
By: **Senators Currie, Exum, and Pinsky**
Introduced and read first time: February 2, 2001
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Marijuana - Exceptions for Medical Use**

3 FOR the purpose of allowing certain individuals who have certain medical conditions
4 to possess marijuana and related drug paraphernalia under certain
5 circumstances; allowing certain individuals related to qualifying patients to
6 possess marijuana and related drug paraphernalia under certain circumstances;
7 providing that certain physicians who make certain statements are not in
8 violation of certain laws; prohibiting certain property related to the medical use
9 of marijuana from being treated in a certain manner under certain
10 circumstances; providing that certain individuals who are in certain locations
11 with a qualifying patient are not in violation of certain laws under certain
12 circumstances; establishing a certain defense and presumption; providing that
13 authorization for the medical use of marijuana provided under this Act does not
14 apply under certain circumstances; providing that insurance coverage is not
15 required for the medical use of marijuana; providing that accommodation of the
16 medical use of marijuana may not be required in any place of employment;
17 prohibiting certain fraudulent representations regarding the medical use of
18 marijuana; establishing certain penalties; providing that certain laws relating
19 to drug paraphernalia do not apply to the medical use of marijuana; requiring
20 the Department of Health and Mental Hygiene to issue certain registry
21 identification cards to certain individuals under certain circumstances;
22 requiring an individual who possesses a registry identification card to notify the
23 Department of certain changes; requiring the Department to maintain a list of
24 individuals to whom a registry identification card has been issued; requiring the
25 Department to adopt certain regulations; declaring the findings and intent of
26 the General Assembly; making technical changes; defining certain terms;
27 making provisions of this Act severable; and generally relating to the medical
28 use of marijuana.

29 BY renumbering
30 Article 27 - Crimes and Punishments
31 Section 287A(b), (d), and (e), respectively
32 to be Section 287A(c), (e), and (f), respectively
33 Annotated Code of Maryland
34 (1996 Replacement Volume and 2000 Supplement)

1 BY repealing and reenacting, without amendments,
2 Article 27 - Crimes and Punishments
3 Section 287(a)
4 Annotated Code of Maryland
5 (1996 Replacement Volume and 2000 Supplement)

6 BY adding to
7 Article 27 - Crimes and Punishments
8 Section 287A(b) and 292
9 Annotated Code of Maryland
10 (1996 Replacement Volume and 2000 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article 27 - Crimes and Punishments
13 Section 287A(c)
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 2000 Supplement)

16 BY adding to
17 Article - Health - General
18 Section 20-701 and 20-702 to be under the new subtitle "Subtitle 7. Registry
19 Identification Cards"
20 Annotated Code of Maryland
21 (2000 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That Section(s) 287A(b), (d), and (e), respectively, of Article 27 - Crimes
24 and Punishments of the Annotated Code of Maryland be renumbered to be Section(s)
25 287A(c), (e), and (f), respectively.

26 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
27 read as follows:

28 **Article 27 - Crimes and Punishments**

29 287.

30 Except as authorized by this subheading, it is unlawful for any person:

31 (a) To possess or administer to another any controlled dangerous substance,
32 unless such substance was obtained directly, or pursuant to a valid prescription or
33 order from a practitioner, while acting in the course of his professional practice.

1 287A.

2 (B) THIS SECTION DOES NOT APPLY TO A PERSON WHO IS AUTHORIZED TO
3 POSSESS MARIJUANA UNDER § 292 OF THIS SUBHEADING.

4 [(c)] (D) It is unlawful for any person to use, or to possess with intent to use,
5 drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
6 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
7 contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a
8 controlled dangerous substance in violation of this subheading. Any person who
9 violates this subsection is guilty of a misdemeanor and upon conviction for a first
10 offense may be fined not more than \$500. A person who is convicted of a subsequent
11 violation of this subsection may be imprisoned for not more than 2 years or fined not
12 more than \$2,000 or both. Any person convicted of violating this subsection who
13 previously has been convicted of violating subsection [(d)(2)] (E)(2) OF THIS SECTION
14 shall be subject to the same penalties specified for subsequent violations of this
15 subsection.

16 292.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
18 INDICATED.

19 (2) "ADEQUATE SUPPLY" MEANS AN AMOUNT OF MARIJUANA
20 COLLECTIVELY POSSESSED BY A QUALIFYING PATIENT AND THE QUALIFYING
21 PATIENT'S PRIMARY CAREGIVER THAT:

22 (I) IS NOT MORE THAN IS REASONABLY NECESSARY TO ENSURE
23 THE UNINTERRUPTED AVAILABILITY OF MARIJUANA FOR THE PURPOSE OF
24 ALLEVIATING THE SYMPTOMS OR EFFECTS OF A QUALIFYING PATIENT'S
25 DEBILITATING MEDICAL CONDITION; AND

26 (II) DOES NOT EXCEED THREE MATURE MARIJUANA PLANTS, FOUR
27 IMMATURE MARIJUANA PLANTS, AND 1 OUNCE OF USABLE MARIJUANA PER EACH
28 MATURE PLANT.

29 (3) "DEBILITATING MEDICAL CONDITION" MEANS:

30 (I) CANCER, GLAUCOMA, POSITIVE STATUS FOR HUMAN
31 IMMUNODEFICIENCY VIRUS, ACQUIRED IMMUNE DEFICIENCY SYNDROME, OR THE
32 TREATMENT OF THESE CONDITIONS;

33 (II) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL
34 CONDITION, OR ITS TREATMENT, THAT PRODUCES ONE OR MORE OF THE
35 FOLLOWING:

36 1. CACHEXIA OR WASTING SYNDROME, SEVERE PAIN, OR
37 SEVERE NAUSEA;

1 (II) "USABLE MARIJUANA" DOES NOT INCLUDE THE SEEDS, STALKS,
2 AND ROOTS OF A MARIJUANA PLANT.

3 (11) "WRITTEN CERTIFICATION" MEANS A QUALIFYING PATIENT'S
4 MEDICAL RECORDS OR A STATEMENT SIGNED BY A QUALIFYING PATIENT'S
5 PHYSICIAN STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, AFTER
6 HAVING COMPLETED A FULL ASSESSMENT OF THE QUALIFYING PATIENT'S MEDICAL
7 HISTORY AND CURRENT MEDICAL CONDITION MADE IN THE COURSE OF A BONA
8 FIDE PHYSICIAN-PATIENT RELATIONSHIP, THE QUALIFYING PATIENT HAS A
9 DEBILITATING MEDICAL CONDITION AND THE POTENTIAL BENEFITS OF THE
10 MEDICAL USE OF MARIJUANA WOULD LIKELY OUTWEIGH THE HEALTH RISKS FOR
11 THE QUALIFYING PATIENT.

12 (B) (1) THE GENERAL ASSEMBLY FINDS THAT STATE LAW SHOULD MAKE A
13 DISTINCTION BETWEEN THE MEDICAL AND NONMEDICAL USE OF MARIJUANA.

14 (2) IT IS THE INTENT OF THE GENERAL ASSEMBLY:

15 (I) TO ENSURE THAT PHYSICIANS ARE NOT PENALIZED FOR
16 DISCUSSING MARIJUANA AS A TREATMENT OPTION WITH THEIR PATIENTS; AND

17 (II) TO ENSURE THAT SERIOUSLY ILL INDIVIDUALS WHO ENGAGE
18 IN THE MEDICAL USE OF MARIJUANA ON THEIR PHYSICIANS' ADVICE ARE NOT
19 ARRESTED AND INCARCERATED FOR USING MARIJUANA FOR MEDICAL PURPOSES.

20 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY:

21 (1) A QUALIFYING PATIENT WHO HAS IN THE QUALIFYING PATIENT'S
22 POSSESSION WRITTEN CERTIFICATION, OR A REGISTRY IDENTIFICATION CARD
23 ISSUED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 20-702 OF
24 THE HEALTH - GENERAL ARTICLE, SHALL NOT BE SUBJECT TO ARREST OR
25 PROSECUTION, OR BE PENALIZED IN ANY MANNER, FOR THE MEDICAL USE OF
26 MARIJUANA, PROVIDED THE QUANTITY OF MARIJUANA DOES NOT EXCEED AN
27 ADEQUATE SUPPLY;

28 (2) WHEN THE ACQUISITION, POSSESSION, CULTIVATION,
29 TRANSPORTATION, OR ADMINISTRATION OF MARIJUANA BY A QUALIFYING PATIENT
30 IS NOT PRACTICABLE, THE LEGAL PROTECTIONS ESTABLISHED BY THIS SECTION
31 FOR A QUALIFYING PATIENT SHALL EXTEND TO THE QUALIFYING PATIENT'S
32 PRIMARY CAREGIVER, PROVIDED THAT THE PRIMARY CAREGIVER'S ACTIONS ARE
33 NECESSARY FOR THE QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA; AND

34 (3) A PHYSICIAN MAY NOT BE SUBJECTED TO ARREST OR CRIMINAL
35 PROSECUTION, OR BE DENIED ANY RIGHT OR PRIVILEGE, FOR PROVIDING WRITTEN
36 CERTIFICATION FOR THE MEDICAL USE OF MARIJUANA TO QUALIFYING PATIENTS.

37 (D) (1) ANY PROPERTY THAT IS POSSESSED, OWNED, OR USED IN
38 CONNECTION WITH THE MEDICAL USE OF MARIJUANA OR ACTS INCIDENTAL TO THE
39 MEDICAL USE OF MARIJUANA MAY NOT BE HARMED, NEGLECTED, INJURED, OR
40 DESTROYED WHILE IN THE POSSESSION OF STATE OR LOCAL LAW ENFORCEMENT

1 OFFICIALS, PROVIDED THAT LAW ENFORCEMENT AGENCIES SEIZING LIVE
2 MARIJUANA PLANTS AS EVIDENCE SHALL NOT BE RESPONSIBLE FOR THE CARE AND
3 MAINTENANCE OF THE PLANTS.

4 (2) ANY PROPERTY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION
5 MAY NOT BE FORFEITED UNDER ANY PROVISION OF STATE OR LOCAL LAW
6 PROVIDING FOR THE FORFEITURE OF PROPERTY OTHER THAN AS A SENTENCE
7 IMPOSED AFTER CONVICTION OF A CRIMINAL OFFENSE OR ENTRY OF A PLEA OF
8 GUILTY TO A CRIMINAL OFFENSE.

9 (3) MARIJUANA, PARAPHERNALIA, AND OTHER PROPERTY SEIZED IN
10 CONNECTION WITH THE CLAIMED MEDICAL USE OF MARIJUANA SHALL BE
11 RETURNED IMMEDIATELY ON THE DETERMINATION BY A COURT OR PROSECUTOR
12 THAT THE QUALIFYING PATIENT OR PRIMARY CAREGIVER IS ENTITLED TO THE
13 PROTECTIONS CONTAINED IN THIS SECTION, AS MAY BE EVIDENCED BY A DECISION
14 NOT TO PROSECUTE, A DISMISSAL OF CHARGES, OR AN ACQUITTAL.

15 (E) AN INDIVIDUAL MAY NOT BE ARRESTED OR PROSECUTED FOR A CRIMINAL
16 OFFENSE SOLELY FOR BEING IN THE PRESENCE OR VICINITY OF THE MEDICAL USE
17 OF MARIJUANA.

18 (F) (1) A PATIENT OR PRIMARY CAREGIVER MAY ASSERT THE MEDICAL USE
19 OF MARIJUANA AS A DEFENSE TO ANY PROSECUTION INVOLVING MARIJUANA.

20 (2) THE DEFENSE SHALL BE PRESUMED VALID IF THE EVIDENCE SHOWS
21 THAT:

22 (I) THE PATIENT'S MEDICAL RECORDS INDICATE THAT, IN THE
23 PHYSICIAN'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL
24 ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL
25 CONDITION MADE IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT
26 RELATIONSHIP, THE POTENTIAL BENEFITS OF THE MEDICAL USE OF MARIJUANA
27 WOULD LIKELY OUTWEIGH THE HEALTH RISKS FOR THE PATIENT; AND

28 (II) THE PATIENT AND THE PATIENT'S PRIMARY CAREGIVER WERE
29 COLLECTIVELY IN POSSESSION OF A QUANTITY OF MARIJUANA THAT WAS
30 MEDICALLY JUSTIFIED TO ADDRESS THE PATIENT'S DEBILITATING MEDICAL
31 CONDITION.

32 (G) THE AUTHORIZATION FOR THE MEDICAL USE OF MARIJUANA UNDER THIS
33 SECTION SHALL NOT APPLY TO:

34 (1) THE MEDICAL USE OF MARIJUANA IN A WAY THAT ENDANGERS THE
35 HEALTH OR WELL-BEING OF ANOTHER PERSON, SUCH AS DRIVING OR OPERATING
36 HEAVY MACHINERY WHILE UNDER THE INFLUENCE OF MARIJUANA;

37 (2) THE SMOKING OF MARIJUANA IN PUBLIC, INCLUDING ON PUBLIC
38 TRANSPORTATION; AND

1 (3) THE USE OF MARIJUANA BY A QUALIFYING PATIENT, PRIMARY
2 CAREGIVER, OR ANY OTHER INDIVIDUAL FOR PURPOSES OTHER THAN MEDICAL USE
3 AUTHORIZED UNDER THIS SECTION.

4 (H) INSURANCE COVERAGE IS NOT REQUIRED FOR THE MEDICAL USE OF
5 MARIJUANA.

6 (I) THE ACCOMMODATION OF THE MEDICAL USE OF MARIJUANA MAY NOT BE
7 REQUIRED IN ANY PLACE OF EMPLOYMENT.

8 (J) (1) A PERSON MAY NOT MAKE A FRAUDULENT REPRESENTATION TO A
9 LAW ENFORCEMENT OFFICIAL OF ANY FACT OR CIRCUMSTANCE RELATING TO THE
10 MEDICAL USE OF MARIJUANA TO AVOID ARREST OR PROSECUTION.

11 (2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A
12 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
13 EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000 OR BOTH.

14 **Article - Health - General**

15 **SUBTITLE 7. REGISTRY IDENTIFICATION CARDS.**

16 20-701.

17 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
18 INDICATED.

19 (B) "DEBILITATING MEDICAL CONDITION" HAS THE MEANING STATED IN
20 ARTICLE 27, § 292(A) OF THE CODE.

21 (C) "MARIJUANA" HAS THE MEANING STATED IN ARTICLE 27, § 292(A) OF THE
22 CODE.

23 (D) "MEDICAL USE" HAS THE MEANING STATED IN ARTICLE 27, § 292(A) OF THE
24 CODE.

25 (E) "PATIENT" HAS THE MEANING STATED IN ARTICLE 27, § 292(A) OF THE
26 CODE.

27 (F) "PHYSICIAN" HAS THE MEANING STATED IN ARTICLE 27, § 292(A) OF THE
28 CODE.

29 (G) "PRIMARY CAREGIVER" HAS THE MEANING STATED IN ARTICLE 27, § 292(A)
30 OF THE CODE.

31 (H) "QUALIFYING PATIENT" HAS THE MEANING STATED IN ARTICLE 27, § 292(A)
32 OF THE CODE.

1 (I) "REGISTRY IDENTIFICATION CARD" MEANS A DOCUMENT ISSUED BY THE
2 DEPARTMENT THAT IDENTIFIES AN INDIVIDUAL AS A QUALIFYING PATIENT OR
3 PRIMARY CAREGIVER.

4 20-702.

5 (A) ON OR BEFORE JANUARY 1, 2002, THE DEPARTMENT SHALL ADOPT
6 REGULATIONS GOVERNING THE MANNER IN WHICH THE DEPARTMENT WILL
7 CONSIDER APPLICATIONS FOR REGISTRY IDENTIFICATION CARDS, AND FOR
8 RENEWING REGISTRY IDENTIFICATION CARDS, FOR QUALIFYING PATIENTS AND
9 PRIMARY CAREGIVERS.

10 (B) THE DEPARTMENT SHALL ISSUE REGISTRY IDENTIFICATION CARDS TO
11 QUALIFYING PATIENTS, AND TO QUALIFYING PATIENTS' PRIMARY CAREGIVERS, IF
12 ANY, WHO SUBMIT, IN ACCORDANCE WITH THE DEPARTMENT'S REGULATIONS, THE
13 FOLLOWING:

14 (1) WRITTEN CERTIFICATION THAT THE INDIVIDUAL IS A QUALIFYING
15 PATIENT;

16 (2) A REGISTRATION FEE, NOT TO EXCEED \$25 PER QUALIFYING
17 PATIENT;

18 (3) THE NAME, ADDRESS, AND DATE OF BIRTH OF THE QUALIFYING
19 PATIENT;

20 (4) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
21 QUALIFYING PATIENT'S PHYSICIAN; AND

22 (5) THE NAME, ADDRESS, AND DATE OF BIRTH OF THE QUALIFYING
23 PATIENT'S PRIMARY CAREGIVER, IF THE QUALIFYING PATIENT HAS DESIGNATED A
24 PRIMARY CAREGIVER AT THE TIME OF APPLICATION.

25 (C) (1) THE DEPARTMENT SHALL VERIFY THE INFORMATION CONTAINED IN
26 AN APPLICATION SUBMITTED UNDER THIS SECTION, AND SHALL APPROVE OR DENY
27 AN APPLICATION WITHIN 30 DAYS AFTER RECEIPT OF THE APPLICATION.

28 (2) THE DEPARTMENT MAY DENY AN APPLICATION ONLY IF THE
29 APPLICANT DID NOT PROVIDE THE INFORMATION REQUIRED UNDER THIS SECTION,
30 OR IF THE DEPARTMENT DETERMINES THAT THE INFORMATION PROVIDED WAS
31 FALSIFIED.

32 (3) AN INDIVIDUAL WHOSE APPLICATION HAS BEEN DENIED MAY NOT
33 REAPPLY FOR AT LEAST 6 MONTHS AFTER THE DATE OF THE DENIAL, UNLESS
34 AUTHORIZED TO DO SO BY THE DEPARTMENT OR A COURT OF COMPETENT
35 JURISDICTION.

36 (D) (1) THE DEPARTMENT SHALL ISSUE A REGISTRY IDENTIFICATION CARD
37 WITHIN 5 DAYS AFTER APPROVING AN APPLICATION.

1 (2) A REGISTRY IDENTIFICATION CARD:

2 (I) SHALL EXPIRE 1 YEAR AFTER THE DATE OF ISSUANCE; AND

3 (II) SHALL CONTAIN:

4 1. THE NAME, ADDRESS, AND DATE OF BIRTH OF THE
5 QUALIFYING PATIENT, AND OF THE QUALIFYING PATIENT'S PRIMARY CAREGIVER, IF
6 ANY;

7 2. THE DATE OF ISSUANCE AND EXPIRATION DATE OF THE
8 REGISTRY IDENTIFICATION CARD; AND

9 3. ANY OTHER INFORMATION THAT THE DEPARTMENT MAY
10 SPECIFY IN ITS REGULATIONS.

11 (E) (1) AN INDIVIDUAL WHO POSSESSES A REGISTRY IDENTIFICATION CARD
12 SHALL NOTIFY THE DEPARTMENT OF ANY CHANGE IN:

13 (I) THE INDIVIDUAL'S NAME OR ADDRESS;

14 (II) THE QUALIFYING PATIENT'S PHYSICIAN OR PRIMARY
15 CAREGIVER; OR

16 (III) THE STATUS OF THE QUALIFYING PATIENT'S DEBILITATING
17 MEDICAL CONDITION.

18 (2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION
19 SHALL BE GIVEN WITHIN 10 DAYS AFTER THE OCCURRENCE OF A CHANGE
20 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

21 (3) IF NOTICE IS NOT GIVEN AS REQUIRED UNDER THIS SUBSECTION,
22 THE INDIVIDUAL'S REGISTRY IDENTIFICATION CARD SHALL BE DEEMED NULL AND
23 VOID.

24 (F) THE POSSESSION OF OR APPLICATION FOR A REGISTRY IDENTIFICATION
25 CARD SHALL NOT, IN ITSELF, CONSTITUTE PROBABLE CAUSE TO SEARCH THE
26 PERSON OR PROPERTY OF AN INDIVIDUAL POSSESSING OR APPLYING FOR THE
27 REGISTRY IDENTIFICATION CARD, OR OTHERWISE SUBJECT THE PERSON OR
28 PROPERTY OF AN INDIVIDUAL POSSESSING THE REGISTRY IDENTIFICATION CARD TO
29 INSPECTION BY ANY GOVERNMENTAL AGENCY.

30 (G) (1) THE DEPARTMENT SHALL MAINTAIN A LIST OF THE INDIVIDUALS TO
31 WHOM THE DEPARTMENT HAS ISSUED REGISTRY IDENTIFICATION CARDS.

32 (2) THE NAMES OF INDIVIDUALS ON THE LIST SHALL BE CONFIDENTIAL
33 AND NOT SUBJECT TO DISCLOSURE EXCEPT TO:

34 (I) AUTHORIZED EMPLOYEES OF THE DEPARTMENT AS
35 NECESSARY TO PERFORM OFFICIAL DUTIES OF THE DEPARTMENT; OR

1 (II) AUTHORIZED EMPLOYEES OF STATE OR LOCAL LAW
2 ENFORCEMENT AGENCIES FOR THE PURPOSE OF VERIFYING THAT AN INDIVIDUAL
3 WHO IS ENGAGED IN THE SUSPECTED OR ALLEGED MEDICAL USE OF MARIJUANA IS
4 LAWFULLY IN POSSESSION OF A REGISTRY IDENTIFICATION CARD.

5 SECTION 3. AND BE IT FURTHER ENACTED, That, within 90 days after the
6 effective date of this Act, the Department of Health and Mental Hygiene shall adopt
7 regulations governing the manner in which it will consider petitions submitted by
8 physicians or patients to add debilitating medical conditions to those included in the
9 definition of "debilitating medical condition" contained in Article 27, § 292(a)(3) of the
10 Code, as enacted by Section 2 of this Act. The regulations shall require that, in
11 considering a petition submitted by a physician or patient, the Department shall
12 provide public notice of, and an opportunity to comment in a public hearing on, the
13 petition. After public hearing, the Department shall approve or deny a petition within
14 180 days after its submission. The approval or denial shall be considered a final
15 action by the Department, subject to judicial review.

16 SECTION 4. AND BE IT FURTHER ENACTED, That, if any provision of this
17 Act or the application thereof to any person or circumstance is held invalid for any
18 reason in a court of competent jurisdiction, the invalidity does not affect other
19 provisions or any other application of this Act which can be given effect without the
20 invalid provision or application, and for this purpose the provisions of this Act are
21 declared severable.

22 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2001.