SENATE BILL 517

E1, E2, R5 5lr1843

By: Senator Zirkin

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2

Criminal Law – Use and Possession of Marijuana and Drug Paraphernalia

3 FOR the purpose of repealing a certain criminal prohibition on the use or possession of 4 marijuana; establishing that certain civil penalties apply to the use or possession of 5 any quantity of marijuana; establishing a civil penalty for the smoking of marijuana 6 in a public place; requiring a court to dismiss a certain use or possession of marijuana 7 charge if the court finds that the person used or possessed marijuana because of a 8 certain medical necessity; providing that the provisions of this Act may not be 9 construed to authorize certain activities; establishing that certain procedures regarding the issuance of a citation for the use or possession of marijuana apply to 10 11 all amounts and not just certain amounts of marijuana; establishing that a certain 12 criminal prohibition on the use or possession of drug paraphernalia does not apply 13 to the use or possession of drug paraphernalia involving the use or possession of 14 marijuana; repealing a certain affirmative defense regarding a certain medical 15 necessity as it relates to a certain offense prohibiting the use and possession of drug 16 paraphernalia; prohibiting the use of marijuana in a vehicle while on a highway; 17 providing for certain penalties for a violation of this Act; providing for the application of certain provisions of this Act; and generally relating to the use and possession of 18 19 marijuana and drug paraphernalia.

20 BY repealing and reenacting, with amendments,

Article – Criminal Law

22 Section 5–601, 5–601.1, and 5–619

23 Annotated Code of Maryland

24 (2012 Replacement Volume and 2014 Supplement)

25 BY adding to

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26 Article – Transportation

27 Section 21–903.1 and 27–116

28 Annotated Code of Maryland

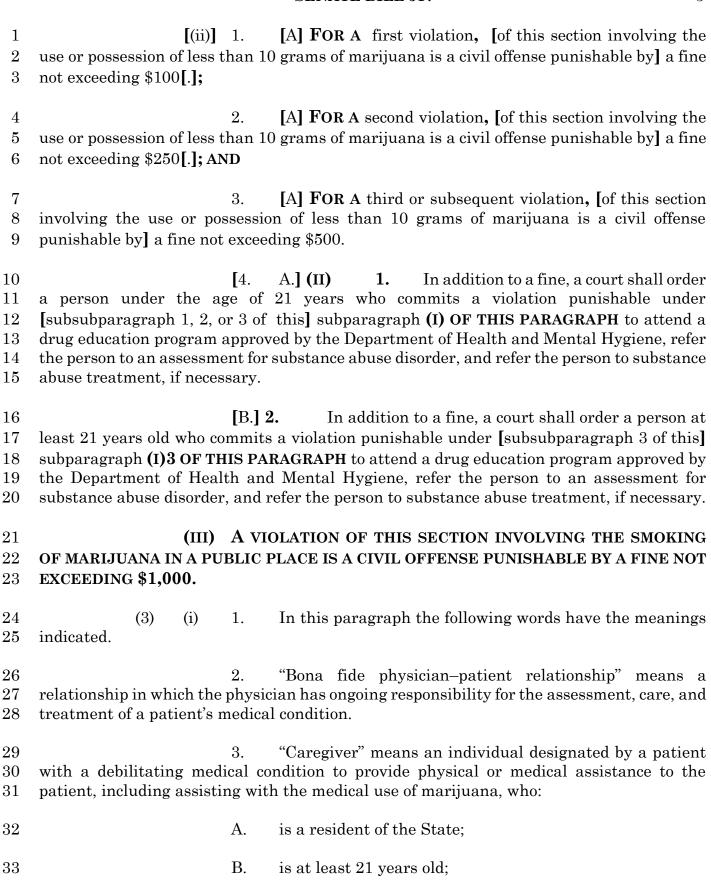
29 (2012 Replacement Volume and 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, 1 2 That the Laws of Maryland read as follows: 3 Article - Criminal Law 4 5-601.5 (a) Except as otherwise provided in this title, a person may not: 6 (1) possess or administer to another a controlled dangerous substance, 7 unless obtained directly or by prescription or order from an authorized provider acting in 8 the course of professional practice; or 9 (2) obtain or attempt to obtain a controlled dangerous substance, or 10 procure or attempt to procure the administration of a controlled dangerous substance by: 11 (i) fraud, deceit, misrepresentation, or subterfuge; 12 (ii) the counterfeiting or alteration of a prescription or a written 13 order; the concealment of a material fact; 14 (iii) the use of a false name or address; 15 (iv) 16 falsely assuming the title of or representing to be a (v) 17 manufacturer, distributor, or authorized provider; or 18 (vi) making, issuing, or presenting a false or counterfeit prescription 19 or written order. 20 Information that is communicated to a physician in an effort to obtain a 21controlled dangerous substance in violation of this section is not a privileged 22 communication. 23 Except as provided in paragraphs (2) and (3) of this subsection, a person 24who violates this section is guilty of a misdemeanor and on conviction is subject to 25 imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both. 26 (2) Except as provided in subparagraph [(ii)] (III) of this paragraph, (i) 27 a [person whose] violation of this section [involves] INVOLVING the use or possession of 28marijuana is A CIVIL OFFENSE subject to [imprisonment not exceeding 1 year or a fine not 29 exceeding \$1,000 or both.



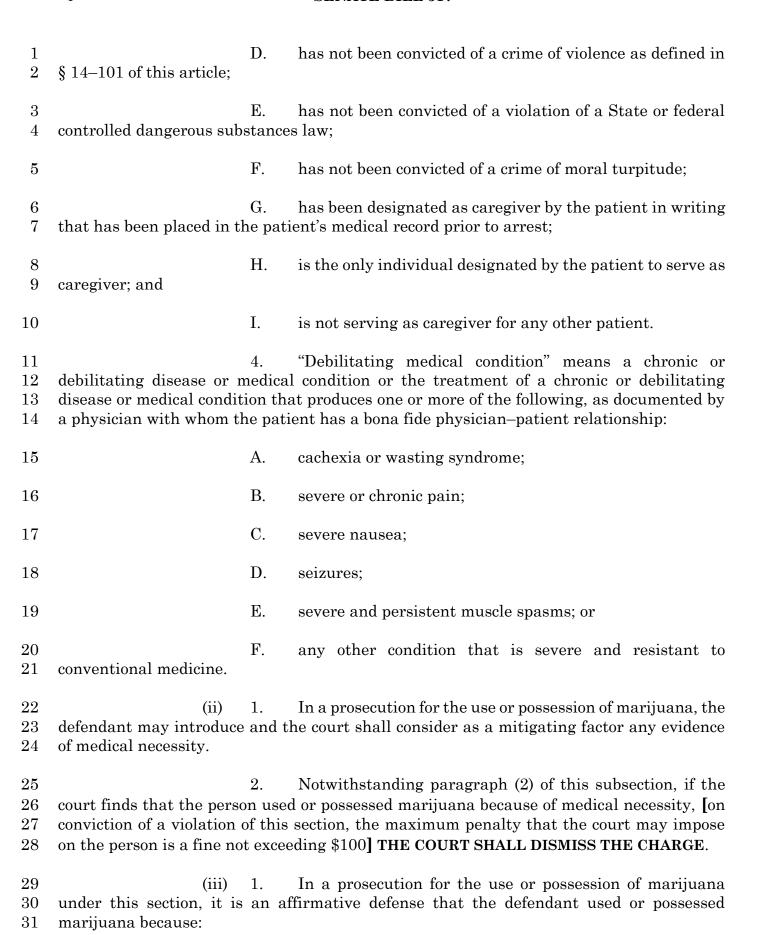
is an immediate family member, a spouse, or a domestic

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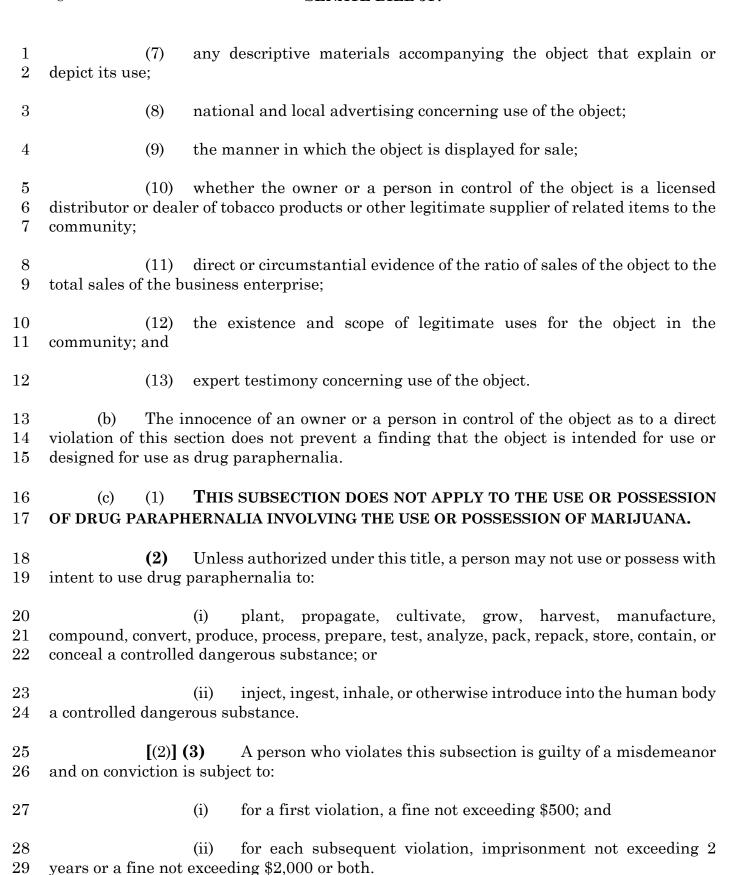
partner of the patient;



1 2 3	A. the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician—patient relationship;					
4 5	B. the debilitating medical condition is severe and resistant to conventional medicine; and					
6 7	C. marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition.					
8 9 10 11	under this section, it is an affirmative defense that the defendant possessed marijuana					
12 13 14 15 16	this subsubparagraph unless the defendant notifies the State's Attorney of the defendant's intention to assert the affirmative defense and provides the State's Attorney with all documentation in support of the affirmative defense in accordance with the rules of					
17 18	3. An affirmative defense under this subparagraph may not be used if the defendant was:					
19 20 21	A. using marijuana in a public place or assisting the individual for whom the defendant is a caregiver in using the marijuana in a public place; or					
22	B. in possession of more than 1 ounce of marijuana.					
23 24	(d) The provisions of subsection [(c)(2)(ii)] (C)(2)(I) of this section making the possession of marijuana a civil offense may not be construed to:					
25	(1) affect the laws relating to:					
26 27	[(1)] (I) operating a vehicle or vessel while under the influence of or while impaired by a controlled dangerous substance; or					
28 29	[(2)] (II) SEARCH, seizure and forfeiture OF A VEHICLE, VESSEL, OR REAL PROPERTY; OR					
30	(2) AUTHORIZE A PERSON TO ENGAGE IN:					
31	(I) SMOKING MARIJUANA IN ANY PUBLIC PLACE;					

1	(II) SMOKING MARIJUANA IN A MOTOR VEHICLE; OR						
2 3 4	(III) UNDERTAKING ANY TASK UNDER THE INFLUENCE OF MARIJUANA, WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE.						
5	5-601.1.						
6 7 8	(a) A police officer shall issue a citation to a person who the police officer has probable cause to believe has committed a violation of § 5–601 of this part involving the use or possession of [less than 10 grams of] marijuana.						
9	(b) (1) A violation of \S 5–601 of this part involving the use or possession of [less than 10 grams of] marijuana is a civil offense.						
$\frac{1}{2}$	(2) Adjudication of a violation under § 5–601 of this part involving the use or possession of [less than 10 grams of] marijuana:						
13	(i) is not a criminal conviction for any purpose; and						
14 15	(ii) does not impose any of the civil disabilities that may result from a criminal conviction.						
16 17 18	(c) (1) A citation issued for a violation of § 5–601 of this part involving the use or possession of [less than 10 grams of] marijuana shall be signed by the police officer who issues the citation and shall contain:						
9	(i) the name and address of the person charged;						
20	(ii) the date and time that the violation occurred;						
21	(iii) the location at which the violation occurred;						
22	(iv) the fine that may be imposed;						
23 24	(v) a notice stating that prepayment of the fine is allowed, except as provided in paragraph (2) of this subsection; and						
25	(vi) a notice in boldface type that states that the person shall:						
26	1. pay the full amount of the preset fine; or						
27 28	2. request a trial date at the date, time, and place established by the District Court by writ or trial notice.						

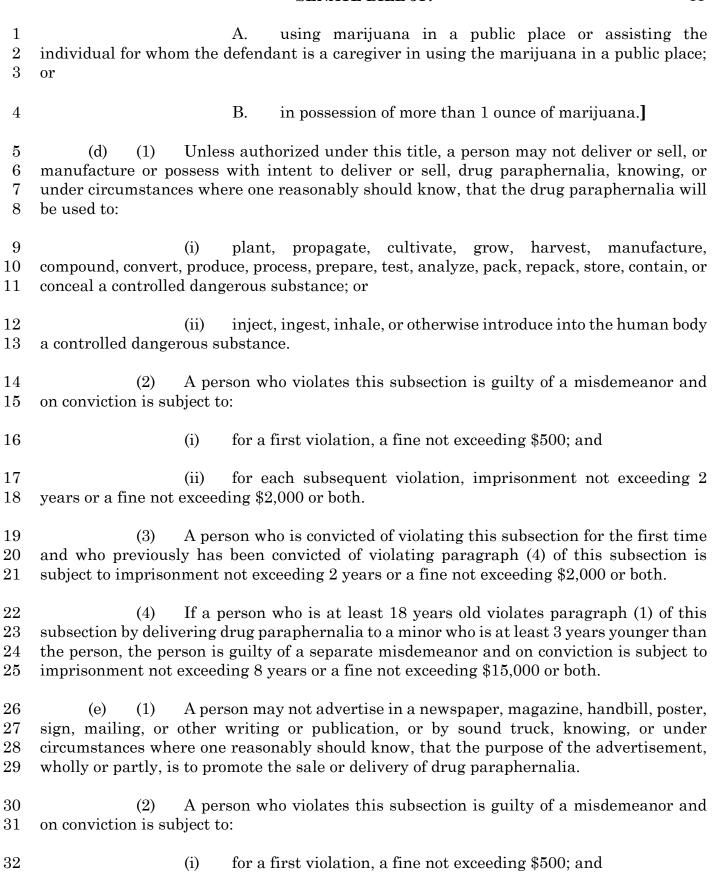
- 1 (2) (i) If a citation for a violation of § 5–601 of this part involving the 2 use or possession of [less than 10 grams of] marijuana is issued to a person under the age 3 of 21 years, the court shall summon the person for trial.
- 4 (ii) If the court finds that a person at least 21 years old has 5 committed a third or subsequent violation of § 5–601 of this part involving the use or 6 possession of [less than 10 grams of] marijuana, the court shall summon the person for 7 trial.
- 8 (d) The form of the citation shall be uniform throughout the State and shall be 9 prescribed by the District Court.
- 10 (e) The Chief Judge of the District Court shall establish a schedule for the 11 prepayment of the fine.
- 12 (f) A person issued a citation for a violation of § 5–601 of this part involving the 13 use or possession of [less than 10 grams of] marijuana who is under the age of 18 years 14 shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of the 15 Courts Article.
- 16 (g) A citation for a violation of § 5–601 of this part involving the use or possession 17 of [less than 10 grams of] marijuana and the official record of a court regarding the citation 18 are not subject to public inspection and may not be included on the public Web site 19 maintained by the Maryland Judiciary.
- 20 5-619.
- 21 (a) To determine whether an object is drug paraphernalia, a court shall consider, 22 among other logically relevant factors:
- 23 (1) any statement by an owner or a person in control of the object 24 concerning its use;
- 25 (2) any prior conviction of an owner or a person in control of the object under a State or federal law relating to a controlled dangerous substance;
- 27 (3) the proximity of the object, in time and space, to a direct violation of this section or to a controlled dangerous substance;
- 29 (4) a residue of a controlled dangerous substance on the object;
- 30 (5) direct or circumstantial evidence of the intent of an owner or a person in control of the object to deliver it to another who, the owner or the person knows or should reasonably know, intends to use the object to facilitate a violation of this section;
- 33 (6) any instructions, oral or written, provided with the object concerning 34 its use;



1 2 3	-	has be	son who is convicted of violating this subsection for the first een convicted of violating subsection (d)(4) of this section is under paragraph [(2)(ii)] (3)(II) of this subsection.			
4 5	[(4) (i) indicated.	1.	In this paragraph the following words have the meanings			
6 7 8	relationship in which the treatment of a patient's r		"Bona fide physician—patient relationship" means a ian has ongoing responsibility for the assessment, care, and condition.			
9 10 11	3. "Caregiver" means an individual designated by a patient with a debilitating medical condition to provide physical or medical assistance to the patient, including assisting with the medical use of marijuana, who:					
12		A.	is a resident of the State;			
13		В.	is at least 21 years old;			
14 15	partner of the patient;	C.	is an immediate family member, a spouse, or a domestic			
16 17	§ 14–101 of this article;	D.	has not been convicted of a crime of violence as defined in			
18 19	E. has not been convicted of a violation of a State or federal controlled dangerous substances law;					
20		F.	has not been convicted of a crime of moral turpitude;			
21 22	that has been placed in t	G. he pati	has been designated as caregiver by the patient in writing ent's medical record prior to arrest;			
23 24	caregiver; and	Н.	is the only individual designated by the patient to serve as			
25		I.	is not serving as caregiver for any other patient.			
26 27 28 29	disease or medical condit	tion tha	"Debilitating medical condition" means a chronic or l condition or the treatment of a chronic or debilitating at produces one or more of the following, as documented by ent has a bona fide physician—patient relationship:			
30		A.	cachexia or wasting syndrome;			
31		В.	severe or chronic pain;			

1		C.	severe nausea;
2		D.	seizures;
3		E.	severe and persistent muscle spasms; or
4 5	conventional medicine.	F.	any other condition that is severe and resistant to
6 7 8			In a prosecution under this subsection involving drug juana, the defendant may introduce and the court shall any evidence of medical necessity.
9 10 11	because of medical neces	sity, o	Notwithstanding paragraph (2) of this subsection, if the ed or possessed drug paraphernalia related to marijuana a conviction of a violation of this subsection, the maximum ose on the person is a fine not exceeding \$100.
13 14 15			In a prosecution under this subsection involving drug nana, it is an affirmative defense that the defendant used or related to marijuana because:
16 17 18	has been diagnosed by physician–patient relation	_	the defendant has a debilitating medical condition that hysician with whom the defendant has a bona fide
19 20	to conventional medicine	B. ; and	the debilitating medical condition is severe and resistant
21 22	therapeutic or palliative	C. relief f	marijuana is likely to provide the defendant with rom the debilitating medical condition.
23 24 25 26 27	possessed drug parapher	nalia r led for	A. In a prosecution under this subsection involving marijuana, it is an affirmative defense that the defendant elated to marijuana because the drug paraphernalia related medical use by an individual with a debilitating medical nt is a caregiver.
28 29 30 31	intention to assert the	affirma ort of	A defendant may not assert the affirmative defense under the defendant notifies the State's Attorney of the defendant's active defense and provides the State's Attorney with all the affirmative defense in accordance with the rules of Rules 4–262 and 4–263.

33 An affirmative defense under this subparagraph may not 34 be used if the defendant was:



for each subsequent violation, imprisonment not exceeding 2

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(ii)

years or a fine not exceeding \$2,000 or both.

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Article – Transportation

- 2 **21–903.1.**
- 3 (A) THIS SECTION APPLIES TO A MOTOR VEHICLE THAT IS DRIVEN, 4 STOPPED, STANDING, OR OTHERWISE LOCATED ON A HIGHWAY.
- 5 (B) A PERSON MAY NOT USE MARIJUANA IN A MOTOR VEHICLE ON A 6 HIGHWAY.
- 7 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROHIBITION 8 CONTAINED IN THIS SECTION APPLIES THROUGHOUT THE STATE.
- 9 **27–116.**
- ANY PERSON CONVICTED OF A VIOLATION OF § 21–903.1 OF THIS ARTICLE IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$1,000.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.