

SENATE BILL 757

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71r3029
CF HB 1040

By: **Senator Gladden**

Introduced and read first time: February 12, 2007

Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Maryland Compassionate Use Act

FOR the purpose of allowing the medical use of marijuana under certain circumstances; repealing certain criminal provisions that allow the imposition of a certain fine for use or possession of marijuana or use or possession of drug paraphernalia related to marijuana under certain circumstances; establishing a Compassionate Use Registry Program; requiring the Department of Health and Mental Hygiene to issue registry identification cards to certain qualifying patients who submit certain documents under certain circumstances in order to qualify for use of marijuana for certain medical conditions; requiring the Department to verify application information and approve or deny an application or renewal within a certain time period or the application shall be deemed granted after a certain time period; allowing judicial review of an approval or denial of a petition or the denial of an application or renewal; specifying the duration of and the information that is required to be contained on the registry identification card; allowing the use in the State of a registry identification card issued by another state under certain circumstances; providing that a qualifying patient may not be subject to arrest or other penalty or disciplinary action for medical use of marijuana under certain circumstances; providing that a primary caregiver may not be subject to arrest or other penalty or disciplinary action for assisting with medical use of marijuana under certain circumstances; providing that a practitioner may not be subject to arrest or other penalty or disciplinary action for providing certifications of qualifying patients' debilitating medical conditions or other information under certain circumstances; providing that certain persons are not subject to arrest or criminal prosecution under certain circumstances; providing that a nurse

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



practitioner or pharmacist may not be subject to arrest or other penalty or disciplinary action solely for discussing the benefits or health risks of medical marijuana or other information under certain circumstances; providing that an application for or possession of a registry identification card may not be used to support the search of a certain person or property; prohibiting a school, employer, or landlord from refusing to enroll, employ, or lease to a person solely based on the person's status as a registered qualifying patient or primary caregiver; providing that a primary caregiver may only assist a certain number of qualifying patients with medical use of marijuana; providing that a primary caregiver may receive reimbursements for certain costs; establishing a certain presumption; requiring the Department to adopt regulations to implement this Act by a certain date with certain requirements; requiring that persons issued registry identification cards comply with certain requirements subject to certain penalties for noncompliance; providing that applications and supporting information submitted by qualifying patients are confidential with a certain limitation; providing a certain penalty for a certain breach of confidentiality; requiring the Department to report to the Governor and General Assembly on certain issues by a certain date; allowing a person or a person's primary caregiver to assert a defense to a prosecution involving marijuana under certain conditions; exempting certain property used in connection with the medical use of marijuana from forfeiture under certain circumstances; defining certain terms; and generally relating to the medical use of marijuana.

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 5–601(c) and 5–619(c)

Annotated Code of Maryland

(2002 Volume and 2006 Supplement)

BY adding to

Article – Health – General

Section 21–1117 through 21–1129 to be under the new part “Part IV. Maryland
Compassionate Use Act”

Annotated Code of Maryland

(2005 Replacement Volume and 2006 Supplement)

Preamble

WHEREAS, Modern medical research has discovered beneficial uses for marijuana in treating or alleviating pain, nausea, and other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999; and

WHEREAS, According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 marijuana arrests in the United States are made under state law, rather than under federal law; and

WHEREAS, Changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana; and

WHEREAS, Although federal law currently prohibits any use of marijuana, the laws of Alaska, Arizona, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington permit the medical use and cultivation of marijuana, and Maryland joins in this effort for the health and welfare of its citizens; and

WHEREAS, States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law and, therefore, compliance with this Act does not put the State of Maryland in violation of federal law; and

WHEREAS, State law should make a distinction between the medical and nonmedical use of marijuana; and

WHEREAS, The purpose of this Act is to protect patients with debilitating medical conditions, their physicians, and their primary caregivers from arrest and prosecution, criminal and other penalties, and property forfeiture if those patients engage in the medical use of marijuana; and

WHEREAS, The General Assembly enacts this Act pursuant to its police power to enact legislation for the protection of the health of its citizens, as reserved to the State in the Tenth Amendment of the United States Constitution; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

5–601.

(c) (1) Except as provided in [paragraphs] **PARAGRAPH** (2) [and (3)] of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

(2) A person whose violation of this section involves the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

[(3) (i) In a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.

(ii) Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed marijuana because of medical necessity, on conviction of a violation of this section, the maximum penalty that the court may impose on the person is a fine not exceeding \$100.]

5-619.

(c) (1) Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to:

(i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or

(ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) for a first violation, a fine not exceeding \$500; and

(ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(3) A person who is convicted of violating this subsection for the first time and who previously has been convicted of violating subsection (d)(4) of this section is subject to the penalty specified under paragraph (2)(ii) of this subsection.

[(4) (i) In a prosecution under this subsection involving drug paraphernalia related to marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.

(ii) Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed drug paraphernalia related to marijuana because of medical necessity, on conviction of a violation of this subsection, the maximum penalty that the court may impose on the person is a fine not exceeding \$100.]

Article - Health - General

21-1115. RESERVED.

21-1116. RESERVED.

PART IV. MARYLAND COMPASSIONATE USE ACT.

21-1117.

(A) IN THIS PART IV OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) "DEBILITATING MEDICAL CONDITION" MEANS:

(I) 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, DEBILITATING, OR CHRONIC PAIN;**
- 3. SEVERE NAUSEA;**
- 4. SEIZURES, INCLUDING THOSE CHARACTERISTIC OF EPILEPSY;**
- 5. SEVERE AND PERSISTENT MUSCLE SPASMS, INCLUDING THOSE CHARACTERISTIC OF MULTIPLE SCLEROSIS OR CROHN'S DISEASE; OR**
- 6. AGITATION OF ALZHEIMER'S DISEASE; OR**

(II) ANY OTHER MEDICAL CONDITION OR ITS TREATMENT APPROVED BY THE DEPARTMENT, UNDER § 21-1123 OF THIS SUBTITLE.

(2) “DEBILITATING MEDICAL CONDITION” INCLUDES:

- (I) CANCER;
- (II) GLAUCOMA;
- (III) POSITIVE STATUS FOR HUMAN IMMUNODEFICIENCY VIRUS (HIV);
- (IV) ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS);
- (V) HEPATITIS C; AND
- (VI) THE TREATMENT OF THESE CONDITIONS.

(C) “MARIJUANA” HAS THE MEANING STATED IN § 5-101 OF THE CRIMINAL LAW ARTICLE.

(D) “MEDICAL USE” MEANS THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURE, USE, DELIVERY, TRANSFER, OR TRANSPORTATION OF MARIJUANA OR PARAPHERNALIA RELATING TO THE CONSUMPTION OF MARIJUANA TO ALLEVIATE A REGISTERED QUALIFYING PATIENT’S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE MEDICAL CONDITION.

(E) “PRACTITIONER” MEANS A PERSON WHO IS LICENSED TO PRESCRIBE DRUGS UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE.

(F) “PRIMARY CAREGIVER” MEANS A PERSON WHO:

- (1) IS AT LEAST 21 YEARS OLD;
- (2) HAS AGREED TO ASSIST A PERSON WITH MEDICAL USE OF MARIJUANA; AND
- (3) DOES NOT HAVE A FELONY DRUG CONVICTION.

(G) **“QUALIFYING PATIENT” MEANS A PERSON WHO HAS BEEN DIAGNOSED BY A PHYSICIAN AS HAVING A DEBILITATING MEDICAL CONDITION AND IS A RESIDENT OF THE STATE.**

(H) **“REGISTRY IDENTIFICATION CARD” MEANS A DOCUMENT ISSUED BY THE DEPARTMENT THAT IDENTIFIES A PERSON AS A QUALIFYING PATIENT OR A PRIMARY CAREGIVER.**

(I) (1) **“USABLE MARIJUANA” MEANS THE DRIED LEAVES AND FLOWERS OF THE MARIJUANA PLANT, AND ANY MIXTURE OR PREPARATION OF THE DRIED LEAVES AND FLOWERS OF THE MARIJUANA PLANT.**

(2) **“USABLE MARIJUANA” DOES NOT INCLUDE THE SEEDS, STALKS, AND ROOTS OF THE MARIJUANA PLANT.**

21-1118.

(A) **THERE IS A COMPASSIONATE USE REGISTRY PROGRAM.**

(B) **THE DEPARTMENT SHALL ISSUE A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT WHO SUBMITS THE FOLLOWING, IN ACCORDANCE WITH THIS SUBTITLE AND THE DEPARTMENT’S REGULATIONS:**

(1) **THE NAME, ADDRESS, AND DATE OF BIRTH OF THE QUALIFYING PATIENT;**

(2) **THE MEDICAL RECORDS OF THE QUALIFYING PATIENT;**

(3) **A STATEMENT SIGNED BY A PRACTITIONER STATING:**

(I) **THE PRACTITIONER HAS COMPLETED A FULL ASSESSMENT OF THE QUALIFYING PATIENT’S MEDICAL CONDITION AND HISTORY; AND**

(II) **THAT IN THE PRACTITIONER’S PROFESSIONAL OPINION THE POTENTIAL BENEFITS OF THE MEDICAL USE OF MARIJUANA WOULD LIKELY OUTWEIGH THE POTENTIAL HEALTH RISKS FOR THE QUALIFYING PATIENT;**

(4) A STATEMENT LISTING THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION;

(5) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE QUALIFYING PATIENT'S PRACTITIONER; AND

(6) IF THE QUALIFYING PATIENT HAS A PRIMARY CAREGIVER, THE NAME, ADDRESS, DATE OF BIRTH, AND TELEPHONE NUMBER OF THE PRIMARY CAREGIVER OF THE QUALIFYING PATIENT.

(C) THE DEPARTMENT SHALL ISSUE A REGISTRY IDENTIFICATION CARD TO A PRIMARY CAREGIVER NAMED IN AN APPLICATION BY A QUALIFYING PATIENT, IN ACCORDANCE WITH THIS SUBTITLE AND THE DEPARTMENT'S REGULATIONS.

(D) THE DEPARTMENT MAY NOT ISSUE A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT UNDER THE AGE OF 18 YEARS UNLESS:

(1) A PARENT, GUARDIAN, OR PERSON HAVING LEGAL CUSTODY OF A QUALIFYING PATIENT CONSENTS IN WRITING TO:

(I) ALLOW THE QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA;

(II) SERVE AS THE QUALIFYING PATIENT'S CAREGIVER; AND

(III) CONTROL THE ACQUISITION OF, DOSAGE, AND FREQUENCY OF USE OF THE MARIJUANA BY THE QUALIFYING PATIENT; AND

(2) THE QUALIFYING PATIENT MEETS THE REQUIREMENTS UNDER SUBSECTION (B) OF THIS SECTION.

(E) THE DEPARTMENT SHALL:

(1) VERIFY THE INFORMATION CONTAINED IN AN APPLICATION OR RENEWAL SUBMITTED UNDER SUBSECTIONS (B) AND (D) OF THIS SECTION; AND

(2) APPROVE OR DENY AN APPLICATION OR RENEWAL WITHIN 90 DAYS.

(F) IF THE DEPARTMENT FAILS TO APPROVE OR DENY A REGISTRY IDENTIFICATION APPLICATION OR RENEWAL SUBMITTED UNDER THIS SUBTITLE WITHIN 90 DAYS OF SUBMISSION, THE APPLICATION OR RENEWAL SHALL BE DEEMED GRANTED AND A COPY OF THE REGISTRY IDENTIFICATION APPLICATION OR RENEWAL SHALL BE DEEMED A VALID REGISTRY IDENTIFICATION CARD.

(G) (1) THE DEPARTMENT MAY NOT DENY AN APPLICATION OR RENEWAL UNDER THIS SUBTITLE UNLESS THE APPLICANT FAILS TO PROVIDE THE INFORMATION REQUIRED UNDER THIS SUBTITLE OR THE DEPARTMENT DETERMINES THAT THE INFORMATION SUBMITTED WITH THE APPLICATION WAS FALSIFIED.

(2) (I) DENIAL OF AN APPLICATION OR RENEWAL IS TO BE CONSIDERED A FINAL AGENCY DECISION SUBJECT TO JUDICIAL REVIEW.

(II) JURISDICTION AND VENUE FOR JUDICIAL REVIEW ARE VESTED IN THE CIRCUIT COURT.

(H) THE DEPARTMENT SHALL ISSUE A REGISTRY IDENTIFICATION CARD WITHIN 10 BUSINESS DAYS AFTER APPROVING AN APPLICATION OR RENEWAL UNDER THIS SUBTITLE TO EACH QUALIFYING PATIENT AND PRIMARY CAREGIVER.

(I) A REGISTRY IDENTIFICATION CARD ISSUED UNDER THIS SECTION SHALL:

(1) EXPIRE WITHIN 1 YEAR AFTER THE DATE OF ISSUANCE AND INCLUDE THE DATE OF ISSUANCE AND EXPIRATION ON THE CARD;

(2) CONTAIN THE NAME, ADDRESS, AND DATE OF BIRTH OF THE QUALIFYING PATIENT AND THE PRIMARY CAREGIVER OF THE QUALIFYING PATIENT;

(3) HAVE A RANDOMLY ASSIGNED REGISTRY IDENTIFICATION NUMBER; AND

(4) A PHOTOGRAPH OF THE QUALIFYING PATIENT OR PRIMARY CAREGIVER.

(J) A REGISTRY IDENTIFICATION CARD OR ITS EQUIVALENT ISSUED UNDER THE LAWS OF ANOTHER STATE TO PERMIT THE MEDICAL USE OF MARIJUANA BY A QUALIFYING PATIENT, OR TO PERMIT A PERSON TO ASSIST WITH A QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA, SHALL HAVE THE SAME FORCE AND EFFECT OF A REGISTRY IDENTIFICATION CARD ISSUED BY THE DEPARTMENT UNDER THIS SUBTITLE.

21-1119.

(A) (1) A QUALIFYING PATIENT WHO HAS A REGISTRY IDENTIFICATION CARD ISSUED UNDER § 21-1118 OF THIS SUBTITLE MAY NOT BE SUBJECT TO ARREST, CRIMINAL PROSECUTION, OR PENALTY, OR DENIED A RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY A BUSINESS, OCCUPATIONAL, OR PROFESSIONAL LICENSING BOARD OR BUREAU, FOR THE MEDICAL USE OF MARIJUANA.

(2) A QUALIFYING PATIENT MAY NOT POSSESS AN AMOUNT OF MARIJUANA THAT EXCEEDS 12 MARIJUANA PLANTS PLUS 2.5 OUNCES OF USABLE MARIJUANA.

(B) (1) A PRIMARY CAREGIVER WHO HAS A REGISTRY IDENTIFICATION CARD ISSUED UNDER § 21-1118 OF THIS SUBTITLE MAY NOT BE SUBJECT TO ARREST, CRIMINAL PROSECUTION, OR PENALTY, OR DENIED A RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY A BUSINESS, OCCUPATIONAL, OR PROFESSIONAL LICENSING BOARD OR BUREAU, FOR ASSISTING A QUALIFYING PATIENT TO WHOM THE PRIMARY CAREGIVER IS CONNECTED THROUGH THE DEPARTMENT'S REGISTRATION PROCESS WITH THE MEDICAL USE OF MARIJUANA.

(2) A PRIMARY CAREGIVER MAY NOT POSSESS AN AMOUNT OF MARIJUANA THAT EXCEEDS 12 MARIJUANA PLANTS PLUS 2.5 OUNCES OF USABLE MARIJUANA FOR EACH QUALIFYING PATIENT THE PRIMARY CAREGIVER IS ASSISTING THROUGH THE DEPARTMENT'S REGISTRATION PROCESS.

(C) A PRACTITIONER MAY NOT BE SUBJECT TO ARREST, CRIMINAL PROSECUTION, OR PENALTY, OR DENIED A RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY THE STATE BOARD OF PHYSICIANS OR BY ANOTHER OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU SOLELY FOR PROVIDING CERTIFICATIONS OF QUALIFYING PATIENTS' DEBILITATING MEDICAL CONDITIONS OR STATING THAT, IN THE PRACTITIONER'S PROFESSIONAL OPINION, THE POTENTIAL BENEFITS OF MEDICAL MARIJUANA WOULD LIKELY OUTWEIGH THE POTENTIAL HEALTH RISKS FOR A PATIENT.

(D) A PERSON MAY NOT BE SUBJECT TO ARREST OR CRIMINAL PROSECUTION FOR POSSESSION, CONSPIRACY, AIDING AND ABETTING, BEING AN ACCESSORY, OR OTHER OFFENSE SOLELY FOR BEING IN THE PRESENCE OR VICINITY OF THE MEDICAL USE OF MARIJUANA AS PROVIDED UNDER THIS SUBTITLE OR FOR ASSISTING A REGISTERED QUALIFYING PATIENT WITH USING OR ADMINISTERING MARIJUANA IN ACCORDANCE WITH THIS SUBTITLE.

(E) A NURSE PRACTITIONER OR PHARMACIST MAY NOT BE SUBJECT TO ARREST, CRIMINAL PROSECUTION, OR PENALTY, OR DENIED A RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY AN OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU SOLELY FOR DISCUSSING THE BENEFITS OR HEALTH RISKS OF MEDICAL MARIJUANA OR ITS INTERACTION WITH OTHER SUBSTANCES WITH A PATIENT.

(F) AN APPLICATION FOR OR POSSESSION OF A REGISTRY IDENTIFICATION CARD UNDER THIS SUBTITLE MAY NOT BE USED TO SUPPORT THE SEARCH OF A PERSON OR PROPERTY OR OTHERWISE SUBJECT A PERSON OR PROPERTY TO INSPECTION BY A GOVERNMENTAL AGENCY.

21-1120.

A SCHOOL, EMPLOYER, OR LANDLORD MAY NOT REFUSE TO ENROLL, EMPLOY, OR LEASE TO, OR OTHERWISE PENALIZE, A PERSON SOLELY FOR THE PERSON'S STATUS AS A REGISTERED QUALIFYING PATIENT OR A REGISTERED PRIMARY CAREGIVER.

21-1121.

(A) A PRIMARY CAREGIVER UNDER THIS SUBTITLE MAY NOT ASSIST MORE THAN FIVE QUALIFYING PATIENTS WITH THE MEDICAL USE OF MARIJUANA IN THE SAME TIME PERIOD.

(B) (1) A PRIMARY CAREGIVER MAY RECEIVE REIMBURSEMENT FOR COSTS ASSOCIATED WITH ASSISTING A REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA.

(2) REIMBURSEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT CONSTITUTE SALE OF CONTROLLED SUBSTANCES.

21-1122.

(A) THERE IS A PRESUMPTION THAT A QUALIFYING PATIENT OR PRIMARY CAREGIVER IS ENGAGED IN THE MEDICAL USE OF MARIJUANA IF THE QUALIFYING PATIENT OR PRIMARY CAREGIVER:

(1) POSSESSES A REGISTRY IDENTIFICATION CARD; AND

(2) POSSESSES AN AMOUNT OF MARIJUANA THAT DOES NOT EXCEED THE ALLOWABLE AMOUNT UNDER THIS SUBTITLE.

(B) THE PRESUMPTION UNDER SUBSECTION (A) OF THIS SECTION MAY BE REBUTTED BY EVIDENCE OF CONDUCT THAT DEMONSTRATES THAT THE MARIJUANA WAS NOT FOR THE PURPOSE OF ALLEVIATING A QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE MEDICAL CONDITION.

21-1123.

(A) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

(B) (1) NO LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS SUBTITLE, THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE MANNER IN WHICH IT SHALL CONSIDER PETITIONS FROM THE PUBLIC TO ADD DEBILITATING MEDICAL CONDITIONS TO THOSE INCLUDED IN THIS SUBTITLE.

(2) (I) IN CONSIDERING THE PETITIONS, THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF AND AN OPPORTUNITY TO COMMENT IN A PUBLIC HEARING ON THE PETITIONS.

(II) THE DEPARTMENT SHALL, AFTER THE HEARING, APPROVE OR DENY PETITIONS SUBMITTED WITHIN 180 DAYS AFTER SUBMISSION.

(3) (I) THE APPROVAL OR DENIAL OF A PETITION SHALL BE CONSIDERED A FINAL AGENCY DECISION SUBJECT TO JUDICIAL REVIEW.

(II) JURISDICTION AND VENUE FOR JUDICIAL REVIEW ARE VESTED IN THE CIRCUIT COURT.

(4) THE DENIAL OF A PETITION DOES NOT PREVENT A PERSON WITH THE DENIED CONDITION FROM RAISING AN AFFIRMATIVE DEFENSE TO A CHARGE FOR POSSESSION OF MARIJUANA.

(C) (1) NO LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS SUBTITLE, THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE MANNER IN WHICH IT SHALL CONSIDER APPLICATIONS FOR AND RENEWALS OF REGISTRY IDENTIFICATION CARDS FOR QUALIFYING PATIENTS AND PRIMARY CAREGIVERS.

(2) THE DEPARTMENT'S REGULATIONS SHALL ESTABLISH APPLICATION AND RENEWAL FEES THAT GENERATE REVENUES SUFFICIENT TO OFFSET ALL EXPENSES OF IMPLEMENTING AND ADMINISTERING THIS SUBTITLE.

(3) THE DEPARTMENT MAY VARY THE APPLICATION AND RENEWAL FEES ALONG A SLIDING SCALE THAT ACCOUNTS FOR A QUALIFYING PATIENT'S INCOME.

(4) THE DEPARTMENT MAY ACCEPT DONATIONS FROM PRIVATE SOURCES IN ORDER TO REDUCE THE APPLICATION AND RENEWAL FEES.

21-1124.

(A) A QUALIFYING PATIENT WHO HAS BEEN ISSUED A REGISTRY IDENTIFICATION CARD SHALL NOTIFY THE DEPARTMENT OF A CHANGE IN THE QUALIFYING PATIENT'S NAME, ADDRESS, OR PRIMARY CAREGIVER OR IF THE QUALIFYING PATIENT CEASES TO HAVE A DEBILITATING MEDICAL CONDITION WITHIN 10 DAYS AFTER THAT CHANGE.

(B) (1) A REGISTERED QUALIFYING PATIENT WHO FAILS TO NOTIFY THE DEPARTMENT OF A CHANGE IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$75.

(2) IF A PERSON HAS CEASED TO SUFFER FROM A DEBILITATING MEDICAL CONDITION, THE REGISTRATION CARD OF THE PERSON SHALL BE DEEMED VOID AND THE PERSON SHALL BE LIABLE FOR ANY PENALTIES THAT MAY APPLY TO THE PERSON'S NONMEDICAL USE OF MARIJUANA.

(C) (1) A REGISTERED PRIMARY CAREGIVER SHALL NOTIFY THE DEPARTMENT OF A CHANGE IN THE CAREGIVER'S NAME OR ADDRESS WITHIN 10 DAYS AFTER THE CHANGE.

(2) A PRIMARY CAREGIVER WHO FAILS TO NOTIFY THE DEPARTMENT OF A CHANGE IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$75.

(D) WHEN A QUALIFYING PATIENT OR PRIMARY CAREGIVER NOTIFIES THE DEPARTMENT OF A CHANGE REQUIRED UNDER THIS SECTION, THE DEPARTMENT SHALL ISSUE TO THE REGISTERED QUALIFYING PATIENT AND EACH PRIMARY CAREGIVER A NEW REGISTRY IDENTIFICATION CARD WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE UPDATED INFORMATION AND THE FEE SET BY THE DEPARTMENT.

(E) (1) WHEN A QUALIFYING PATIENT WHO POSSESSES A REGISTRY IDENTIFICATION CARD GIVES NOTICE OF A CHANGE IN THE PATIENT'S PRIMARY CAREGIVER, THE DEPARTMENT SHALL NOTIFY THE PRIMARY CAREGIVER WITHIN 10 DAYS.

(2) THE PRIMARY CAREGIVER'S PROTECTIONS AS PROVIDED IN THIS SUBTITLE SHALL EXPIRE 10 DAYS AFTER NOTIFICATION BY THE DEPARTMENT.

(F) (1) IF A REGISTERED QUALIFYING PATIENT OR A PRIMARY CAREGIVER LOSES THE REGISTRY IDENTIFICATION CARD, THE PATIENT OR CAREGIVER SHALL NOTIFY THE DEPARTMENT AND SUBMIT A FEE SET BY THE DEPARTMENT WITHIN 10 DAYS AFTER LOSING THE CARD.

(2) WITHIN 10 BUSINESS DAYS AFTER NOTIFICATION OF THE LOSS AND PAYMENT OF THE FEE SET BY THE DEPARTMENT, THE DEPARTMENT SHALL ISSUE A NEW REGISTRY IDENTIFICATION CARD WITH A NEW RANDOM IDENTIFICATION NUMBER.

(G) IF A QUALIFYING PATIENT OR A PRIMARY CAREGIVER WILLFULLY VIOLATES ANY PROVISION OF THIS SUBTITLE, AS DETERMINED BY THE DEPARTMENT, THE PATIENT'S OR CAREGIVER'S REGISTRY IDENTIFICATION CARD MAY BE REVOKED.

21-1125.

(A) (1) APPLICATIONS AND SUPPORTING INFORMATION SUBMITTED BY QUALIFYING PATIENTS, INCLUDING INFORMATION REGARDING THEIR PRIMARY CAREGIVERS AND PRACTITIONERS, ARE CONFIDENTIAL AND PROTECTED UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.

(2) (I) THE DEPARTMENT SHALL MAINTAIN A CONFIDENTIAL LIST OF PERSONS TO WHOM THE DEPARTMENT HAS ISSUED REGISTRY IDENTIFICATION CARDS AND SHALL NOTIFY LOCAL AND STATE LAW ENFORCEMENT OF THE NUMBER OF QUALIFYING PATIENTS IN ANY GIVEN CITY OR TOWN.

(II) INDIVIDUAL NAMES AND OTHER IDENTIFYING INFORMATION ON THE LIST SHALL BE CONFIDENTIAL, EXEMPT FROM THE PROVISIONS OF THE MARYLAND PUBLIC INFORMATION ACT, AND NOT SUBJECT TO DISCLOSURE, EXCEPT TO AUTHORIZED EMPLOYEES OF THE DEPARTMENT AS NECESSARY TO PERFORM OFFICIAL DUTIES OF THE DEPARTMENT.

(B) THE DEPARTMENT MAY VERIFY TO LAW ENFORCEMENT PERSONNEL WHETHER A REGISTRY IDENTIFICATION CARD IS VALID BY CONFIRMING THE RANDOM REGISTRY IDENTIFICATION NUMBER.

(C) (1) (I) A PERSON, INCLUDING AN EMPLOYEE OR OFFICIAL OF THE DEPARTMENT OR ANOTHER STATE AGENCY OR LOCAL GOVERNMENT, MAY NOT BREACH THE CONFIDENTIALITY OF INFORMATION OBTAINED PURSUANT TO THIS SUBTITLE.

(II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$1,000 OR BOTH.

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, EMPLOYEES OF THE DEPARTMENT MAY NOTIFY LAW ENFORCEMENT OFFICIALS ABOUT FALSIFIED OR FRAUDULENT INFORMATION SUBMITTED TO THE DEPARTMENT.

21-1126.

(A) ON OR BEFORE DECEMBER 31, 2009, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY ON THE MEDICAL USE OF MARIJUANA.

(B) THE REPORT SHALL INCLUDE:

(1) THE NUMBER OF APPLICATIONS FOR REGISTRY IDENTIFICATION CARDS RECEIVED BY THE DEPARTMENT, THE NUMBER OF QUALIFYING PATIENTS AND PRIMARY CAREGIVERS APPROVED, THE NATURE OF THE DEBILITATING MEDICAL CONDITIONS OF THE QUALIFYING PATIENTS, THE NUMBER OF REGISTRY IDENTIFICATION CARDS REVOKED, AND THE NUMBER OF PRACTITIONERS PROVIDING WRITTEN CERTIFICATION FOR QUALIFYING PATIENTS;

(2) AN EVALUATION OF THE COSTS OF PERMITTING THE USE OF MARIJUANA FOR SYMPTOM RELIEF, INCLUDING ANY COSTS TO LAW ENFORCEMENT AGENCIES AND THE COSTS OF ANY LITIGATION;

(3) STATISTICS REGARDING THE NUMBER OF MARIJUANA-RELATED PROSECUTIONS AGAINST REGISTERED PATIENTS AND CAREGIVERS, AND AN ANALYSIS OF THE FACTS UNDERLYING THOSE PROSECUTIONS;

(4) STATISTICS REGARDING THE NUMBER OF PROSECUTIONS AGAINST PRACTITIONERS FOR VIOLATIONS OF THIS PART IV OF THIS SUBTITLE; AND

(5) A STATEMENT ON THE UNITED STATES FOOD AND DRUG ADMINISTRATION'S POSITION REGARDING THE USE OF MARIJUANA FOR MEDICAL PURPOSES OR APPROVED ALTERNATIVE DELIVERY SYSTEMS FOR MARIJUANA.

21-1127.

(A) (1) THIS PART IV OF THIS SUBTITLE DOES NOT AUTHORIZE:

(I) A PERSON TO UNDERTAKE A TASK UNDER THE INFLUENCE OF MARIJUANA WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE;

(II) THE SMOKING OF MARIJUANA:

1. IN A SCHOOL BUS OR OTHER FORM OF PUBLIC TRANSPORTATION;

2. ON ANY SCHOOL GROUNDS;

3. IN ANY CORRECTIONAL FACILITY;

4. IN ANY PUBLIC PLACE; OR

5. IN ANY LICENSED DRUG TREATMENT FACILITY IN THE STATE; OR

(III) A PERSON TO OPERATE, NAVIGATE, OR BE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE, AIRCRAFT, OR MOTORBOAT WHILE UNDER THE INFLUENCE OF MARIJUANA.

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, A REGISTERED QUALIFYING PATIENT MAY NOT BE CONSIDERED TO BE UNDER THE

INFLUENCE SOLELY FOR HAVING MARIJUANA METABOLITES IN THE PATIENT'S SYSTEM.

(B) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO REQUIRE:

(1) A GOVERNMENT MEDICAL ASSISTANCE PROGRAM OR PRIVATE HEALTH INSURER TO REIMBURSE A PERSON FOR COSTS ASSOCIATED WITH THE MEDICAL USE OF MARIJUANA; OR

(2) AN EMPLOYER TO ACCOMMODATE THE MEDICAL USE OF MARIJUANA IN A WORKPLACE.

(C) FRAUDULENT REPRESENTATION TO A LAW ENFORCEMENT OFFICIAL OF ANY FACT OR CIRCUMSTANCE RELATING TO THE MEDICAL USE OF MARIJUANA TO AVOID ARREST OR PROSECUTION IS PUNISHABLE BY A FINE OF \$500, WHICH SHALL BE IN ADDITION TO ANY OTHER PENALTIES THAT MAY APPLY FOR MAKING A FALSE STATEMENT TO A LAW ENFORCEMENT OFFICIAL.

21-1128.

(A) EXCEPT AS PROVIDED IN § 21-1127 OF THIS SUBTITLE, A PERSON OR A PERSON'S PRIMARY CAREGIVER MAY ASSERT THE MEDICAL PURPOSE FOR USING MARIJUANA AS A DEFENSE TO ANY PROSECUTION INVOLVING MARIJUANA, AND THE DEFENSE SHALL BE PRESUMED VALID WHERE A PREPONDERANCE OF THE EVIDENCE SHOWS THAT:

(1) THE QUALIFYING PATIENT'S MEDICAL RECORDS INDICATE AND A PRACTITIONER HAS STATED THAT, IN THE PRACTITIONER'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL ASSESSMENT OF THE PERSON'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION MADE IN THE COURSE OF A BONA FIDE PRACTITIONER-PATIENT RELATIONSHIP, THE POTENTIAL BENEFITS OF USING MARIJUANA FOR MEDICAL PURPOSES WOULD LIKELY OUTWEIGH THE HEALTH RISKS FOR THE QUALIFYING PATIENT; AND

(2) THE PERSON OR THE PERSON'S PRIMARY CAREGIVER WAS IN POSSESSION OF A QUANTITY OF MARIJUANA THAT WAS NOT MORE THAN WHAT IS PERMITTED UNDER THIS SUBTITLE TO ENSURE THE UNINTERRUPTED AVAILABILITY OF MARIJUANA FOR THE PURPOSE OF ALLEVIATING THE

PERSON'S MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE MEDICAL CONDITION.

(B) A PERSON MAY ASSERT THE MEDICAL PURPOSE FOR USING MARIJUANA IN A MOTION TO DISMISS CHARGES FOR POSSESSION OF MARIJUANA.

(C) IF THE PERSON OR THE PERSON'S PRIMARY CAREGIVER DEMONSTRATES THE PERSON'S MEDICAL PURPOSE FOR USING MARIJUANA PURSUANT TO THIS SECTION, AN INTEREST IN OR RIGHT TO PROPERTY THAT WAS POSSESSED, OWNED, OR USED IN CONNECTION WITH A PERSON'S USE OF MARIJUANA FOR MEDICAL PURPOSES MAY NOT BE SUBJECT TO FORFEITURE SOLELY FOR THE POSSESSION OR USE OF MARIJUANA.

21-1129.

THIS PART IV OF THIS SUBTITLE MAY BE CITED AS THE "MARYLAND COMPASSIONATE USE ACT".

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.