. Expenditure.
§ 73408. Report.

§ 73401. Creation of Fund.

There is hereby created, separate and apart from other funds of the government of Guam, a fund to be known as the Customs Forfeiture Fund (Fund),

which shall be divided into two (2) accounts: one (1) account to be known as the Customs Local Forfeiture Account (CLFA); and another account to be known as the Customs Federal Shared Assets Forfeiture Account (CFSAFA). The Fund shall not be commingled with the General Fund and shall be kept in a separate bank account, administered by the Director of Guam Customs and Quarantine Agency (Director). The Fund shall be expended as authorized by the Director.

§ 73402. Items Subject to Forfeiture.

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

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

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

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

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

(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Article, unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or

colluded to a violation of Articles 4 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11 GCA; or Chapter 47 of Title 9 GCA;

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

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

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

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

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

(h) all land and real property used by the owner with his or her knowledge or consent which contributed to or facilitated violation of the

provisions of Articles 4 or 6 of Chapter 67, Title 9 GCA; Article 6 of Chapter 6, Title 11 GCA; or Chapter 47 of Title 9 GCA; and

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

§ 73403. Procedure.

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

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

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

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

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

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

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

§ 73404. Custody.

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

(a) place the property under seal; or

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

§ 73405. Assets Forfeited.

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

(a) retain the property for official use;

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

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

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

§ 73406. Deposit.

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

(b) All proceeds from the sale of forfeited property received by the Guam Customs and Quarantine Agency from any cooperative agreement or memorandum of understanding between the Guam Customs and Quarantine Agency and any other government of Guam entity shall also be deposited into the CLFA.

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

§ 73407. Expenditure.

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

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

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

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

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

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

§ 73408. Report.

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

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

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

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

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

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

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

(g) any other pertinent information."

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

"(c) Any individual who imports tobacco products outside the exemptions identified in this Article shall be imposed a fine of three (3) times the taxable assessment, which shall be determined using the tax rate established in § 26603 of Article 6, Chapter 26, Title 11, Guam Code Annotated, by the Officer of the Customs and Quarantine Agency at the port of entry. The commodity shall be seized, and the violator of this Section shall be fined an additional three (3) times the value of the current value of the commodity for the cost of storage, destruction, and administrative fees for

tobacco exceeding the exemption pursuant to 9 GCA § 47.70.This fee shall be deposited in the Customs Local Forfeiture Account (CLFA)."

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

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

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