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I MINA' TRENTI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 24-32-(COR)
Introduced by:

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A.A. Yamashita, Ph.D.

AN ACT TO *ADD* A NEW ARTICLE 24 TO CHAPTER 12, TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO ALLOWING THE MEDICAL USE OF CANNABIS, AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT, PROVIDING PENALTIES, AND FOR OTHER PURPOSES, ALSO KNOWN AS THE JOAQUIN CONCEPCION COMPASSIONATE CANNABIS USE ACT OF 2013.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. A New Article 24 is hereby *added* to Chapter 12 of Title 10 of
3 the Guam Code Annotated to read as follows:

4 "ARTICLE 24.

5 THE JOAQUIN CONCEPCION COMPASSIONATE CANNABIS USE ACT
6 OF 2013.

- 7 §122401. Title.
- 8 §122402. Purpose of Act.
- 9 §122403. Definitions.
- 10 §122404. Exemption from Criminal and Civil Penalties
11 for Medical Use of Cannabis.
- 12 §122405. Prohibitions, Restrictions and Limitations on
13 the Medical Use of Cannabis—Criminal
14 Penalties.
- 15 §122406. Advisory Board Created—Duties.
- 16 §122407. Department Rules; Registry Identification
17 Cards.
- 18 §122408. Homegrown Cultivation Registrations.

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2 **§122401. Title.** This Act *shall* be known and *shall* be cited as the ‘*The*
3 *Joaquin Concepcion Compassionate Cannabis Use Act of 2013.*’

4 **§122402. Purpose of Act.** The purpose of this Act is to allow the beneficial
5 use of medical cannabis in a regulated system for alleviating symptoms caused by
6 debilitating medical conditions and their medical treatments.

7 **§122403. Definitions.** As used in this Act:

8 (A) “Adequate supply” means an amount of cannabis, in any form approved
9 by the Department, possessed by a qualified patient or collectively possessed
10 by a qualified patient and the qualified patient’s primary caregiver that is
11 determined by rule of the Department to be no more than reasonably
12 necessary to ensure the uninterrupted availability of cannabis for a period of
13 three (3) months and that is derived solely from an intrastate source.

14 (B) “Cannabis” means all parts of the plant of the genus cannabis, whether
15 growing or not, the seeds thereof, the resin extracted from any part of the plant,
16 and every compound, manufacture, salt, derivative, mixture, or preparation of the
17 plant, its seeds, or its resin, including marijuana concentrate. “Cannabis” does not
18 include the mature stalks of the plant, fiber produced from the stalks, oil, or cake
19 made from the seeds of the plant, sterilized seed of the plant which is incapable of
20 germination, or the weight of any other ingredient combined with marijuana to
21 prepare topical or oral administrations, food, drink, or other products.

22 (C) “Debilitating medical condition” means:

- 23 (1) cancer;
- 24 (2) glaucoma;
- 25 (3) multiple sclerosis;
- 26 (4) damage to the nervous tissue of the spinal cord, with objective
27 neurological indication of intractable spasticity;
- 28 (5) epilepsy;

1 (6) positive status for human immunodeficiency virus or acquired
2 immune deficiency syndrome;

3 (7) admitted into hospice care in accordance with rules promulgated
4 under this Act;

5 (8) post-traumatic stress disorder;

6 (9) rheumatoid arthritis or similar chronic autoimmune inflammatory
7 disorders; or

8 (10) any other medical condition, medical treatment or disease as approved
9 by the Department;

10 (D) “Department” means the Department of Public Health and Social
11 Services.

12 (E) “Homegrown cultivation registration” means a registration issued to
13 qualified patients or their personal caregivers under the terms of Section 122408 of
14 this Act.

15 (F) “Hospice care” means palliative care for the terminally and seriously ill
16 provided in a hospital, nursing home, or private residence.

17 (G) “Licensed producer” means any person or association of persons within
18 Guam that the Department determines to be qualified to produce, possess,
19 distribute and dispense cannabis pursuant to this Act and that is licensed by the
20 Department.

21 (H) “Medical use” means the acquisition, cultivation, possession, processing,
22 (including development of related products such as food, tinctures, aerosols, oils,
23 or ointments), transfer, transportation, sale, distribution, dispensing, or
24 administration of cannabis, as well as the possession of cannabis paraphernalia, for
25 the benefit of qualifying patients in the treatment of debilitating medical
26 conditions, or the symptoms thereof.

27 (I) “Practitioner” means a person licensed in Guam to prescribe and
28 administer drugs that are subject to the Guam Uniform Controlled Substances Act.

1 (J) “Primary caregiver” means a resident of Guam who is at least eighteen
2 (18) years of age and who has been designated by the qualified patient as being
3 necessary to assist the patient in the medical use of cannabis in accordance with the
4 provisions of this Act, and who so agrees to assist the patient. Primary caregivers
5 are prohibited from consuming cannabis obtained for the personal, medical use of
6 the qualified patient.

7 (K) “Qualified patient” means a resident of Guam who has been diagnosed
8 by a practitioner as having a debilitating medical condition and has received
9 written certification and a registry identification card issued pursuant to this Act.

10 (L) “Written certification” means a statement in a patient’s medical records
11 or a statement signed by a patient's practitioner that, in the practitioner's
12 professional opinion, the patient has a debilitating medical condition and the
13 practitioner believes that the potential health benefits of the medical use of
14 cannabis would likely outweigh the health risks for the patient. A written
15 certification is not valid for more than one (1) year from the date of issuance.

16 **§122404. Exemption from Criminal and Civil Penalties for the Medical**
17 **use of Cannabis.**

18 (A) A qualified patient *shall not* be subject to arrest, prosecution or penalty
19 in any manner for the possession of or the medical use of cannabis if the quantity
20 of cannabis does not exceed an adequate supply.

21 (B) A qualified patient’s primary caregiver *shall not* be subject to arrest,
22 prosecution or penalty in any manner for the possession of cannabis for medical
23 use by the qualified patient if the quantity of cannabis does not exceed an adequate
24 supply.

25 (C) Subsection A of this section *shall not* apply to a qualified patient under
26 the age of eighteen years, unless:

27 (1) the qualified patient’s practitioner has explained the potential risks
28 and benefits of the medical use of cannabis to the qualified patient and

1 to a parent, guardian or person having legal custody of the qualified
2 patient; and

3 (2) a parent, guardian or person having legal custody consents in
4 writing to:

5 (a) allow the qualified patient's medical use of cannabis;

6 (b) serve as the qualified patient's primary caregiver; and

7 (c) control the dosage and the frequency of the medical use of
8 cannabis by the qualified patient.

9 (D) A qualified patient or a primary caregiver *shall* be granted the full legal
10 protections provided in this section if the patient or caregiver is in possession of a
11 registry identification card.

12 (E) A qualified patient who fails to register and receive a registry
13 identification card from the Department but who nevertheless has received a
14 written certification from their physician for the medical use of cannabis may be
15 subject to arrest or prosecution but may raise an affirmative defense at trial.

16 (F) A practitioner *shall not* be subject to arrest or prosecution, penalized in
17 any manner or denied any right or privilege for recommending the medical use of
18 cannabis or providing written certification for the medical use of cannabis pursuant
19 to this Act.

20 (G) A licensed producer *shall not* be subject to arrest, prosecution or
21 penalty, in any manner, for the production, possession, distribution or dispensing
22 of cannabis in compliance with this Act.

23 (H) Any property interest that is possessed, owned or used in connection
24 with the medical use of cannabis, or acts incidental to such use, *shall not* be
25 harmed, injured or destroyed while in the possession of state or local law
26 enforcement officials. Any such property interest *shall not* be forfeited under any
27 local law providing for the forfeiture of property except as provided in the Special
28 Assets Forfeiture Fund, 10 GCA §§ 79101 - 79105. Cannabis, paraphernalia or

1 other property seized from a qualified patient or primary caregiver in connection
2 with the claimed medical use of cannabis *shall* be returned immediately upon the
3 determination by a court or prosecutor that the qualified patient or primary
4 caregiver is entitled to the protections of the provisions of this Act, as may be
5 evidenced by a failure to actively investigate the case, a decision not to prosecute,
6 the dismissal of charges or acquittal.

7 (I) A person *shall not* be subject to arrest or prosecution for a cannabis-
8 related offense for simply being in the presence of the medical use of cannabis as
9 permitted under the provisions of this Act.

10 (J) A person *shall not* be subject to arrest or prosecution for a cannabis-
11 related offense for simply allowing one's property to be used by qualified patients
12 or their primary caregivers for the homegrown cultivation of cannabis to the extent
13 permitted under Section 122408 of this Act.

14 **§122405. Prohibitions, Restrictions and Limitations on the Medical Use**
15 **of Cannabis—Criminal Penalties.**

16 (A) Participation in the medical use of cannabis by a qualified patient or
17 primary caregiver does not relieve the qualified patient or primary caregiver from:

18 (1) criminal prosecution or civil penalties for activities not permitted
19 by this Act;

20 (2) liability for damages or criminal prosecution arising out of the
21 operation of a vehicle while under the influence of cannabis; or

22 (3) criminal prosecution or civil penalty for possession or use of
23 cannabis:

24 (a) in a school bus or public vehicle;

25 (b) on school grounds or property;

26 (c) in the workplace of the qualified patient's or primary
27 caregiver's employment; or

28 (d) at a public park, recreation center, youth center or other

1 public place.

2 (B) A person who makes a fraudulent representation to a law enforcement
3 officer about the person's participation in a medical use of cannabis program to
4 avoid arrest or prosecution for a cannabis-related offense is guilty of a petty
5 misdemeanor.

6 (C) If a licensed producer sells, distributes, dispenses or transfers cannabis
7 to a person not permitted to participate in the medical use of cannabis under this
8 Act, or obtains or transports cannabis outside Guam in violation of federal law, the
9 licensed producer shall be subject to arrest, prosecution and civil or criminal
10 penalties in accordance with Guam law.

11 **§122406. Advisory Board Created—Duties.** The Director of the
12 Department *shall* establish an advisory board consisting of seven (7) members, six
13 (6) of which *shall* be practitioners representing the fields of neurology, pain
14 management, medical oncology, psychiatry, infectious disease, and family
15 medicine, and one (1) of which shall be a member of the public at large. The
16 practitioners *shall* be board-certified in their area of specialty and knowledgeable
17 about the medical use of cannabis. The members *shall* be chosen for appointment
18 by the Director from a list proposed by the Guam Board of Medical Examiners. A
19 quorum of the advisory board shall consist of three (3) members. The advisory
20 board *shall*:

21 (A) review and recommend to the Department for approval additional
22 debilitating medical conditions that would benefit from the medical use
23 of cannabis;

24 (B) accept and review petitions to add medical conditions, medical
25 treatments or diseases to the list of debilitating medical conditions that
26 qualify for the medical use of cannabis;

27 (C) convene at least twice per year to conduct public hearings and to
28 evaluate petitions,

1 which shall be maintained as confidential personal health information, to add
2 medical conditions, medical treatments or diseases to the list of debilitating
3 medical conditions that qualify for the medical use of cannabis; and

4 (D) recommend quantities of cannabis that are necessary to constitute an
5 adequate supply for qualified patients and primary caregivers.

6 **§122407. Department Rules; Registry Identification Cards.**

7 (A) No later than nine (9) months after enactment of this Act, and after
8 consultation with the advisory board, the Department *shall* promulgate rules in
9 accordance with the Administrative Adjudication law, 5 GCA § 9100 *et seq.*, to
10 implement the purpose of this Act. The rules *shall*:

11 (1) govern the manner in which the Department will consider
12 applications for registry identification cards and for the renewal of
13 identification cards for qualified patients and primary caregivers;

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15 (2) define the amount of cannabis that is necessary to constitute an
16 adequate supply, including amounts for topical treatments;

17 (3) identify criteria and set forth procedures for including additional
18 medical conditions, medical treatments or diseases to the list of
19 debilitating medical conditions that qualify for the medical use of
20 cannabis. Procedures shall include a petition process and shall allow
21 for public comment and public hearings before the advisory board;

22 (4) set forth additional medical conditions, medical treatments or
23 diseases to the list of debilitating medical conditions that qualify for
24 the medical use of cannabis as recommended by the advisory board;

25 (5) identify requirements for the licensure of producers and cannabis
26 production facilities and set forth procedures to obtain licenses;

27 (6) develop a distribution system for medical cannabis that provides
28 for:

1 (a) cannabis production facilities within Guam housed on
2 secured grounds and operated by licensed producers; and
3 (b) distribution of medical cannabis to qualified patients or their
4 primary caregivers to take place at locations that are designated
5 by the Department and that are not within one thousand (1,000)
6 feet of any school, church or daycare center;

7 (7) determine additional duties and responsibilities of the advisory
8 board;

9 (8) be revised and updated as necessary; and

10 (9) set application fees for registry identification cards so as to defray
11 the administrative costs of implementing this Act.

12 (B) The Department *shall* issue registry identification cards to a patient and
13 to the primary caregiver for that patient, if any, who submit the following, in
14 accordance with the Department's rules:

15 (1) a written certification;

16 (2) the name, address and date of birth of the patient;

17 (3) the name, address and telephone number of the patient's
18 practitioner; and

19 (4) the name, address and date of birth of the patient's primary
20 caregiver, if any.

21 (C) The Department *shall* verify the information contained in an application
22 submitted pursuant to Subsection B of this section and shall approve or deny an
23 application within thirty days of receipt. The Department may deny an application
24 only if the applicant did not provide the information required pursuant to
25 Subsection B of this section or if the Department determines that the information
26 provided is false. A person whose application has been denied *shall not* reapply
27 for six (6) months from the date of the denial unless otherwise authorized by the
28 Department.

1 (D) The Department *shall* issue a registry identification card within five (5)
2 days of approving an application, and a card *shall* expire one year after the date of
3 issuance. A registry identification card *shall* contain:

4 (1) the name, address and date of birth of the qualified patient and
5 primary caregiver, if any;

6 (2) the date of issuance and expiration date of the registry
7 identification card; and

8 (3) other information that the Department may require by rule.

9 (E) A person who possesses a registry identification card *shall* notify the
10 Department of any change in the person's name, address, qualified patient's
11 practitioner, qualified patient's primary caregiver or change in status of the
12 qualified patient's debilitating medical condition within ten (10) days of the
13 change.

14 (F) Possession of or application for a registry identification card *shall not*
15 constitute probable cause or give rise to reasonable suspicion for a governmental
16 agency to search the person or property of the person possessing or applying for
17 the card.

18 (G) The Department *shall* maintain a confidential file containing the names
19 and addresses of the persons who have either applied for or received a registry
20 identification card. Individual names on the list *shall* be confidential and not
21 subject to disclosure, except:

22 (1) to authorized employees or agents of the Department as necessary
23 to perform the duties of the Department pursuant to the provisions of
24 this Act;

25 (2) to authorized employees of state or local law enforcement
26 agencies, but only for the purpose of verifying that a person is
27 lawfully in possession of a registry identification card; or

28 (3) as provided in the federal Health Insurance Portability and

1 Accountability Act of 1996, codified at 42 U.S.C. § 1320d *et seq.*

2 **§122408. Homegrown Cultivation Registrations.** If after nine (9) months
3 after enactment of this Act, the Department has failed to promulgate rules as
4 mandated under Section 122407(A) of this Act for the production and distribution
5 of medical cannabis, the Department *shall* issue a homegrown cultivation
6 registration to a qualifying patient allowing the patient or the patient’s personal
7 caregiver to cultivate a limited number of plants, sufficient to maintain an adequate
8 supply of cannabis, and *shall* require cultivation and storage only in an enclosed,
9 locked facility. Until the Department promulgates said rules, the written
10 recommendation of a qualifying patient’s physician *shall* constitute a valid
11 cultivation registration.”

12 **Section 2. The following *new* subsection (g) is added to Appendix A of**
13 **Chapter 67 of Title 9 Guam Code Annotated, to read as follows:**

14 “(g) The enumeration of marihuana, tetrahydrocannabinols or chemical
15 derivatives of these as Schedule I controlled substances does not apply to the
16 medical use of cannabis pursuant to the Joaquin Concepcion Compassionate
17 Cannabis Use Act of 2013.”

18 **Section 3. Temporary Provision.**

19 (A) During the period between December 1, 2013, and thirty (30) days after
20 the effective date of rules promulgated by the Department pursuant to Subsection
21 122407(A) of this Act, a qualified patient who would be eligible to engage in the
22 medical use of cannabis in accordance with this Act but for the lack of effective
23 rules concerning registry identification cards, licensed producers, cannabis
24 production facilities, distribution system and adequate supply, may obtain a written
25 certification from a practitioner and upon presentation of that certification to the
26 Department, the Department *shall* issue a temporary certification for participation
27 in the program. The Department *shall* maintain a list of all temporary certificates
28 issued pursuant to this section.

1 (B) A person possessing a temporary certificate and the person's primary
2 caregiver are not subject to arrest, prosecution, civil or criminal penalty or denial
3 of any right or privilege for possessing cannabis if the amount of cannabis
4 possessed collectively is not more than the amount that is specified on the
5 temporary certificate issued by the Department.

6 (C) A practitioner *shall not* be subject to arrest or prosecution to be
7 penalized in any manner or denied any right or privilege for recommending the
8 medical use of cannabis or providing written certification for the medical use of
9 cannabis pursuant to this Act on or after December 1, 2013.

10 **Section 4. Severability.** *If* any provision of this Act or its application to
11 any person or circumstance is found to be invalid or contrary to law, such
12 invalidity shall not affect other provisions or applications of this Act which can be
13 given effect without the invalid provisions or application, and to this end the
14 provisions of this Act are severable.

15 **Section 5. Effective date.** The Act *shall* take effect upon enactment into
16 law.