
By: **Delegates Oaks, Anderson, Barve, Branch, Bromwell, Bronrott, Burns, Cardin, Carter, Costa, C. Davis, Dumais, Feldman, Goodwin, Gordon, Griffith, Gutierrez, Kach, Madaleno, Marriott, McIntosh, Menes, Morhaim, Murray, Nathan-Pulliam, Paige, Pendergrass, Pugh, Rosenberg, Ross, F. Turner, V. Turner, Vaughn, and Weldon**

Introduced and read first time: February 10, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Compassionate Use Act**

3 FOR the purpose of providing for a certain defense of diagnosis of a terminal or
4 debilitating medical condition in certain controlled dangerous substances
5 prosecutions; providing that a physician may not be subjected to arrest, criminal
6 prosecution, certain disciplinary action, or be denied any right or privilege for
7 providing certain counseling; repealing the authorization for a defendant to
8 introduce evidence of medical necessity as a mitigating factor in certain criminal
9 proceedings; repealing the maximum penalty that a court may impose in certain
10 circumstances; defining certain terms; and generally relating to the use of
11 medical marijuana.

12 BY repealing and reenacting, with amendments,
13 Article - Criminal Law
14 Section 5-601 and 5-619(c)
15 Annotated Code of Maryland
16 (2002 Volume and 2005 Supplement)

17 BY adding to
18 Article - Criminal Law
19 Section 5-601.1
20 Annotated Code of Maryland
21 (2002 Volume and 2005 Supplement)

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

1

Article - Criminal Law

2 5-601.

3 (a) Except as otherwise provided in this title, a person may not:

4 (1) possess or administer to another a controlled dangerous substance,
5 unless obtained directly or by prescription or order from an authorized provider
6 acting in the course of professional practice; or7 (2) obtain or attempt to obtain a controlled dangerous substance, or
8 procure or attempt to procure the administration of a controlled dangerous substance
9 by:

10 (i) fraud, deceit, misrepresentation, or subterfuge;

11 (ii) the counterfeiting or alteration of a prescription or a written
12 order;

13 (iii) the concealment of a material fact;

14 (iv) the use of a false name or address;

15 (v) falsely assuming the title of or representing to be a
16 manufacturer, distributor, or authorized provider; or17 (vi) making, issuing, or presenting a false or counterfeit
18 prescription or written order.19 (b) Information that is communicated to a physician in an effort to obtain a
20 controlled dangerous substance in violation of this section is not a privileged
21 communication.22 (c) (1) IN THIS SUBSECTION, "TERMINAL OR DEBILITATING MEDICAL
23 CONDITION" INCLUDES:

24 (I) CANCER;

25 (II) SICKLE CELL ANEMIA;

26 (III) GLAUCOMA;

27 (IV) POSITIVE STATUS FOR HUMAN IMMUNODEFICIENCY VIRUS;

28 (V) ACQUIRED IMMUNE DEFICIENCY SYNDROME;

29 (VI) HEPATITIS C;

30 (VII) MULTIPLE SCLEROSIS;

31 (VIII) CROHN'S DISEASE;

1 (IX) AGITATION OF ALZHEIMER'S DISEASE; AND

2 (X) SYMPTOMS SUCH AS CACHEXIA, WASTING SYNDROME, SEVERE
3 OR CHRONIC PAIN, SEVERE NAUSEA, SEIZURES, AND SEVERE AND PERSISTENT
4 MUSCLE SPASMS.

5 (2) IT IS A DEFENSE TO THE CRIME OF POSSESSING, ADMINISTERING,
6 OBTAINING OR ATTEMPTING TO OBTAIN, OR PROCURING OR ATTEMPTING TO
7 PROCURE A CONTROLLED DANGEROUS SUBSTANCE THAT THE DEFENDANT HAS
8 BEEN DIAGNOSED WITH A TERMINAL OR DEBILITATING MEDICAL CONDITION AND
9 THE USE OF MEDICAL MARIJUANA MAY ALLEVIATE THE DEFENDANT'S CONDITION
10 OR SYMPTOMS.

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

14 (2) A person whose violation of this section involves the use or possession
15 of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding
16 \$1,000 or both.

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

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

24 5-601.1.

25 (A) IN THIS SECTION, "PHYSICIAN" MEANS AN INDIVIDUAL WHO HAS A
26 LICENSE TO PRACTICE MEDICINE AND IS LICENSED TO PRESCRIBE DRUGS UNDER
27 TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE.

28 (B) A PHYSICIAN MAY NOT BE SUBJECTED TO ARREST, CRIMINAL
29 PROSECUTION, OR DISCIPLINARY ACTION BY THE STATE BOARD OF PHYSICIANS, OR
30 BE DENIED ANY RIGHT OR PRIVILEGE, FOR COUNSELING PATIENTS ON THE MEDICAL
31 USE OF MARIJUANA.

32 5-619.

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

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

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

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

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

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

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

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

14 (ii) Notwithstanding paragraph (2) of this subsection, if the court
15 finds that the person used or possessed drug paraphernalia related to marijuana
16 because of medical necessity, on conviction of a violation of this subsection, the
17 maximum penalty that the court may impose on the person is a fine not exceeding
18 \$100.] IN THIS PARAGRAPH, "TERMINAL OR DEBILITATING MEDICAL CONDITION"
19 INCLUDES:

- 20 1. CANCER;
- 21 2. SICKLE CELL ANEMIA;
- 22 3. GLAUCOMA;
- 23 4. POSITIVE STATUS FOR HUMAN IMMUNODEFICIENCY
24 VIRUS;
- 25 5. ACQUIRED IMMUNE DEFICIENCY SYNDROME;
- 26 6. HEPATITIS C;
- 27 7. MULTIPLE SCLEROSIS;
- 28 8. CROHN'S DISEASE;
- 29 9. AGITATION OF ALZHEIMER'S DISEASE; AND
- 30 10. SYMPTOMS SUCH AS CACHEXIA, WASTING SYNDROME,
31 SEVERE OR CHRONIC PAIN, SEVERE NAUSEA, SEIZURES, AND SEVERE AND
32 PERSISTENT MUSCLE SPASMS.

33 (II) IT IS A DEFENSE TO THE CRIME OF USING OR POSSESSING
34 WITH THE INTENT TO USE DRUG PARAPHERNALIA THAT THE DEFENDANT HAS BEEN

1 DIAGNOSED WITH A TERMINAL OR DEBILITATING MEDICAL CONDITION AND THE
2 USE OF MEDICAL MARIJUANA MAY ALLEVIATE THE DEFENDANT'S CONDITION OR
3 SYMPTOMS.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2006.