

I Mina'trentai Siette Na Lihelaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
7-37 (COR)	Christopher M. Dueñas	AN ACT TO ADD A NEW §§ 19406 & 19505.1 AND TO AMEND §§ 19405(b), 19405(c), 19604(a), 19604(c), 19604(d)(2) & 19805(c) ALL OF CHAPTER 19, TITLE 10 GUAM CODE ANNOTATED RELATIVE TO PROHIBITING THE SUSPENSION OF CONSTITUTIONAL RIGHTS AND TO REPEAL CRIMINAL PENALTIES FOR VIOLATIONS OF EXECUTIVE ORDERS.	1/17/23 8:13 a.m.						

I MINA'TRENTAI SIETE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 7-37 (COR)

Introduced by:

Christopher M. Dueñas 

**AN ACT TO ADD A NEW §§ 19406 & 19505.1 AND TO AMEND
§§ 19405(b), 19405(c), 19604(a), 19604(c), 19604(d)(2) & 19805(c)
ALL OF CHAPTER 19, TITLE 10 GUAM CODE ANNOTATED
RELATIVE TO PROHIBITING THE SUSPENSION OF
CONSTITUTIONAL RIGHTS AND TO REPEAL CRIMINAL
PENALTIES FOR VIOLATIONS OF EXECUTIVE ORDERS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Organic Rights of citizens of Guam include:

4 48 U.S.C. § 1421b (a) states “No law shall be enacted in Guam respecting an
5 establishment of religion or prohibiting the free exercise thereof, or abridging the
6 freedom of speech, or of the press, or the right of the people peaceably to assemble
7 and to petition the government for a redress of their grievances.”

8 48 U.S.C. § 1421b (e) and (f) state that “No person shall be deprived of life, liberty,
9 or property without due process of law.” And “Private property shall not be taken
10 for public use without just compensation.”

11 48 U.S.C. § 1421b (u) Statutorily incorporates the “First through Ninth
12 Amendments” to the Constitution of the United States which include the First and
13 Second amendments.

1 48 U.S.C. § 1423b gives *I Liheslatura* the sole authority to create law. Courts,
2 throughout the United States, have held that criminal acts (felonies and
3 misdemeanors) can be created exclusively by enactment of law and not
4 administratively or through an executive order. Additionally, in a unanimous
5 decision in the case of *Timbs v. Indiana*, 586 U.S. ____ (2019), the United States
6 Supreme Court incorporated the Excessive Fines Clause of the Eighth Amendment
7 in 2019.

8 *I Liheslaturan Guåhan* further finds that the US Supreme Court, in the case of
9 *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor Of*
10 *New York on Application for Injunctive Relief* 592 U. S. ____ (2020), granted
11 requests from the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish
12 synagogues to block enforcement of a New York executive order restricting
13 attendance at houses of worship. Both the diocese and the synagogues claimed that
14 the executive order violated the right to the free exercise of religion guaranteed by
15 the First Amendment, particularly when secular businesses in the area are allowed
16 to remain open.

17 As it was the intent of the framers of the Bill of Rights in 1789 to limit the powers
18 of government over the people, it is also the intent of *I Liheslatura* to reaffirm such
19 fundamental rights of Guam’s residents during public health emergencies. The first
20 nine amendments to the United States Constitution that are guaranteed to the people
21 of Guam by 48 U.S.C. § 1421b(u) were never intended to for government to grant
22 or withhold rights and privileges to the governed. Instead, these and other
23 amendments to the United States Constitution are strict limitations and proscriptions
24 on governmental power. Such rights are often referred to as *negative right* that
25 instead of granting individual rights to its citizens, it prevents government from
26 taking away specified privileges, immunities, freedoms and protections from the

1 citizens of this country. It is the intent of *I Liheslatura* to reaffirm that such
2 fundamental rights on Guam continue to exist during declared public health
3 emergencies.

4 **Section 2.** A new § 19406 is *added* to Article 4, Chapter 19, Title 10, Guam
5 Code Annotated to read:

6 **“§ 19406 Reaffirmation of Organic/Constitutional Rights.**

7 No executive order, agency directive or administrative rule or regulation,
8 issued or promulgated pursuant to a declaration of a *state of public health emergency*
9 or in anticipation or contemplation of a declaration of a *state of public health*
10 *emergency*; shall:

11 (a) prohibit freedom of assembly in or on one’s residential property,

12 (b) prohibit the free exercise of religion,

13 (c) diminish or suspend a person’s 2nd Amendment Constitutional rights as
14 specified in Chapter 60 of Title 10 Guam Code Annotated,

15 (d) deprive any person of liberty without due process of law,

16 (e) permit the confiscation or seizure of any lawfully owned property without
17 due process and just compensation,

18 (f) create or have the effect to create criminal acts or redefine or expand the
19 scope of existing criminal acts or civil violations that are defined by Public Law,

20 (g) impose excessive fines, or(h) deny access to public information as required
21 by the *Freedom of Information Act* (Chapter 10, 5 GCA).”

22 **Section 3.** A new § 19505.1 is *added* to Chapter 19, Title 10, Guam Code
23 Annotated to read as follows:

1
2 **“§ 19505.1. Proscription of Seizure of Patient’s Lawfully Prescribed Drugs,**
3 **Medical Supplies and Appliances.**

4 Notwithstanding any other provision of law, it is unlawful for any official of
5 the Government of Guam to seize, confiscate or order to seize or confiscate any
6 resident’s lawfully prescribed drugs, pharmaceutical agents, medical devices and
7 medical supplies that are imported to Guam via the United States Postal Service or
8 a private shipping carrier or agent.”

9 **Section 4.** § 19405(b) of Chapter 19, Title 10, Guam Code Annotated is
10 *amended* to read as follows:

11 “(b) Automatic Termination. Notwithstanding any other provision of this
12 Chapter, the declaration of a state of public health emergency shall be terminated
13 automatically after thirty (30) days, unless renewed by ~~I Magalåhen Guåhan~~ ~~[The~~
14 ~~Governor]~~ I Liheslaturan Guåhan under the same standards and procedures set forth
15 in this Article. Any such renewal shall also be terminated automatically after thirty
16 (30) days, unless renewed by ~~the I Magalåhen Guåhan~~ ~~[The Governor]~~ I
17 Liheslaturan Guåhan under the same standards and procedures set forth in this
18 Article.

19 **Section 5.** § 19405(c) of Chapter 19, Title 10, Guam Code Annotated is
20 *amended* to read as follows:

21 “(c) ~~[The Guam Legislature]~~ I Liheslaturan Guåhan, by a resolution of a
22 majority ~~vote~~ of its members, ~~[The Guam Legislature]~~ may terminate, in part or in
23 whole, the declaration of a state of public health emergency at any time from the
24 date of original declaration upon finding that the occurrence of an illness or health
25 condition that caused the emergency does not or no longer poses a high probability

1 of a large number of deaths in the affected population, a large number of incidents
2 of serious permanent or long-term disability in the affected population or a
3 significant risk of substantial future harm to a large number of people in the affected
4 population. ~~Such a termination by [The Guam Legislature] shall override any~~
5 ~~renewal by I Magalåhen Guåhan [The Governor].~~ Any request, attempt or renewal
6 of such earlier termination or partial termination by *I Magalahen/haga Guahan* shall
7 be of no force or effect without a majority vote of *I Liheslaturan Guahan*.”

8 **Section 6.** § 19604(a) of Article 6, Chapter 19, Title 10, Guam Code
9 Annotated is amended to read:

10 “(a) Authorization. During the public health emergency, the public health
11 authority may isolate, consistent with the definition of ‘isolation’ in § 19103(h), or
12 quarantine, consistent with the definition of ‘quarantine’ in § 19103(o), an individual
13 or groups of individuals. This includes individuals or groups who have not been
14 vaccinated, treated, tested, or examined pursuant to §§ 19602 and 19603. The public
15 health authority may also establish and maintain places of isolation and quarantine,
16 and set rules and make orders. Failure to obey these rules, orders or provisions shall
17 constitute a ~~misdemeanor~~ a civil violation that *may* be subject to a fine not to exceed
18 Twenty-Five Dollars (\$25.00).”

19 **Section 7.** § 19604(c) of Article 6, Chapter 19, Title 10, Guam Code
20 Annotated is amended to read:

21 “(c) Cooperation. Persons subject to isolation or quarantine shall obey the
22 public health authority’s rules and orders; and shall not go beyond the isolation or
23 quarantine premises. Failure to obey these provisions shall constitute a ~~misdemeanor~~
24 a civil violation that *may* be subject to a fine not to exceed Twenty-Five Dollars
25 (\$25.00).”

1 **Section 8.** § 19604(d)(2) of Article 6, Chapter 19, Title 10, Guam Code
2 Annotated is amended to read:

3 “(2) Unauthorized Entry. No person, other than a person authorized by the
4 public health authority, shall enter isolation or quarantine premises. Failure to obey
5 this provision shall constitute a ~~misdemeanor~~ a civil violation that may be subject to
6 a fine not to exceed Twenty-Five Dollars (\$25.00).”

7 **Section 9.** § 19805(c) of Chapter 19, Title 10, Guam Code Annotated is
8 *amended* to read as follows:

9 “(c) Amount. The amount of compensation shall be calculated in the same
10 manner as compensation due for taking of property pursuant to non-emergency
11 eminent domain procedures, as provided in Chapter 15 of Title 21 of the Guam Code
12 Annotated, except that the amount of compensation calculated for items obtained
13 under §19505 shall be ~~limited to the costs incurred to produce the item~~ the
14 replacement cost of the item on the date of seizure plus the cost of shipping. If the
15 Government of Guam fails to pay the importer within thirty (30) days of seizure, the
16 Government of Guam shall pay a penalty of ten percent (10%) of the replacement
17 value, of the item seized, on the date of seizure plus the cost of shipping.”