

**I MINA TRENTA NA LIHESLATURAN GUAHAN
2010 (SECOND) Regular Session**

Bill No. _____

Introduced by

Ray Tenorio
A.B. Palacios, Sr.

**AN ACT ADDING A NEW CHAPTER 10 TO TITLE 6 OF THE
GUAM CODE ANNOTATED RELATIVE TO PROTECTING
JOURNALISTS AND THE FREEDOM OF THE PRESS, AND TO
ADD A NEW CHAPTER 91 TO TITLE 9 OF THE GUAM CODE
ANNOTATED RELATIVE TO PROVIDING PENALTIES FOR
VIOLATING THE FREEDOM OF THE PRESS.**

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

2 **Section 1. Legislative Findings and Intent.**

3 Through this act, *I Liheslaturan Guahan* performs its duty of ensuring the
4 inviolability of the freedom of its citizens. The Legislature is protecting and upholding
5 the freedom of the press through this Act. The right to a free press is among the most
6 fundamental rights of democracy. Hundreds of thousands of men and women have died
7 protecting this foundation of our country.

8 Journalists are every citizen's conduit for truth and accountability in government.
9 They seek the truth and report it. Censorship of the journalist's voice is the censorship of
10 the people. It is censorship of the truth and the freedom to seek it. It is intimidation of the
11 pursuit of truth.

12 No person, association, agency or government may stand between the People and
13 their right to know the truth, whether by reading a publication, listening to radio
14 broadcasts of the news, watching television or streaming versions of news. The individual
15 pursuit of truth is the choice of the citizen to trust or not trust a journalist, an editor, or a
16 news organization. The government has no place in making this choice.

17

18 **Section 2. Guam Privacy Protection Act.** There is hereby created a new Section
19 10 to Article 6, Guam Code Annotated, to read:

20

“Chapter 10

1 **Guam Privacy Protection Act**

2 **§10101. Protection of Journalists and the Freedom of the Press.**

3 **(a) Work Product Materials.** Notwithstanding any other law, it shall be
4 unlawful for a government agency, officer or employee, in connection with the
5 investigation or prosecution of a criminal offense, to search for or seize any work product
6 materials possessed by a person reasonably believed to have a purpose to disseminate to
7 the public a newspaper, book, broadcast, or other similar form of public communication;
8 but this provision shall not impair or affect the ability of any government officer or
9 employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

10 (1) there is probable cause to believe that the person possessing such materials
11 has committed or is committing the criminal offense to which the materials relate:

12 Provided, however, that a government officer or employee may not search for or seize
13 such materials under the provisions of this paragraph if the offense to which the
14 materials relate consists of the receipt, possession, communication, or withholding of
15 such materials or the information contained therein; or

16 (2) there is reason to believe that the immediate seizure of such materials is
17 necessary to prevent the death of, or serious bodily injury to, a human being.

18 (3) No warrant shall issue for the search and seizure of any work product
19 materials possessed by a person reasonably believed to have a purpose to disseminate
20 to the public a newspaper, book, broadcast, or other similar form of public
21 communication unless supported by an affidavit justifying its necessity under sections
22 (a)(2) and (a)(3) of this act.

23 **(b) Other Documents.** Notwithstanding any other law, it shall be unlawful for a
24 government agency, officer or employee, in connection with the investigation or
25 prosecution of a criminal offense, to search for or seize documentary materials, other than
26 work product materials, possessed by a person in connection with a purpose to
27 disseminate to the public a newspaper, book, broadcast, or other similar form of public
28 communication; but this provision shall not impair or affect the ability of any government
29 officer or employee, pursuant to otherwise applicable law, to search for or seize such
30 materials, if—

1 (1) there is probable cause to believe that the person possessing such materials
2 has committed or is committing the criminal offense to which the materials relate:
3 Provided, however, that a government officer or employee may not search for or seize
4 such materials under the provisions of this paragraph if the offense to which the
5 materials relate consists of the receipt, possession, communication, or withholding of
6 such materials or the information contained therein;

7 (2) there is reason to believe that the immediate seizure of such materials is
8 necessary to prevent the death of, or serious bodily injury to, a human being;

9 (3) there is reason to believe that the giving of notice pursuant to a subpoena
10 duces tecum would result in the destruction, alteration, or concealment of such
11 materials; or

12 (4) such materials have not been produced in response to a court order
13 directing compliance with a subpoena duces tecum, and—

14 (A) all appellate remedies have been exhausted; or

15 (B) there is reason to believe that the delay in an investigation or trial
16 occasioned by further proceedings relating to the subpoena would threaten the
17 interests of justice.

18 (5) No warrant shall issue for the search and seizure of any thing or
19 document, other than work product material, possessed by a person reasonably
20 believed to have a purpose to disseminate to the public a newspaper, book, broadcast,
21 or other similar form of public communication unless supported by an affidavit
22 justifying its necessity under sections (b)(1)-(4) of this act.

23 **(c) Objections to Court Ordered Subpoenas; Affidavits.** In the event a search
24 warrant is sought pursuant to paragraph (4)(B) of subsection (b) of this section, the
25 person possessing the materials shall be afforded adequate opportunity to submit an
26 affidavit setting forth the basis for any contention that the materials sought are not subject
27 to seizure.”

28
29 **Section 3. Criminal Penalties for Violating the Freedom of the Press.** There is
30 hereby created a new Chapter 91 to Title 9, Guam Code Annotated, to read:

31 **“§91.01. Crimes Against the Freedom of the Press.**

1 Any person violating any provision of Chapter 10 of Title 6, Guam Code
2 Annotated, Guam Privacy Protection Act, upon conviction thereof, shall be guilty of a
3 felony of the third degree. It shall not be a defense to a violation of this section that the
4 person executing a search was in possession of a warrant.”
5

6 **Section 4. Severability.** Any provision of this Act held to be invalid or
7 unenforceable by its terms, or as applied to any person or circumstance, shall be
8 construed so as to give it the maximum effect permitted by law, unless such holding shall
9 be one of utter invalidity or unenforceability, in which event such provision shall be
10 deemed severable here from and shall not affect the remainder hereof or the application
11 of such provision to other persons not similarly situated or to other, dissimilar
12 circumstances.