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MAJORITY LEADER

CHAIRPERSON
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

June 15, 2010

The Honorable Judith T. Won Pat, Ed.
The Honorable Members of I Mina'Trenta na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

Dear Colleague:

I am writing to seek support for my bill on a topic that has already generated some interesting public discussion, namely allowing licensed physicians in Guam to recommend and prescribe cannabis (marijuana) to qualified patients. Today at 4:20 p.m., I introduced Bill No. 420-30 (COR), entitled "The Compassionate Health Care Act of 2010."

Bill 420 proposes to establish several "Compassionate Health Care Centers" that will grow, process and dispense cannabis, by prescription only, to qualified patients. The bill also proposes to impose some additional restrictions on the use of cannabis in public and in the presence of minors, and eliminate any penalties on possession of an ounce or less of cannabis.

I strongly believe that this is a health care issue that is too important to politicize. The first exhibit included with Bill 420 should convince most skeptics that the federal government is in agreement.

Cannabis is most frequently prescribed for people who suffer from debilitating illnesses including "cancer; human immunodeficiency virus (HIV); acquired immune deficiency syndrome (AIDS); any chronic or debilitating disease or medical condition or treatment that produces cachexia (wasting syndrome); severe pain; severe nausea; seizures, including those characteristic of epilepsy; severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease." There is a large body of evidence that shows that the use of cannabis has brought relief and comfort to a number of suffering individuals. Several have approached me, including some veterans, who believe that cannabis could ease their pain and suffering.

I have included with this letter a section-by-section summary of Bill 420. I hope each member will take the opportunity to read the bill and elect to join as co-sponsors of the legislation. I look forward to your feedback.

Very Truly Yours,


Rory J. Respicio

**Section by Section Analysis of
BILL NO. 420-30 (COR)
"THE COMPASSIONATE HEALTH CARE ACT OF 2010"
(permitting medicinal cannabis use in Guam)**

SECTION BREAKDOWN

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PART I - FINDINGS & INTENT

SECTION 1 - FINDINGS OF FACT

The bill states 10 (ten) findings of fact:

1. **The U.S. Justice Department has ordered agents to stop arresting patients and suppliers who follow state medical cannabis laws.**
 - Department of Justice Memorandum of Oct. 19, 2009, Subject: "Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana" attached to draft bill as exhibit 1; web link provided.
 - Los Angeles Times story attached to draft bill as exhibit 2; web link provided.
2. **Twenty-seven (27) jurisdictions within the United States have reformed their cannabis laws.**
 - About half of the U.S. population resides in the 27 jurisdictions listed, in which laws have been passed to either decriminalize cannabis or to permit medical cannabis use, or both.
3. **Courts have ruled that doctors who prescribe cannabis are safe from prosecution.**
 - On October 29, 2002, the Ninth Circuit Court of Appeals unanimously upheld the First Amendment right of doctors to recommend cannabis to their patients. A year later the Supreme Court let the ruling stand.
 - Conant v. Walters Opinion attached as Exhibit 3.
 - Hawaii Guide to use of Medical Marijuana attached as Exhibit 4.
4. **Many professionals support the use of cannabis for certain medicinal purposes.**

Statements made by the following professionals are included:

 - Former U.S. Surgeon General Joycelyn Elders, MD
 - DEA Administrative Law Judge Francis L. Young
 - Emeritus Professor of Psychiatry Lester Grinspoon, MD, Harvard Medical School
 - Donald Abrams, MD, et al. "Short-Term Effects of Cannabinoids in Patients with HIV-1 Infection," Annals of Internal Medicine
 - Colin Blakemore, PhD, Chair, Dept. of Physiology, University of Oxford (U.K.), and Leslie Iversen, PhD, Professor of Pharmacology, Oxford University

5. **Cannabis is safer than alcohol and cigarettes.**

Scientific studies reveal that cannabis is safer than products that are legal and available for adult consumption. Various studies were conducted by the following individuals:

 - Jack E. Henningfield, PhD for the National Institute on Drug Abuse (NIDA)
 - Professor David Nutt, Bristol University, Great Britain. Web link provided.
 - P.A. Fried and C.M. O'Connell, Department of Psychology, Carleton University, Ottawa, Ontario, Canada. Web link provided.

6. **Enforcement costs \$10 Billion annually.**
 - Research studies, including the Miron Report [also see No. 10 below], legalizing cannabis would save \$7.7 billion per year if government stopped spending on enforcement and prohibition, and yield tax revenue of \$2.4 billion per year if cannabis were taxed like all other goods.

 - Miron report attached to draft bill as Exhibit 5.

7. **Strict laws don't work and don't reduce availability.**
 - Comparisons are drawn between the current situation with cannabis and the failed attempt in the 1920 and '30s by the United States government to make alcoholic beverages illegal.

8. **Relaxed laws don't increase use.**
 - The National Research Council has found that in states where cannabis is decriminalized, the liberal laws have neither contributed to an increase in cannabis consumption, nor negatively impacted adolescent attitudes toward drug use.

9. **Survey shows most Americans support legalizing medicinal cannabis.**
 - In a national (48 states) survey conducted March 10-14, 2010 among 1,500 adults, the Pew Research Center for the People & the Press, found that 73% were in favor of the sale and use of cannabis for medicinal purposes. 23% were opposed. The survey area did not include Alaska, Washington, D.C. and Hawaii, three jurisdictions in which medicinal cannabis programs have already been implemented. Web link provided.

10. 2005 Report estimates multi-billion-dollar economic windfall if cannabis is legalized and taxed.

- The Miron Report [also see No. 6, above] published in 2005 by Harvard University Economics Professor Jeffrey A. Miron, examined the budgetary implications of taxing and regulating cannabis like other goods. Savings to law enforcement and increases in tax revenues would exceed \$10 billion, according to his findings. Nobel Laureate Economist Milton Friedman and 553 other distinguished economists and educators support the Miron report and have appealed for officials to take action.

- Miron report attached to draft bill as Exhibit 5.

SECTION 2 - LEGISLATIVE FINDINGS

Based on the "Findings of Fact" presented in Section 1, *I Liheslatura* finds that:

- a. Laws criminalizing cannabis have failed;
- b. Many in need of medicinal cannabis have been denied treatment because of outmoded laws;
- c. The federal government's former policies have proven to be a tremendous waste of resources that could be better expended on more serious crimes;
- d. The Obama administration's progressive cannabis policy, implemented in October 2009, sends a clear signal to jurisdictions without medicinal cannabis laws that they should consider assisting their citizens who can be comforted through the use of this drug;
- e. For a number of years, efforts have been, and are being made in jurisdictions across the United States to implement a more sensible policy relative to cannabis usage;
- f. Medical and legal professionals have spoken out in favor of the medicinal use of cannabis;
- g. The compassionate national trend of relaxing laws relative to medicinal cannabis offers needed assistance and relief to many people across our country; and
- h. As lawmakers, *I Liheslatura* has the duty to regulate laws relating to health, medical practices and well-being that respect the personal decisions made jointly by patients and their physicians.

SECTION 3 - LEGISLATIVE INTENT

Based on the Legislative findings listed in Section 2 of this Act,

It is the intent of *I Liheslatura*:

- a. To permit licensed physicians to recommend and prescribe medicinal cannabis to their patients;
- b. To permit the licensing of Compassionate Care Centers, also called dispensaries, so that medicinal cannabis can be produced under controlled situations, and prescriptions for licensed medicinal cannabis patients may be filled;
- c. To allow certain individuals, including providers, primary caregivers and qualifying patients, to engage in the cultivation, harvesting and preparation of cannabis for authorized sale and medicinal use;
- d. To eliminate penalties for the simple possession and/or use of cannabis by individuals 18 or more years of age, in the amounts and under the conditions delineated in this act;
- e. To provide specific restrictions on the public use of cannabis; and
- f. To change the location of "cannabis (marijuana or marihuana)" from Guam's Schedule I list of Controlled Substances to Guam's Schedule V list of Controlled Substances.

It IS NOT the intent of *I Liheslatura* to:

- a. Affect the application or enforcement of the laws of Guam relating to public health and safety or protection of children and others relative to the following:
 - i. possession on school grounds;
 - ii. relative to minors;
 - iii. relative to chemical production;
 - iv. relative to loitering to commit a crime or acts not authorized by law;
 - v. relative to driving while under the influence;
 - vi. relative to contributing to the delinquency of a minor; or
- b. Affect the application or enforcement of the laws of Guam prohibiting use of controlled substances in the workplace or by specific persons whose jobs involve public safety.

PART II - COMPASSIONATE HEALTH CARE POLICY

SECTION 1 - COMPASSIONATE HEALTH CARE ACT OF 2010

A New Article 23 is added to Title 10 Guam Code Annotated Chapter 12 to read:

“ARTICLE 23. THE COMPASSIONATE HEALTH CARE ACT OF 2010.

§ 122301. Title of Act.

This Act shall be known as “The Compassionate Health Care Act of 2010.”

§ 122302. Definitions.

Defines the following terms:

- a. “Adequate supply”
- b. “Cannabis”
- c. “Caregiver”
- d. “Compassionate Care Center”
- e. “Debilitating medical condition” to include:
 - i. Cancer;
 - ii. Glaucoma;
 - iii. Positive status for Human Immunodeficiency Virus (HIV), or the treatment of this condition;
 - iv. Positive status for Acquired Immune Deficiency Syndrome (AIDS), or the treatment of this condition;
 - v. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 1. Cachexia or wasting syndrome;
 2. Severe pain;
 3. Severe nausea;
 4. Seizures, including those characteristic of epilepsy; or
 5. Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn’s disease; or
 - vi. Any other medical condition approved by the Department of Public Health and Social Services pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.
- f. “Department”
- g. “Dispensary”
- h. “Distribution”
- i. “Marijuana” and “Marihuana”
- j. “Mature Cannabis plant”
- k. “Medicinal use”

- l. "Physician" means a physician license by the Board of Medical Examiners to practice medicine on Guam. "Physician" does not include a physician's assistant.
- m. "Prescription"
- n. "Provider"
- o. "Qualifying patient"
- p. "Usable cannabis"
- q. "Written certification"

§ 122303. Medicinal use of cannabis; conditions of use.

- (a) The medicinal use of cannabis by a qualifying patient shall be permitted only if:
 - (1) The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;
 - (2) The qualifying patient's physician has certified in writing that, in the physician's professional opinion the potential benefits of the medicinal use of cannabis would likely outweigh the health risks for the particular qualifying patient;
 - (3) The physician has written a prescription for the qualifying patient that provides instructions for the amount of cannabis to be provided, and the recommended dosage, and
 - (4) The amount of cannabis in possession of a qualifying patient does not exceed an adequate supply.
- (b) For a qualifying patient under the age of eighteen years, the medicinal use of cannabis shall be permitted only if:
 - (1) The qualifying patient's physician has explained the potential risks and benefits of the medicinal use of cannabis to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and
 - (2) A parent, guardian, or person having legal custody consents in writing to:
 - i. Permit the qualifying patient to use cannabis for medicinal purposes;
 - ii. Serve as the qualifying patient's primary caregiver; and
 - iii. Control the acquisition of the cannabis, the dosage, and the frequency of the medicinal use of cannabis by the qualifying patient.
- (c) The authorization for the medicinal use of cannabis in this section shall not apply to the medicinal use of cannabis:
 - (1) On any school grounds;
 - (2) At any public place or location open to the public;
 - (3) In any vehicle, public or private, whether moving or at rest;
 - (4) In any workplace unless the patient is working at his or her place of residence; or
 - (5) In the presence of a person or persons under the age of 18."

§ 122304. Registration requirements.

§ 122305. Personal cannabis supply.

A patient may cultivate up to three plants and possess up to three ounces of usable cannabis for personal medicinal use. Also defines limits for caregivers for each patient they assist.

§ 122306. Affirmative defense.

§ 122307. Protections afforded to physician.

Pursuant to Title 10 GCA Chapter 12 §12218 and §12219 and other medicinal cannabis laws, no physician shall be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for providing written certification for the medicinal use of cannabis for a qualifying patient.

§ 122308. Protection of cannabis and other seized property.

Cannabis, paraphernalia or any property seized because of the use of cannabis shall be returned if the authorities determine the user was eligible to possess such property.

§ 122309. Fraudulent misrepresentation; penalty.

§ 122310. Administrative rules, forms and procedures.

The Department of Public Health & Social Services shall develop and update rules, forms and procedures consistent with Articles 23 and 24.

SECTION 2 – COMPASSIONATE CARE CENTERS

A New Article 24 is added to Title 10 Guam Code Annotated Chapter 12 to read:

**“ARTICLE 24.
COMPASSIONATE CARE CENTERS.**

§ 122401. Compassionate Care Centers, Function.

A Compassionate Care Center registered under this section may acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, or dispense cannabis, and related supplies and educational materials, to registered qualifying patients and their registered caregivers.

§ 122402. Registration and Application Requirements.

Not later than ninety (90) days after the effective date of this act, the Department of Public Health shall promulgate the administrative rules, forms, procedures and regulations governing the manner in which it shall consider and process applications for registration certificates for Compassionate Care Centers, a \$250 non-refundable fee is required, the applicant must submit the location of the center, including the location for the facility in which cannabis would be cultivated and the security and safety measures in place.

§ 122403. Establishment of Centers.

180 days after effective date of enabling act, DPHSS shall begin accepting applications for establishment of three centers, and within 30 days shall grant at least one registration certificate, if qualified applicants have applied. No more than three centers shall hold valid certificates at the same time.

§ 122404. Consideration of Applications.

Public hearings required when Center registrations are being considered. Health needs of the patients, safety of the public, and community support shall be considerations in approving applications.

§ 122405. Tracking patients.

DPHSS shall keep records of qualified patients, registered caregivers, and Care Center information/statistics of non-private and non-protected personal information of its patients.

§ 122406. Compassionate Care Registry Identification Cards.

DPHSS shall provide identification cards to employees, officers and volunteers at Centers. Cards cannot be issued to any person convicted of a felony drug offense.

§ 122407. Expiration, Renewal or Termination of Registration Certificate.

Registration certificates shall expire after three years. Renewals may be submitted 60 days in advance of expiration.

§ 122408. Compassionate Care Center, Name.

The phrase "Compassionate Care Center" shall be included in the name of each facility registered under this Article 24. A business or businesses not authorized under the provisions of Article 24 cannot use the words "Compassionate Care Center" in that order in any business or corporate name. "

PART III - ADJUSTMENTS TO GUAM CODE ANNOTATED

SECTION 1 - RE: ILLEGAL POSSESSION

Title 9 Guam Code Annotated Chapter 67 § 67.401.2. Illegal Possession is amended to remove any penalty or fine for possession of one ounce or less of usable marijuana (except as noted below), which is defined in the section as: "the dried leaves and flowers of the plant *Cannabis* family *Moraceae*, and any mixture or preparation thereof. 'Usable cannabis' does not include the seeds, stalks, and roots of the plant, or a seedling with no observable flowers or buds."

The exception noted above is if a person is involved in the *use* of marijuana:

- (1) On any school grounds;
- (2) At any public place or location open to the public;
- (3) In any vehicle, public or private, whether moving or at rest;
- (4) In any workplace unless the patient is working at his or her place of residence; or
- (5) In the presence of a person or persons under the age of 18;
- (6) shall be guilty of a violation and punished by a fine of One Hundred Dollars (\$100.00) for each ounce of marijuana and any additional fraction thereof.

SECTION 2 - ADD NEW 10 GCA §§12218, 12219 - RE: MEDICAL CANNABIS

§12118 "No physician shall be subject to arrest, or prosecution, or penalized in any manner, or denied any right or privilege for providing written certification for the medicinal use of cannabis for a qualifying patient, or for prescribing medicinal cannabis to a qualified patient" based on the U.S. Supreme Court ruling in *Conant v. Walters* (309F.3d 629, 2002), with conditions relating to the diagnosis of a debilitating medical condition, an explanation of the risks and benefits, and proper written certifications.

§12119 (and Section 3 immediately following this paragraph) deal with individuals properly registered as medicinal cannabis users and drug testing, eliminating any fine or penalty and providing for alternate duty assignments if necessary.

SECTION 3 - ADD NEW 10 GCA §75107 - RE: DRUG TESTING

(See Section 2, §12119 immediately above)

SECTION 4 - AMEND 9 GCA §67.100(20) - RE: DEFINITION OF MARIJUANA

Amends the definition of Marijuana to be consistent with similar amendments.

SECTION 5 - AMEND 9 GCA, CH67, APP A - SCH. I CTRLD SUB, DELETION

Removes "Marihuana" and "Tetrahydrocannabinols" from the Schedule I list of Controlled Substances.

SECTION 6 - ADD 9 GCA, CH67, APP E - SCH. V CTRLD SUB, ADDITION

Adds "Marijuana" and a definition consistent with similar amendments to the Schedule V list of Controlled Substances.

PART IV - MISCELLANEOUS PROVISIONS

SECTION 1 - DPHSS RULES/REGS

DPHSS is to draft Rules and Regulations to carry out this provision in accordance with the Administrative Adjudication Act.

SECTION 2 - EFFECTIVE DATE

This act shall be effective upon enactment.