**EDDIE BAZA CALVO**
*Governor*

**RAY TENORIO**
*Lieutenant Governor*

*Office of the Governor Of Guam*

DEC 31 2018

Honorable Therese M. Terlaje
Acting Speaker
*I Mina'trentai Kuåttro Na Liheslaturan Guåhan*
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Hon Speaker Therese M. Terlaje
34GL-18-2729
DEC 31 2018
Time: 16:35
Received by:

2019 JAN -2 AM 9:22

Dear Madame Speaker:

Transmitted herewith is Bill No. 380-34 (LS), **"AN ACT TO *AMEND* §§ 122504 AND 122505 OF ARTICLE 25, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING FROM CRIMINAL AND CIVIL PENALTIES THOSE ENGAGED IN THE HOME CULTIVATION OF MEDICAL CANNABIS; AND EXTENDING PROHIBITION, RESTRICTIONS, AND LIMITATIONS OVER THE SAME,"** which was signed on December 28, 2018, as **Public Law 34-165.**

*Senseramente,*

**EDDIE BAZA CALVO**



2729

*I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN*
**2018 (SECOND) Regular Session**

**CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN***

This is to certify that **Bill No. 380-34 (LS), "AN ACT TO *AMEND* §§ 122504 AND 122505 OF ARTICLE 25, CHAPTER 12, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING FROM CRIMINAL AND CIVIL PENALTIES THOSE ENGAGED IN THE HOME CULTIVATION OF MEDICAL CANNABIS; AND EXTENDING PROHIBITION, RESTRICTIONS, AND LIMITATIONS OVER THE SAME,"** was on the 19th day of December 2018, duly and regularly passed.

**Therese M. Terlaje**
**Acting Speaker**

Attested:

**Régine Biscoe Lee**
**Legislative Secretary**

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This Act was received by *I Maga'låhen Guåhan* this 19th day of DEC, 2018, at 6:57 o'clock P .M.

Assistant Staff Officer
*Maga'låhi's* Office

APPROVED:

EDWARD J.B. CALVO
*I Maga'låhen Guåhan*

Date: DEC 28 2018

Public Law No. 34-165

*I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN*
**2018 (SECOND) Regular Session**

**Bill No. 380-34 (LS)**

Introduced by: Dennis G. Rodriguez, Jr.
Louise Borja Muña
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Telena Cruz Nelson
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje
Mary Camacho Torres

**AN ACT TO *AMEND* §§ 122504 AND 122505 OF ARTICLE 25, CHAPTER 12, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING FROM CRIMINAL AND CIVIL PENALTIES THOSE ENGAGED IN THE HOME CULTIVATION OF MEDICAL CANNABIS; AND EXTENDING PROHIBITION, RESTRICTIONS, AND LIMITATIONS OVER THE SAME.**

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

**Section 1.** § 122504 of Article 25, Chapter 12, Title 10, Guam Code Annotated, is *amended* to read:

"**§ 122504. Exemption from Criminal and Civil Penalties for the Medical Use of Cannabis.**

(a) A qualified patient is presumed to be engaged in the medical use of cannabis and *shall not* be subject to arrest, prosecution, or penalty in any

manner for the possession of or the medical use of cannabis if the qualified patient possesses a quantity of cannabis that does not exceed the allowable amount, possesses a quantity of cannabis that does not exceed the amount authorized for home cultivation under § 122530(d) of this Article, is acting in accordance with all of the requirements of this Act, and is in possession of a written certification and a cannabis home cultivation permit where applicable. For purposes of this Section, the allowable amount and the amounts allowed under § 122530(d) of this Article *shall* be quantified separately to ensure that a qualified patient may possess both up to the allowable amount pursuant to § 122503(a) and the amount of cultivated plants authorized by § 122530(d) of this Article.

(b) A qualified patient's primary caregiver, patient's designated caregiver, or multiple patients' designated caregiver is presumed to be engaged in the medical use of cannabis and *shall not* be subject to arrest, prosecution, or penalty in any manner for the possession of cannabis for medical use by the qualified patient if the caregiver possesses a quantity of cannabis that does not exceed the allowable amount or possesses a quantity that does not exceed the quantity of cannabis authorized for home cultivation under § 122530(d) of this Article where applicable; provided, that the caregiver is assisting in the registered qualified patient's medical use of cannabis pursuant to this Act, and is acting in accordance with all of the requirements of this Act. For purposes of this Section, the allowable amount and the amounts allowed under § 122530(d) of this Article *shall* be quantified separately to ensure that a qualified patient and/or a caregiver may possess both up to the allowable amount pursuant to § 122503(a) and the amount of cultivated plants authorized by § 122530(d) of this Article.

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

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

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

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

(B) serve as the qualified patient's primary caregiver and/or patient's designated caregiver; and

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

(d) A qualified patient, primary caregiver, patient's designated caregiver, or multiple patients' designated caregiver *shall* be granted the full legal protections provided in this Section if such person is in possession of a written certification and/or a cannabis home cultivation permit where applicable.

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

(f) A licensed possessor or employee of a licensed medical cannabis business *shall not* be subject to arrest, prosecution, or penalty, in any manner, for the production, possession, distribution, dispensing, acquisition, cultivation, processing, transferring, transporting, selling, or laboratory

testing of cannabis or medical cannabis paraphernalia in compliance with this Act; provided, that they are registered and certified or authorized by the DPHSS and are acting in accordance with this Act.

(g) (1) Any property interest that is possessed, owned or used in connection with the medical use of cannabis or home cultivation of medical cannabis pursuant to § 122530 of this Article, or acts incidental to such use, *shall not* be harmed, injured, or destroyed while in the possession of state or local law enforcement officials.

(2) Any such property interest *shall not* be forfeited under any local law providing for the forfeiture of property, except as provided in the Special Assets Forfeiture Fund, 10 GCA §§ 79101 - 79105.

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

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

(i) An operator or worker of a facility approved by the DPHSS to conduct laboratory testing *shall not* be subject to arrest, prosecution, or penalty, in any manner, or denied any right or privilege for possession, acquisition, transferring, transporting, selling, or laboratory testing of cannabis, prepared medical cannabis, or medical cannabis product for medical use pursuant to this Act.

(j) The DPHSS *shall* be authorized to acquire, possess, store, and laboratory test cannabis for medical use pursuant to this Act; and, the employees of the DPHSS *shall not* be subject to arrest or prosecution for acquiring, possessing, storing, and/or conducting laboratory tests of cannabis for medical use pursuant to this Act.

(k) A person may raise an affirmative defense if the person is found to be in possession of medical cannabis but can show legitimate need for medical cannabis or if the person has a qualifying debilitating medical condition under the provisions set forth by this Act.

(l) No qualifying patient, primary caregiver, patient's designated caregiver, or multiple patients' designated caregiver under this Act shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this Act; provided, that this Subsection *shall not* apply if the qualifying patient's or caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence."

**Section 2.** § 122505 of Article 25, Chapter 12, Title 10, Guam Code Annotated, is *amended* to read:

"**§ 122505. Prohibitions, Restrictions, and Limitations on the Medical Use of Cannabis - Criminal Penalties.**

(a) Participation in the medical use of cannabis by a qualified patient, primary caregiver, patient's designated caregiver, or multiple patients' designated caregiver *does not* relieve the qualified patient or caregiver from:

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

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

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

(A) in a school bus or public vehicle;

(B) on school grounds or property;

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

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

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

(c) If a licensed possessor or employee of a licensed medical cannabis business sells, distributes, dispenses, or transfers cannabis to a person not permitted to participate in the medical use of cannabis under this Act, or obtains or transports cannabis outside Guam in violation of federal law, the licensed possessor or employee of a licensed medical cannabis business *shall* be subject to arrest, prosecution and civil or criminal penalties in accordance with Guam law."

**Section 3. Severability.** If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.