

HOUSE BILL 1809

E1, J1
HB 15/12 – HGO & JUD

2lr3514

By: **Delegates Glenn and Morhaim**

Introduced and read first time: May 14, 2012

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Marijuana – Caregiver – Affirmative Defense**

3 FOR the purpose of establishing that it is an affirmative defense to a prosecution for
4 the possession of marijuana or the possession of certain drug paraphernalia that
5 the marijuana or drug paraphernalia was intended for medical use by an
6 individual with a certain debilitating medical condition for whom the defendant
7 is a certain caregiver; prohibiting a certain defendant from asserting a certain
8 affirmative defense unless, at least a certain number of days before trial, the
9 defendant notifies the State’s Attorney of the defendant’s intention to assert the
10 affirmative defense and provides the State’s Attorney with certain
11 documentation; prohibiting a certain affirmative defense from being used under
12 certain circumstances; defining a certain term; and generally relating to the
13 medical use of marijuana.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Law
16 Section 5–601(c)(3) and 5–619(c)(4)
17 Annotated Code of Maryland
18 (2012 Replacement Volume)

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

21 **Article – Criminal Law**

22 5–601.

23 (c) (3) (i) 1. In this paragraph the following words have the
24 meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2. “Bona fide physician–patient relationship” means a
2 relationship in which the physician has ongoing responsibility for the assessment,
3 care, and treatment of a patient’s medical condition.

4 **3. “CAREGIVER” MEANS AN INDIVIDUAL**
5 **DESIGNATED BY A PATIENT WITH A DEBILITATING MEDICAL CONDITION TO**
6 **PROVIDE PHYSICAL OR MEDICAL ASSISTANCE TO THE PATIENT, INCLUDING**
7 **ASSISTING WITH THE MEDICAL USE OF MARIJUANA, WHO:**

8 **A. IS A RESIDENT OF THE STATE;**

9 **B. IS AT LEAST 21 YEARS OLD;**

10 **C. IS AN IMMEDIATE FAMILY MEMBER, SPOUSE, OR**
11 **DOMESTIC PARTNER OF THE PATIENT;**

12 **D. HAS NOT BEEN CONVICTED OF A CRIME OF**
13 **VIOLENCE AS DEFINED IN § 14–101 OF THIS ARTICLE;**

14 **E. HAS NOT BEEN CONVICTED OF A VIOLATION OF A**
15 **STATE OR FEDERAL CONTROLLED DANGEROUS SUBSTANCES LAW;**

16 **F. HAS NOT BEEN CONVICTED OF A CRIME OF MORAL**
17 **TURPITUDE;**

18 **G. HAS BEEN DESIGNATED AS CAREGIVER BY THE**
19 **PATIENT IN A WRITING THAT HAS BEEN PLACED IN THE PATIENT’S MEDICAL**
20 **RECORD PRIOR TO ARREST;**

21 **H. IS THE ONLY INDIVIDUAL DESIGNATED BY THE**
22 **PATIENT TO SERVE AS CAREGIVER; AND**

23 **I. IS NOT SERVING AS CAREGIVER FOR ANY OTHER**
24 **PATIENT.**

25 **[3.] 4. “Debilitating medical condition” means a chronic or**
26 **debilitating disease or medical condition or the treatment of a chronic or debilitating**
27 **disease or medical condition that produces one or more of the following, as documented**
28 **by a physician with whom the patient has a bona fide physician–patient relationship:**

29 **A. cachexia or wasting syndrome;**

30 **B. severe or chronic pain;**

31 **C. severe nausea;**

- 1 D. seizures;
- 2 E. severe and persistent muscle spasms; or
- 3 F. any other condition that is severe and resistant to
4 conventional medicine.

5 (ii) 1. In a prosecution for the use or possession of
6 marijuana, the defendant may introduce and the court shall consider as a mitigating
7 factor any evidence of medical necessity.

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

12 (iii) 1. In a prosecution for the use or possession of
13 marijuana under this section, it is an affirmative defense that the defendant used or
14 possessed marijuana because:

15 A. the defendant has a debilitating medical condition
16 that has been diagnosed by a physician with whom the defendant has a bona fide
17 physician–patient relationship;

18 B. the debilitating medical condition is severe and
19 resistant to conventional medicine; and

20 C. marijuana is likely to provide the defendant with
21 therapeutic or palliative relief from the debilitating medical condition.

22 **2. A. IN A PROSECUTION FOR THE POSSESSION**
23 **OF MARIJUANA UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT**
24 **THE DEFENDANT POSSESSED MARIJUANA BECAUSE THE MARIJUANA WAS**
25 **INTENDED FOR MEDICAL USE BY AN INDIVIDUAL WITH A DEBILITATING**
26 **MEDICAL CONDITION FOR WHOM THE DEFENDANT IS A CAREGIVER.**

27 **B. A DEFENDANT MAY NOT ASSERT THE**
28 **AFFIRMATIVE DEFENSE UNDER THIS SUBSUBPARAGRAPH UNLESS, AT LEAST 30**
29 **DAYS BEFORE TRIAL, THE DEFENDANT NOTIFIES THE STATE’S ATTORNEY OF**
30 **THE DEFENDANT’S INTENTION TO ASSERT THE AFFIRMATIVE DEFENSE AND**
31 **PROVIDES THE STATE’S ATTORNEY WITH ALL DOCUMENTATION IN SUPPORT OF**
32 **THE AFFIRMATIVE DEFENSE.**

33 **[2.] 3. [The] AN affirmative defense UNDER THIS**
34 **SUBPARAGRAPH may not be used if the defendant was:**

1 A. using marijuana in a public place **OR ASSISTING THE**
2 **INDIVIDUAL FOR WHOM THE DEFENDANT IS A CAREGIVER IN USING THE**
3 **MARIJUANA IN A PUBLIC PLACE;** or

4 B. in possession of more than 1 ounce of marijuana.

5 5-619.

6 (c) (4) (i) 1. In this paragraph the following words have the
7 meanings indicated.

8 2. “Bona fide physician–patient relationship” means a
9 relationship in which the physician has ongoing responsibility for the assessment,
10 care, and treatment of a patient’s medical condition.

11 3. **“CAREGIVER” MEANS AN INDIVIDUAL**
12 **DESIGNATED BY A PATIENT WITH A DEBILITATING MEDICAL CONDITION TO**
13 **PROVIDE PHYSICAL OR MEDICAL ASSISTANCE TO THE PATIENT, INCLUDING**
14 **ASSISTING WITH THE MEDICAL USE OF MARIJUANA, WHO:**

15 A. **IS A RESIDENT OF THE STATE;**

16 B. **IS AT LEAST 21 YEARS OLD;**

17 C. **IS AN IMMEDIATE FAMILY MEMBER, SPOUSE, OR**
18 **DOMESTIC PARTNER OF THE PATIENT;**

19 D. **HAS NOT BEEN CONVICTED OF A CRIME OF**
20 **VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE;**

21 E. **HAS NOT BEEN CONVICTED OF A VIOLATION OF A**
22 **STATE OR FEDERAL CONTROLLED DANGEROUS SUBSTANCES LAW;**

23 F. **HAS NOT BEEN CONVICTED OF A CRIME OF MORAL**
24 **TURPITUDE;**

25 G. **HAS BEEN DESIGNATED AS CAREGIVER BY THE**
26 **PATIENT IN A WRITING THAT HAS BEEN PLACED IN THE PATIENT’S MEDICAL**
27 **RECORD PRIOR TO ARREST;**

28 H. **IS THE ONLY INDIVIDUAL DESIGNATED BY THE**
29 **PATIENT TO SERVE AS CAREGIVER; AND**

1 **I. IS NOT SERVING AS CAREGIVER FOR ANY OTHER**
2 **PATIENT.**

3 [3.] 4. “Debilitating medical condition” means a chronic or
4 debilitating disease or medical condition or the treatment of a chronic or debilitating
5 disease or medical condition that produces one or more of the following, as documented
6 by a physician with whom the patient has a bona fide physician–patient relationship:

7 A. cachexia or wasting syndrome;

8 B. severe or chronic pain;

9 C. severe nausea;

10 D. seizures;

11 E. severe and persistent muscle spasms; or

12 F. any other condition that is severe and resistant to
13 conventional medicine.

14 (ii) 1. In a prosecution under this subsection involving drug
15 paraphernalia related to marijuana, the defendant may introduce and the court shall
16 consider as a mitigating factor any evidence of medical necessity.

17 2. Notwithstanding paragraph (2) of this subsection, if
18 the court finds that the person used or possessed drug paraphernalia related to
19 marijuana because of medical necessity, on conviction of a violation of this subsection,
20 the maximum penalty that the court may impose on the person is a fine not exceeding
21 \$100.

22 (iii) 1. In a prosecution under this subsection involving drug
23 paraphernalia related to marijuana, it is an affirmative defense that the defendant
24 used or possessed drug paraphernalia related to marijuana because:

25 A. the defendant has a debilitating medical condition
26 that has been diagnosed by a physician with whom the defendant has a bona fide
27 physician–patient relationship;

28 B. the debilitating medical condition is severe and
29 resistant to conventional medicine; and

30 C. marijuana is likely to provide the defendant with
31 therapeutic or palliative relief from the debilitating medical condition.

32 **2. A. IN A PROSECUTION UNDER THIS**
33 **SUBSECTION INVOLVING DRUG PARAPHERNALIA RELATED TO MARIJUANA, IT IS**

1 AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT POSSESSED DRUG
2 PARAPHERNALIA RELATED TO MARIJUANA BECAUSE THE DRUG
3 PARAPHERNALIA RELATED TO MARIJUANA WAS INTENDED FOR MEDICAL USE
4 BY AN INDIVIDUAL WITH A DEBILITATING MEDICAL CONDITION FOR WHOM THE
5 DEFENDANT IS A CAREGIVER.

6 B. A DEFENDANT MAY NOT ASSERT THE
7 AFFIRMATIVE DEFENSE UNDER THIS SUBSUBPARAGRAPH UNLESS, AT LEAST 30
8 DAYS BEFORE TRIAL, THE DEFENDANT NOTIFIES THE STATE'S ATTORNEY OF
9 THE DEFENDANT'S INTENTION TO ASSERT THE AFFIRMATIVE DEFENSE AND
10 PROVIDES THE STATE'S ATTORNEY WITH ALL DOCUMENTATION IN SUPPORT OF
11 THE AFFIRMATIVE DEFENSE.

12 [2.] 3. [The] AN affirmative defense UNDER THIS
13 SUBPARAGRAPH may not be used if the defendant was:

14 A. using marijuana in a public place OR ASSISTING THE
15 INDIVIDUAL FOR WHOM THE DEFENDANT IS A CAREGIVER IN USING THE
16 MARIJUANA IN A PUBLIC PLACE; or

17 B. in possession of more than 1 ounce of marijuana.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 June 1, 2012.