

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

MAR 10 2014

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1388
Office of the Governor
3.10.14
4:43 PM
2014 MAR 10 PM 5:01
JMD

Dear Madame Speaker:

Attached is Bill No. 215-32 (COR), entitled, *“An act to provide for a binding referendum during the 2014 General Election. . . relative to allowing the medical use of cannabis. . .; to be known as the “Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013,”* which lapsed into law as new **Public Law 32-134** pursuant to Section 1423i of the Organic Act of Guam.

I recognize that Bill 215 raises a number of legal questions and concerns over the method of its presentation to me, as well as over the mechanism for public referendum that it seeks to enact. What is unquestionable, however, is my unwavering belief in democracy and the right of the People to decide for themselves on issues that affect their lives and our community. In this regard, the many issues which surround the medical use of cannabis touch the very core of all aspects of our society, most particularly those personal aspects which involve easing the suffering of family members and loved ones.

Whether cannabis should be legalized for compassionate and medical use is a difficult question that requires thorough research and discussion. Will legalization hurt or help the People? What is the opinion of the medical community? How will legalization affect crime and law enforcement? How will we regulate the use and dispensement of medical cannabis? How will federal law affect all this? As long as answers to these and other questions are presented to the community, I am confident that our People will ultimately make the best decision for themselves and for Guam.

Senseramente,

EDDIE BAZA CALVO

1388

I MINA TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

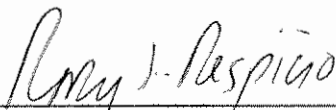
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 215-32 (COR), "AN ACT TO PROVIDE FOR A BINDING REFERENDUM DURING THE 2014 GENERAL ELECTION TO DETERMINE WHETHER AMENDMENTS TO TITLE 10, GUAM CODE ANNOTATED, TO ADD A NEW ARTICLE 24 TO CHAPTER 12, RELATIVE TO ALLOWING THE MEDICAL USE OF CANNABIS, AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT, PROVIDING PENALTIES, AND FOR OTHER PURPOSES, SHALL BE ALLOWED WITHIN GUAM; TO BE KNOWN AS THE "JOAQUIN (KC) CONCEPCION II COMPASSIONATE CANNABIS USE ACT OF 2013," was on the 1st day of February, 2014, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

Attested:



Rory J. Respicio
Acting Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this _____ day of _____, 2014, at _____ o'clock _____ M.


Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: FEB 16 2014

Public Law No. 32-134



Rex Hernandez
Feb. 09, 2014
Office of the Governor

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

Bill No. 215-32 (COR)

As substituted by the Author;
further substituted by the Committee on Rules;
and amended on the Floor.

Introduced by:

T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Judith T. Won Pat, Ed.D.

AN ACT TO PROVIDE FOR A BINDING REFERENDUM DURING THE 2014 GENERAL ELECTION TO DETERMINE WHETHER AMENDMENTS TO TITLE 10, GUAM CODE ANNOTATED, TO ADD A NEW ARTICLE 24 TO CHAPTER 12, RELATIVE TO ALLOWING THE MEDICAL USE OF CANNABIS, AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT, PROVIDING PENALTIES, AND FOR OTHER PURPOSES, SHALL BE ALLOWED WITHIN GUAM; TO BE KNOWN AS THE "JOAQUIN (KC) CONCEPCION II COMPASSIONATE CANNABIS USE ACT OF 2013."

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that it is the right of the people to determine matters of policy, particularly as it
4 relates to personal freedom and medical treatment options. *I Liheslatura* further
5 finds that an issue of this significance should rightfully be decided by the people of
6 Guam.

7 Given the financial constraints placed on the Guam Election Commission
8 and the many challenges that would arise from calling a special election, *I*
9 *Liheslatura* finds that this matter is most appropriate for placement on the 2014
10 General Election ballot.

11 **Section 2.** The Guam Election Commission, subject to the provisions
12 hereinafter set forth, *shall* put to the voters the question described in Section 4 of
13 this Act. The question *shall* be submitted during the 2014 General Election.

14 **Section 3.** The question *shall* determine whether or not amendments to
15 Title 10, Guam Code Annotated, to *add* a new Article 24 to Chapter 12, relative to
16 allowing the medical use of cannabis, amending provisions of the Controlled
17 Substances Act, providing penalties, and for other purposes, to be known as the
18 “Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013,” as
19 outlined in Exhibit “A” attached, *shall* be allowed within Guam via a referendum
20 certified by the Guam Election Commission as eligible for a binding referendum
21 vote.

22 **Section 4.** The question put to voters *shall* be:

23 **“Shall the “Joaquin (KC) Concepcion II Compassionate Cannabis**
24 **Use Act of 2013” that provides for the medical use of cannabis be**
25 **allowed?**

26 **Yes**

27 **No**

1 **Vote for only ‘Yes’ or ‘No’.**”

2 **Section 5.** Given the length of the referendum proposal concerning the
3 medicinal use of cannabis referenced in Section 4 of this Act, and notwithstanding
4 Paragraph (a) of Title 3 GCA, § 16509, the Guam Election Commission *shall not*
5 be required to include in its pamphlet for the voters the entire text of the
6 referendum. Instead, the Commission *shall* set forth in summary fashion the
7 provisions of the proposed Act. The Commission *shall* keep *at least* twelve (12)
8 copies of the complete referendum at its offices for voters to review at their
9 request, and make the complete referendum available on its website. The
10 Commission *shall* also distribute six (6) copies of the complete referendum to each
11 branch of the Guam Public Library, the Robert F. Kennedy Library at the
12 University of Guam, and the Guam Territorial Law Library, and two (2) copies of
13 the complete referendum to the offices of the Public Auditor, the Attorney General,
14 and each Mayor and Senator. The complete referendum *shall* be posted online on
15 the Guam Election Commission website.

16 **Section 6.** *If* the referendum is approved, the Act *shall* take effect ninety
17 (90) days after its approval has been certified by the Guam Election Commission.
18 The Commission *shall* transmit the results of the referendum to *I Maga'lahren*
19 *Guåhan*, the Speaker of *I Liheslaturan Guåhan*, and the Compiler of Laws. *If* the
20 referendum is approved, *I Maga'lahren Guåhan shall* assign a public law number to
21 it after its receipt by him.

EXHIBIT "A"

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, TO BE KNOWN AS THE "JOAQUIN (KC) CONCEPCION II 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,
3 Guam Code Annotated, to read as follows:

4 **"ARTICLE 24**
5 **THE JOAQUIN (KC) CONCEPCION II COMPASSIONATE CANNABIS**
6 **USE ACT OF 2013**

7 § 122401. Title.
8 § 122402. Purpose of Act.
9 § 122403. Definitions.

1 § 122404. Exemption from Criminal and Civil Penalties for
2 Medical Use of Cannabis.

3 § 122405. Prohibitions, Restrictions and Limitations on the
4 Medical Use of Cannabis - Criminal Penalties.

5 § 122406. Advisory Board Created - Duties.

6 § 122407. Department Rules; Registry Identification Cards.

7 § 122401. **Title.** This Act *shall* be known and *shall* be cited as the
8 “*Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013.*”

9 § 122402. **Purpose of Act.** The purpose of this Act is to allow the
10 beneficial use of medical cannabis in a regulated system for alleviating symptoms
11 caused by debilitating medical conditions and their medical treatments.

12 § 122403. **Definitions.** As used in this Act:

13 (a) *Adequate supply* means an amount of cannabis, in any form
14 approved by the Department, possessed by a qualified patient or collectively
15 possessed by a qualified patient and the qualified patient’s primary caregiver
16 that is determined by rule of the Department to be no more than reasonably
17 necessary to ensure the uninterrupted availability of cannabis for a period of
18 three (3) months and that is derived solely from an intrastate source.

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

- 1 (c) *Debilitating medical condition* means:
- 2 (1) cancer;
- 3 (2) glaucoma;
- 4 (3) multiple sclerosis;
- 5 (4) damage to the nervous tissue of the spinal cord, with
- 6 objective neurological indication of intractable spasticity;
- 7 (5) epilepsy;
- 8 (6) positive status for human immunodeficiency virus or
- 9 acquired immune deficiency syndrome;
- 10 (7) admitted into hospice care in accordance with rules
- 11 promulgated under this Act;
- 12 (8) post-traumatic stress disorder;
- 13 (9) rheumatoid arthritis or similar chronic autoimmune
- 14 inflammatory disorders; or
- 15 (10) any other medical condition, medical treatment or disease
- 16 as approved by the Department;
- 17 (d) *Department* means the Department of Public Health and Social
- 18 Services.
- 19 (e) *Hospice care* means palliative care for the terminally and
- 20 seriously ill provided in a hospital, nursing home, or private residence.
- 21 (f) *Licensed producer* means any person or association of persons
- 22 within Guam that the Department determines to be qualified to
- 23 produce, possess, distribute and dispense cannabis pursuant to this
- 24 Act, and that is licensed by the Department.
- 25 (g) *Medical use* means the acquisition, cultivation, possession,
- 26 processing, (including development of related products such as food,

1 tinctures, aerosols, oils, or ointments), transfer, transportation, sale,
2 distribution, dispensing, or administration of cannabis, as well as the
3 possession of cannabis paraphernalia, for the benefit of qualifying
4 patients in the treatment of debilitating medical conditions, or the
5 symptoms thereof.

6 (h) *Practitioner* means a person licensed in Guam to prescribe and
7 administer drugs that are subject to the Guam Uniform Controlled
8 Substances Act.

9 (i) *Primary caregiver* means a resident of Guam who is *at least*
10 eighteen (18) years of age, and who has been designated by the
11 qualified patient as being necessary to assist the patient in the medical
12 use of cannabis in accordance with the provisions of this Act, and who
13 so agrees to assist the patient. Primary caregivers are prohibited from
14 consuming cannabis obtained for the personal, medical use of the
15 qualified patient.

16 (j) *Qualified patient* means a resident of Guam who has been
17 diagnosed by a practitioner as having a debilitating medical condition,
18 and has received written certification and a registry identification card
19 issued pursuant to this Act.

20 (k) *Written certification* means a statement in a patient's medical
21 records or a statement signed by a patient's practitioner that, in the
22 practitioner's professional opinion, the patient has a debilitating
23 medical condition and the practitioner believes that the potential
24 health benefits of the medical use of cannabis would likely outweigh
25 the health risks for the patient. A written certification is *not* valid for
26 more than one (1) year from the date of issuance.

1 **§ 122404. Exemption from Criminal and Civil Penalties for the**
2 **Medical Use of Cannabis.**

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

7 (b) A qualified patient's primary caregiver *shall not* be subject to
8 arrest, prosecution or penalty in any manner for the possession of
9 cannabis for medical use by the qualified patient if the quantity of
10 cannabis does not exceed an adequate supply.

11 (c) Subsection (a) of this Section *shall not* apply to a qualified
12 patient under the age of eighteen (18) years, unless:

13 (1) the qualified patient's practitioner has explained the
14 potential risks and benefits of the medical use of cannabis to the
15 qualified patient and to a parent, guardian or person having
16 legal custody of the qualified patient; and

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

19 (A) allow the qualified patient's medical use of
20 cannabis;

21 (B) serve as the qualified patient's primary caregiver;
22 and

23 (C) control the dosage and the frequency of the
24 medical use of cannabis by the qualified patient.

25 (d) A qualified patient or a primary caregiver *shall* be granted the
26 full legal protections provided in this Section if the patient or
27 caregiver is in possession of a registry identification card.

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

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

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

13 (h) Any property interest that is possessed, owned or used in
14 connection with the medical use of cannabis, or acts incidental to such
15 use, *shall not* be harmed, injured or destroyed while in the possession
16 of state or local law enforcement officials. Any such property interest
17 *shall not* be forfeited under any local law providing for the forfeiture
18 of property, *except* as provided in the Special Assets Forfeiture Fund,
19 10 GCA §§ 79101 - 79105. Cannabis, paraphernalia or other property
20 seized from a qualified patient or primary caregiver in connection
21 with the claimed medical use of cannabis *shall* be returned
22 immediately upon the determination by a court or prosecutor that the
23 qualified patient or primary caregiver is entitled to the protections of
24 the provisions of this Act, as may be evidenced by a failure to actively
25 investigate the case, a decision not to prosecute, the dismissal of
26 charges or acquittal.

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

4 **§ 122405. Prohibitions, Restrictions and Limitations on the Medical**
5 **Use of Cannabis - Criminal Penalties.**

6 (a) Participation in the medical use of cannabis by a qualified
7 patient or primary caregiver *does not* relieve the qualified patient or primary
8 caregiver from:

9 (1) criminal prosecution or civil penalties for activities *not*
10 permitted by this Act;

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

14 (3) criminal prosecution or civil penalty for possession or
15 use of cannabis:

16 (A) in a school bus or public vehicle;

17 (B) on school grounds or property;

18 (C) in the workplace of the qualified patient's or
19 primary caregiver's employment; or

20 (D) at a public park, recreation center, youth center or
21 other public place.

22 (b) A person who makes a fraudulent representation to a law
23 enforcement officer about the person's participation in a medical use of
24 cannabis program to avoid arrest or prosecution for a cannabis-related
25 offense is guilty of a petty misdemeanor.

26 (c) If a licensed producer sells, distributes, dispenses or transfers
27 cannabis to a person not permitted to participate in the medical use of

1 cannabis under this Act, or obtains or transports cannabis outside Guam in
2 violation of federal law, the licensed producer shall be subject to arrest,
3 prosecution and civil or criminal penalties in accordance with Guam law.

4 **§ 122406. Advisory Board Created - Duties.** There *shall* be established
5 an advisory board consisting of nine (9) members, as follows: (1) the Director of
6 the Department of Public Health and Social Services or his designee; (2) the
7 Chairperson of the Guam Board of Medical Examiners or his designee; (3) the
8 Director of the Department of Agriculture or his designee; (4) the Chairperson of
9 the Legislative Committee on Health and Human Services or his designee; (5) a
10 member of the public at large; and, finally, the remaining four members of said
11 advisory board *shall* be practitioners representing the fields of oncology,
12 neurology, psychiatry, and pain management, respectively, all of whom *shall* be
13 board-certified in their area of specialty and knowledgeable about the medical use
14 of cannabis. A quorum of said advisory board *shall* consist of five members. The
15 board *shall*:

16 (a) review and recommend to the Department for approval
17 additional debilitating medical conditions that would benefit from the
18 medical use of cannabis;

19 (b) accept and review petitions to add medical conditions, medical
20 treatments or diseases to the list of debilitating medical conditions that
21 qualify for the medical use of cannabis;

22 (c) convene at least twice per year to conduct public hearings and
23 to evaluate petitions, which shall be maintained as confidential personal
24 health information, to add medical conditions, medical treatments or
25 diseases to the list of debilitating medical conditions that qualify for the
26 medical use of cannabis; and

1 (d) recommend quantities of cannabis that are necessary to
2 constitute an adequate supply for qualified patients and primary caregivers.

3 **§ 122407. Department Rules; Registry Identification Cards.**

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

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

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

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

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

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

1 (6) develop a distribution system for medical cannabis that
2 provides for:

3 (A) cannabis production facilities within Guam housed
4 on secured grounds and operated by licensed producers; and

5 (B) distribution of medical cannabis to qualified
6 patients or their primary caregivers to take place at locations
7 that are designated by the Department and that are not within
8 one thousand (1,000) feet of any school, church or daycare
9 center;

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

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

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

15 (b) Notwithstanding any other provision of law, the sum of One
16 Hundred Thousand (\$100,000) from the Healthy Future Funds, codified at
17 11 GCA §26603, is hereby appropriated to assist the Department to timely
18 execute its mandate under §122407(a) to promulgate rules to implement the
19 purpose of this Act.

20 (c) The Department *shall* issue registry photo identification cards
21 to a patient and to the primary caregiver for that patient, if any, who submit
22 the following, in accordance with the Department's rules:

23 (1) a written certification;

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

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

1 (4) the name, address and date of birth of the patient's
2 primary caregiver, if any; and

3 (5) a police clearance and court clearance of the primary
4 caregiver.

5 (d) The Department *shall* verify the information contained in an
6 application submitted pursuant to Subsection (c) of this Section and *shall*
7 approve or deny an application within thirty days of receipt. The Department
8 may deny an application only if the applicant did not provide the
9 information required pursuant to Subsection (c) of this Section or if the
10 Department determines that the information provided is false. A person
11 whose application has been denied *shall not* reapply for six (6) months from
12 the date of the denial unless otherwise authorized by the Department.

13 (e) The Department *shall* issue a registry identification card within
14 five days of approving an application, and a card *shall* expire one year after
15 the date of issuance. A registry identification card *shall* contain:

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

18 (2) the date of issuance and expiration date of the registry
19 identification card; and

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

22 (f) A person who possesses a registry identification card *shall*
23 notify the Department of any change in the person's name, address, qualified
24 patient's practitioner, qualified patient's primary caregiver or change in
25 status of the qualified patient's debilitating medical condition within ten
26 days of the change.

1 (g) Possession of or application for a registry identification card
2 *shall not* constitute probable cause or give rise to reasonable suspicion for a
3 governmental agency to search the person or property of the person
4 possessing or applying for the card.

5 (h) The Department *shall* maintain a confidential file containing the
6 names and addresses of the persons who have either applied for or received a
7 registry identification card. Individual names on the list *shall* be confidential
8 and *not* subject to disclosure, *except*:

9 (1) to authorized employees or agents of the Department as
10 necessary to perform the duties of the Department pursuant to the
11 provisions of this Act;

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

15 (3) as provided in the federal Health Insurance Portability
16 and Accountability Act of 1996, codified at 42 U.S.C. § 1320d *et*
17 *seq.*”

18 **Section 2.** A new Subsection (g) is *added* to Appendix A of Chapter 67 of
19 Title 9, Guam Code Annotated, to read as follows:

20 “(g) The enumeration of marihuana, tetrahydrocannabinols or
21 chemical derivatives of these as Schedule I controlled substances does not
22 apply to the medical use of cannabis pursuant to the ‘Joaquin (KC)
23 Concepcion II Compassionate Cannabis Use Act of 2013.’”

24 **Section 3. Severability.** *If* any provision of this Act or its application to
25 any person or circumstance is found to be invalid or contrary to law, such
26 invalidity shall not affect other provisions or applications of this Act which can be

1 given effect without the invalid provisions or application, and to this end the
2 provisions of this Act are severable.

3 **Section 4. Effective Date.** This Act *shall* take effect upon enactment into
4 law.