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of the United States of America  
Department of Licensing and Consumer Affairs**

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Commissioner

**Testimony  
Before the  
33<sup>rd</sup> Legislature of the Virgin Islands  
Committee of the Whole Session**

**Novelle E. Francis Jr., Senate President**

**To Amend Title 19, Chapter 34 of the Virgin Islands Code to Expand the  
Legalization of Medicinal Cannabis**

**June 12, 2020**

*"Serving Businesses & Assisting, Educating and Protecting Consumers"*

Amendment to the Virgin Islands Medical Cannabis Patient Care Act  
Committee of the Whole Session  
33<sup>rd</sup> Legislature of the Virgin Islands  
June 12, 2020

Good Morning Senate President Novelle E. Francis, Jr., Senators of the 33<sup>rd</sup> Legislature of the United States Virgin Islands, members of the listening and viewing audience. I am Richard Tomas Evangelista, Commissioner of the Department of Licensing and Consumer Affairs (DLCA).

The Department of Licensing and Consumer Affairs is in full support of the amendment to the entire Virgin Islands Medical Cannabis Patient Care Act codified at VI Code Ann tit. 19, Chapter 34 in the nature of a substitute. The proposed amendment is entitled “The Virgin Islands Cannabis Use Act”.

On December 18, 2019, I appeared before this body in Special Session to testify on a proposed bill in the form of the Virgin Islands Cannabis Use Act to substantially amend Title 19, Chapter 34, as enacted by Act No. 8167. Since then, the executive branch has conducted listening discussions with multiple senators and the Department of Licensing and Consumer Affairs conducted townhall meetings throughout the Territory to provide

explanatory information and to receive input for further revisions to the proposed bill.

Today, I appear before you in a Committee of the Whole Session with the proposed bill resubmitted incorporating the product of collaboration and input from members of the Legislature who came forward and comments received from the many persons who attended the townhall meetings. Today's testifiers shall highlight for you how we have improved and expanded in areas not addressed in the prior submission.

The amendment in the nature of a substitute, not only provides a more comprehensive regulatory and enforcement framework for cannabis, more importantly, the principal revenues derived from the bill are directed to assist reduce the hemorrhaging of the Government Employees Retirement System (GERS). This proposed source of revenue cannot solve the current financial state of the GERS. However, it is one of the mechanisms that we should utilize while we continue to work together to identify other sources of revenue. The executive branch continues to diligently work on

identifying and securing other sources of revenue to direct to the GERS. When the proposed source of revenue is proven to be a steady and reliable source, the GVI/GERS can apply for a revenue backed bond to obtain the actual cash necessary to avert a collapse of the retirement system. As we prepare for the new norm, post COVID-19, now is the time to prepare ourselves for tomorrow. We shall only fail when we fail to try.

#### TAXES & FEES– SOURCES OF REVENUE

The proposed legislation creates a special fund within the Treasury of the Virgin Islands to be known as the “Cannabis Fund”. All funds collected by the OCR shall be deposited into the Cannabis Fund. The Legislature shall appropriate funds from the Cannabis Fund for the following purposes:

1. Operating funds for the OCR; and
2. Establish a testing facility for the Cannabis and Industrial Hemp for each island of St. Croix, St. Thomas and St. John; and
3. To create a grant program to provide business incubation and micro-lending services to Micro-Cultivation Permittees; and

4. To establish a job training program for residents of the Territory interested in pursuing careers in the Cannabis industry; and
5. To establish programs designed to educate and prevent substance abuse and support individuals afflicted with substance abuse issues; and
6. To establish sponsored research on the potential medical efficacy of Cannabis and the potential negative consequences associated with Cannabis use.

The proposed legislation has a provision under the proposed section 800 (a) for a Cannabis Dispensary to levy a special sale tax of no less than twenty-five percent (25%) on all sales of Cannabis Items to any Qualified Patient and Non-Certified User who are not a resident of the United States Virgin Islands; and a special sales tax of no less than seven and one half percent (7.5%) on all sales of Cannabis Items to Qualified Patients and Non-Certified Users who are residents of the United States Virgin Islands. Qualified Patients who are residents of the Territory and who validly possess

a Medical Cannabis Registry Card issued by the Office of Cannabis Regulation shall be exempt from the special sales tax.

Seventy-five percent (75%) of all the revenues collected from the special sales tax shall be deposited to the Government Employees Retirement System. The remaining twenty-five percent (25%) of the revenue is proposed to be allocated as follows: 1. Twenty percent (20%) shall be deposited with and allocated to the Office of Cannabis Regulation to fund the operations required by the proposed bill and 2. Five percent (5%) shall be disbursed from the Cannabis Fund to the Office of Cannabis Regulation for the specific purposed of Cannabis industry education, job training and micro-lending programs for Virgin Islands residents and Micro-Cultivator Permittees as described in § 799(a)(3)(4).

The proposed legislation, in proposed §800(b), also includes a sales tax levied on a Cannabis Cultivation Licensee of Fifty Cents (\$0.50) per gram of Cannabis cultivated on their Licensed Premises that is transferred to another Licensee. Similar to the special sales tax, Seventy-five percent (75%) of all

the revenues collected from the transfer tax shall be deposited to the Government Employees Retirement System. The remaining twenty-five percent (25%) of the revenue is proposed to be allocated as follows: 1. Twenty percent (20%) shall be deposited with and allocated to the Office of Cannabis Regulation to fund the operations required by the proposed bill and 2. Five percent (5%) shall be disbursed from the Cannabis Fund to the Department of Human Services to administer such funds for youth-related and/or senior citizen programs.

In addition to taxes, the OCR shall also collect fees for each license and permit under its jurisdiction. The fees shall not exceed:

1. One Thousand Dollars (\$1,000.00) for a Micro-Cultivation Permit
2. One Thousand Dollars (\$1,000.00) for a Non-Certified Use Permit
3. Twenty Thousand Dollars (\$20,000.00) for a Cannabis Cultivation License
4. Fifty Thousand Dollars (\$50,000.00) for a Cannabis Dispensary License

5. Ten Thousand Dollars (\$10,000.00) for a Cannabis Manufacturing License
6. Fifty Dollars (\$50.00) for a Medical Patient Registry Card
7. Twenty-five Dollars (\$25.00) for an Adult Use Permit

As we are all aware, the coronavirus disease (COVID-19) pandemic has caused and continues to create an unstable international economic climate unlike any economist could have predicted six months ago when I testified before you on December 18, 2019. As such, the projected revenue from the Cannabis sales today is far less than what was projected the last time I appeared before you to propose amendments to Virgin Islands Medical Cannabis Patient Care Act. However, despite the more conservative projected revenue, currently there is no new identified funding stream for GERS. When the visitors return, the revenue shall increase. As I previously testified, this proposal is one of many other proposals to follow that shall create a steady reliable funding stream. When the cruise ship and airline arrivals begin to increase in numbers, the projected revenue will look more similar to what was reported to this body in December of 2019.

## VIRGIN ISLANDS CANNABIS LICENSING BOARD

The proposal expands and builds upon the eleven (11) member board, appointed by the Governor and approved by the Legislature, that is working and already in existence. With the expansion of the cannabis industry to provide for a steady reliable funding stream for GERS, the composition of the board was slightly tweaked to address some of the concerns raised and recommendations made to add a more diverse membership. A representative from the Department of Justice and a representative from the Department of Tourism were added and one of the healthcare practitioners knowledgeable in cannabis medicine and the representative from the resident retirement community were removed.

The current members of the Virgin Islands Cannabis Licensing Board (Cannabis Board) are: *Chair*: Miguel Tricoche, *Vice Chair*: Catherine Kean, MD, *Secretary*: Nicole Craigwell-Syms, PHD, Members: Christopher T. Jones and Gary Jett, MD. The members have already met eight (8) times but only had a quorum to take action during one meeting. During the February 27, 2020 meeting, the members selected its officers. Unfortunately,

COVID-19, began to impact the Virgin Islands and at one time or another, one of the medical/health representatives were unavailable to obtain a quorum, but that has not hampered the Cannabis Board.

Thus far, the Cannabis Board has accomplished the following:

1. Dr. Kean signed up for and is now certified for medicinal marijuana through Medicinal Marijuana 411, one of the leading authorities on medicinal certification.
2. Mr. Tricoche is having ongoing discussions with Florida's Director of Cannabis and other industry leaders on pitfalls and opportunities within the industry as rules and regulations are formed.
3. Mr. Tricoche is collaborating with the Department of Personnel to create a Director of the Office of Cannabis position.
4. Dr. Jett is a certified medicinal marijuana practitioner and is providing guidance on the process for certifying medical practitioners in the territory.
5. Mr. Jones is collaborating with the Bureau of Information Technology to assist with the development of the OCR website.

6. Mr. Tricoche is collaborating with the Commissioner of DLCA and Finance to appropriate funds earmarked for the OCR.

The Cannabis Board is also engaged in on-going discussions on the following items:

1. Office space to house the Office of Cannabis Regulation
2. Salary and job requirements for the Executive Director
3. Funding for the Office of Cannabis Regulation
4. Inter-island transport of Cannabis
5. Need for a full board or  $\frac{3}{4}$  majority board
6. Discussion with potential
7. Discussion of a proposed deadline for rules and regulations to be promulgated.

As soon as it is safe to resume confirmation hearings, the board is looking forward to Commissioner Positive Nelson's nomination moving forward in the Committee of Rules and Judiciary.

## INVENTORY TRACKING SYSTEM

Once licenses and permits are issued, a regulatory system to monitor and ensure compliance with all applicable laws must be put in place. The OCR has a regulatory framework in place outfitted with its own Enforcement Division, which will be tasked with enforcement of all civil, criminal and regulatory violations related to Medical Cannabis. The OCR is authorized to develop rules and regulations which will include an administrative hearing system.

The proposed legislation (unlike the Virgin Islands Medicinal Cannabis Patient Care Act) requires the Office of Cannabis Regulation to establish an Inventory Tracking System to remotely monitor and track all Cannabis from the acquisition of seeds or clones through the sale or delivery of a finished product to a Qualified Patient, Non-certified User or Sacramental User. The system will assist the government with enforcing regulations, collecting taxes and preventing illegal cannabis diversion and inversion. The system has to track every gram of legal cannabis throughout the production lifecycle.

Without a system in place, it is difficult for the government to monitor the cannabis industry. The pharmaceutical industry exercises a high degree of scrutiny and traceability, so why should we treat medical cannabis any different?

#### LOCAL ENTREPRENEURSHIP

The proposed legislation requires that a majority of each medical cannabis license is owned by bona fide residents of the United States Virgin Islands, who are defined as a natural person who has resided in the Territory for ten (10) of the last fifteen (15) years prior to applying for any license or permit or who has attended a school in the Virgin Islands for at least five years or more, or is a graduate of a Virgin Islands high school, or of the University of the Virgin Islands, and is registered to vote in the Virgin Islands, who remains a bona fide resident of the Territory and who is subject to personal income tax in the Territory for the entire period such person hold title to a license.

The Virgin Islands Cannabis Use Act mandates that all entities engaged in the growth, production, sale and distribution of medical Cannabis must first obtain certification from the Board. There are up to ten (10) licensing/permit categories with limitations on the number of licenses that can be issued in each category and in each island. Some of the licensing categories include, Cannabis Cultivation License, Cannabis Manufacturing License, Medical Cannabis Dispensary License, Micro-Cultivation Permit, Medical Cannabis Adult Use Permit-Resident, Medical Cannabis Adult Use Permit-Non-Resident, Cannabis Non-Certified Use Permit, Cannabis Temporary Non-Certified Use Permit, Onsite Cannabis Consumption Permit and Cannabis Research and Development License.

The Office of Cannabis Regulation is allowed to issue up to seven (7) Medical Cannabis Dispensary Licenses and Onsite Consumption Use Permits and up to fifteen (15) Cannabis Cultivation Licenses for the island of St. Croix. The same number and types of licenses are also permitted to be issued for the island of St. Thomas. For the island of St. John, the OCR may

issue up to three (3) Medical Cannabis Dispensary Licenses and Onsite Consumption Use Permits and up to five (5) Cannabis Cultivation Licenses.

The proposed legislation authorizes the Office of Cannabis Regulation to issue licenses solely pursuant to a formal merit-based application process. Consequently, licenses will be awarded to persons with the highest application score for the specific license type and in the specific island being sought based on certain criteria set forth by the OCR. The criteria include evidence of taxes paid, experience in operating a regulated business, security measures, criminal background, operating plans and evidence of adequate capital and liquidity, among others.

Although there a limited number of cannabis cultivation licenses, there is no limit on the number of Micro-Cultivation Permits that the OCR may issue. A Micro-Cultivation permittee may cultivate, cure, process, store, sell, transfer and transport Cannabis to a Cannabis licensee. The permittee may cultivate no more than fifty (50) Flowering Cannabis Plants and nor more than two hundred (200) Immature Cannabis Plants at a single time.

However, the OCR may consider the feasibility and demand for Micro-Cultivation permittees to grow up to one hundred (100) Flowering Cannabis Plants in non-residential areas. OCR may only issue the permit to a farmer who is duly licensed with the Department of Agriculture and the Department of Licensing and Consumer Affairs.

In addition to the direct employment created by the proposed measure, there are many indirect employment opportunities that will occur from the enhanced cannabis measure. The demand created by the cannabis industry and its employees will create jobs and business growth in our communities. To name just a few, there will be an increase for businesses that provide security, credit unions, and agriculture equipment and supplies.

#### NON-CERTIFIED MEDICAL USE & SACRAMENTAL USE

In addition to Medicinal Cannabis Adult Use, the proposed legislation permits persons over the age of twenty-one (21) that are legally responsible for their own medical decisions to apply for a Non-Certified Medical Use permit. It also for the issuance of a Sacramental Use permit. This permit

allows for the lawful use of cannabis by persons over the age of twenty-one (21) of an organized religion or faith in the sincere exercise of their religion to consume or cultivate Cannabis or Cannabis derived products as part of their religious or sacramental rituals provided such religious group is an organized and registered non-profit organization under the laws of the United States Virgin Islands and maintains its status in good standing.

#### AUTO-EXPUNGEMENT

Additionally, the proposed legislation has incorporated a new provision for the OCR to create an Auto-Expungement Working Group, to include the Attorney General of the Virgin Islands, to issue an Auto-Expungement Report that details a classification of crimes that should be expunged for persons convicted for reasons solely related to possession, control or sale of under one (1) pound of Cannabis and subject to the classification of crimes that may be expunged under the provisions of Title 5 Virgin Islands Code, Chapter 314.

#### CANNABIS RESEARCH AND DEVELOPMENT LICENSE

Finally, we wish to make it clear that the provisions of Section 798A of the proposed measure related to undertaking Research and Development

activities related to cannabis products and equipment to be used in cultivation and use of cannabis products DO NOT apply to ordinary cultivation, manufacture, use or consumption of cannabis products. These sections solely apply to scientific use. The tax incentives provided in Section 798 further do not grant tax incentive benefits to non-scientific applications or use. However, because of the unique tax status of the Virgin Islands such provisions may incentivize the use of the Virgin Islands for scientific developments and registrations of intellectual rights to such developments.

#### CONCLUSION

In summary, the proposed legislation, if passed into law, will be a major economic driver for the Virgin Islands. With the opening up of the various businesses to cultivate, dispense and manufacture cannabis and cannabis products, the Virgin Islands will realize an infusion of well needed revenues through various licensing fees, taxes and fines. The industry will produce financial opportunities to many locals and will boost our tourism product. And most importantly, the cash strapped Government Employees Retirement System will be provided with a steady source of revenue that the Government of the Virgin Islands may use to issue a revenue backed bond to

and obtain the financing needed to make the Government Employees Retirement System whole.

Again, we are in full support of the proposed legislation and look forward to its passage into law. Thank you for the opportunity to comment on the Virgin Islands Cannabis Use Act. We commend your efforts at doing everything in your powers to make the Virgin Islands a better place for all.