

SENATE BILL 502

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2003 Regular Session
3lr0653
CF 3lr1634

By: **Senators Hollinger, Brinkley, Britt, Brochin, Colburn, Conway, Currie, Exum, Forehand, Garagiola, Gladden, Greenip, Grosfeld, Jones, Kasemeyer, Kelley, Kittleman, Klausmeier, Pinsky, and Ruben**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

Reassigned: Judicial Proceedings and Education, Health, and Environmental Affairs, February 7, 2003

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2003

CHAPTER _____

1 AN ACT concerning

2 **Darrell Putman ~~Medical Research~~ Compassionate Use Act**

3 FOR the purpose of ~~establishing the Medical Marijuana Research Program in the~~
4 ~~Board of Physician Quality Assurance; requiring the Board to adopt certain~~
5 ~~regulations on or before a certain date; requiring the Board to admit certain~~
6 ~~patients into the Program under certain circumstances; requiring the Board to~~
7 ~~adopt certain regulations governing petitions to add eligible medical conditions;~~
8 ~~requiring the Board to develop certain evaluation forms; requiring the Board to~~
9 ~~issue participating patient cards with certain requirements; requiring the Board~~
10 ~~to submit certain reports on or before certain dates; prohibiting the arrest,~~
11 ~~prosecution, or penalties for a certain medical use of marijuana under certain~~
12 ~~circumstances; extending certain protections to certain primary caregivers~~
13 ~~under certain circumstances; prohibiting certain physicians who provide certain~~
14 ~~certifications for the medical use of marijuana from being subject to arrest or~~
15 ~~criminal prosecution or denied any right or privilege; prohibiting certain~~
16 ~~property related to the medical use of marijuana from being treated in a certain~~
17 ~~manner under certain circumstances; prohibiting the arrest or prosecution~~
18 ~~solely for being in the presence or vicinity of the medical use of marijuana;~~
19 ~~establishing a certain defense and presumption; providing that authorization for~~
20 ~~the medical use of marijuana provided under this Act does not apply under~~
21 ~~certain circumstances; providing that insurance coverage is not required for the~~
22 ~~medical use of marijuana; providing that accommodation of medical use of~~
23 ~~marijuana may not be required in any place of employment; prohibiting certain~~
24 ~~fraudulent representations; establishing certain penalties; defining certain~~

1 terms; declaring the intent of the General Assembly; allowing certain
 2 individuals in certain marijuana prosecutions to introduce, and requiring the
 3 court to consider as a mitigating factor, certain evidence related to medical
 4 necessity under certain circumstances; establishing certain penalties under
 5 certain circumstances; making the provisions of this Act severable; and
 6 generally relating to the ~~Medical Marijuana Research Program~~ evidence of
 7 certain medical necessity in marijuana-related prosecutions.

8 ~~BY adding to~~
 9 ~~Article—Health—General~~
 10 ~~Section 20-801 through 20-806, inclusive, to be under the new subtitle "Subtitle~~
 11 ~~8. Medical Marijuana Research Program"~~
 12 ~~Annotated Code of Maryland~~
 13 ~~(2000 Replacement Volume and 2002 Supplement)~~

14 ~~BY repealing and reenacting, without amendments,~~
 15 ~~Article—Criminal Law~~
 16 ~~Section 5-601(a)~~
 17 ~~Annotated Code of Maryland~~
 18 ~~(2002 Volume)~~

19 ~~BY adding to~~
 20 ~~Article—Criminal Law~~
 21 ~~Section 5-610~~
 22 ~~Annotated Code of Maryland~~
 23 ~~(2002 Volume)~~

24 BY repealing and reenacting, with amendments,
 25 Article - Criminal Law
 26 Section 5-601(c) and 5-619(c)
 27 Annotated Code of Maryland
 28 (2002 Volume)

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

31 **~~Article—Health—General~~**

32 **~~SUBTITLE 8. MEDICAL MARIJUANA RESEARCH PROGRAM.~~**

33 ~~20-801.~~

34 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 35 ~~INDICATED.~~

1 (B) ~~"DEBILITATING MEDICAL CONDITION" HAS THE MEANING STATED IN §~~
2 ~~5-610(A) OF THE CRIMINAL LAW ARTICLE.~~

3 (C) ~~"MEDICAL MARIJUANA RESEARCH PROGRAM" HAS THE MEANING STATED~~
4 ~~IN § 5-610(A) OF THE CRIMINAL LAW ARTICLE.~~

5 (D) ~~"PARTICIPATING PATIENT" HAS THE MEANING STATED IN § 5-610(A) OF~~
6 ~~THE CRIMINAL LAW ARTICLE.~~

7 (E) ~~"PATIENT" HAS THE MEANING STATED IN § 5-610(A) OF THE CRIMINAL LAW~~
8 ~~ARTICLE.~~

9 (F) ~~"PHYSICIAN" HAS THE MEANING STATED IN § 5-610(A) OF THE CRIMINAL~~
10 ~~LAW ARTICLE.~~

11 (G) ~~"PRIMARY CAREGIVER" HAS THE MEANING STATED IN § 5-610(A) OF THE~~
12 ~~CRIMINAL LAW ARTICLE.~~

13 (H) ~~"PROGRAM PARTICIPATION CARDS" HAS THE MEANING STATED IN §~~
14 ~~5-610(A) OF THE CRIMINAL LAW ARTICLE.~~

15 (I) ~~"WRITTEN CERTIFICATION" HAS THE MEANING STATED IN § 5-610(A) OF~~
16 ~~THE CRIMINAL LAW ARTICLE.~~

17 ~~20-802.~~

18 (A) (1) ~~THERE IS ESTABLISHED IN THE BOARD OF PHYSICIAN QUALITY~~
19 ~~ASSURANCE THE MEDICAL MARIJUANA RESEARCH PROGRAM.~~

20 (2) ~~THE PROGRAM SHALL BE ADMINISTERED BY THE BOARD.~~

21 (B) ~~ON OR BEFORE JANUARY 1, 2004, THE BOARD SHALL ADOPT REGULATIONS~~
22 ~~NECESSARY FOR THE PROPER ADMINISTRATION OF THE PROGRAM, INCLUDING THE~~
23 ~~MANNER IN WHICH THE BOARD WILL CONSIDER APPLICATIONS FOR PROGRAM~~
24 ~~PARTICIPATION CARDS AND FOR RENEWING PROGRAM PARTICIPATION CARDS FOR~~
25 ~~PARTICIPATING PATIENTS AND PRIMARY CAREGIVERS.~~

26 ~~20-803.~~

27 (A) ~~SUBJECT TO REGULATIONS ADOPTED UNDER § 20-804(A) OF THIS~~
28 ~~SUBTITLE, PARTICIPATION IN THE PROGRAM SHALL BE LIMITED TO PATIENTS WITH~~
29 ~~A DEBILITATING MEDICAL CONDITION.~~

30 (B) ~~THE BOARD SHALL ADMIT A PATIENT TO THE PROGRAM IF:~~

31 (1) ~~THE PATIENT'S PHYSICIAN HAS SUBMITTED WRITTEN~~
32 ~~CERTIFICATION ON THE PATIENT'S BEHALF;~~

33 (2) ~~THE PATIENT AND THE PATIENT'S PHYSICIAN HAVE AGREED IN~~
34 ~~WRITING TO JOINTLY COMPLETE PATIENT EVALUATION FORMS; AND~~

1 (3) THE PATIENT HAS PAID A REGISTRATION FEE, NOT TO EXCEED \$150
2 PER-PATIENT.

3 (C) (1) ~~THE BOARD SHALL VERIFY THE INFORMATION CONTAINED IN AN
4 APPLICATION SUBMITTED UNDER THIS SECTION, AND SHALL APPROVE OR DENY AN
5 APPLICATION WITHIN 30 DAYS AFTER RECEIPT OF THE APPLICATION.~~

6 (2) ~~THE BOARD MAY DENY AN APPLICATION ONLY IF THE APPLICANT
7 DID NOT PROVIDE THE INFORMATION REQUIRED UNDER THIS SECTION, OR IF THE
8 BOARD DETERMINES THAT THE INFORMATION PROVIDED WAS FALSIFIED.~~

9 (3) ~~AN INDIVIDUAL WHOSE APPLICATION HAS BEEN DENIED MAY NOT
10 REAPPLY FOR AT LEAST 6 MONTHS AFTER THE DATE OF THE DENIAL, UNLESS
11 AUTHORIZED TO DO SO BY THE BOARD OR A COURT OF COMPETENT JURISDICTION.~~

12 20-804.

13 (A) (1) ~~ON OR BEFORE JANUARY 1, 2004, THE BOARD SHALL ADOPT
14 REGULATIONS GOVERNING THE MANNER IN WHICH IT WILL CONSIDER PETITIONS
15 SUBMITTED BY PHYSICIANS OR PATIENTS TO ADD DEBILITATING MEDICAL
16 CONDITIONS TO THOSE INCLUDED IN THE DEFINITION OF "DEBILITATING MEDICAL
17 CONDITION" STATED IN § 5-610(A) OF THE CRIMINAL LAW ARTICLE.~~

18 (2) (1) ~~THE REGULATIONS SHALL REQUIRE THAT, IN CONSIDERING A
19 PETITION SUBMITTED BY A PHYSICIAN OR PATIENT, THE BOARD SHALL PROVIDE
20 PUBLIC NOTICE OF THE PETITION AND AN OPPORTUNITY TO COMMENT IN A PUBLIC
21 HEARING ON IT.~~

22 (II) ~~AFTER THE PUBLIC HEARING, THE BOARD SHALL APPROVE OR
23 DENY A PETITION WITHIN 180 DAYS AFTER ITS SUBMISSION.~~

24 (III) ~~THE APPROVAL OR DENIAL SHALL BE CONSIDERED A FINAL
25 ACTION BY THE BOARD, SUBJECT TO JUDICIAL REVIEW.~~

26 (B) (1) (1) ~~THE BOARD SHALL DEVELOP PATIENT EVALUATION FORMS
27 FOR THE PURPOSE OF OBTAINING INFORMATION ON THE BASIC SAFETY, EFFICACY,
28 FREQUENCY, AND NATURE OF THE MEDICAL USE OF MARIJUANA BY PARTICIPATING
29 PATIENTS.~~

30 (II) ~~THE FORMS SHALL BE DISTRIBUTED TO PARTICIPATING
31 PATIENTS, COMPLETED JOINTLY BY PARTICIPATING PATIENTS AND THEIR
32 PHYSICIANS, AND RETURNED TO THE BOARD.~~

33 (2) ~~THE BOARD SHALL COMPILE AND ANALYZE DATA ON THE
34 COMPLETED FORMS AND REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE
35 GOVERNOR AND THE GENERAL ASSEMBLY REGARDING THE EFFECTIVENESS OF THE
36 PROGRAM.~~

1 20-805.

2 ~~(A) THE BOARD SHALL ISSUE PROGRAM PARTICIPATION CARDS TO~~
3 ~~PARTICIPATING PATIENTS, AND TO PRIMARY CAREGIVERS, IF ANY, WHO ENROLL IN~~
4 ~~THE MEDICAL MARIJUANA RESEARCH PROGRAM.~~

5 ~~(B) THE BOARD SHALL ISSUE A PROGRAM PARTICIPATION CARD WITHIN 5~~
6 ~~DAYS AFTER APPROVING AN APPLICATION FOR PARTICIPATION IN THE PROGRAM.~~

7 ~~(C) A PROGRAM PARTICIPATION CARD SHALL:~~

8 ~~(1) EXPIRE 1 YEAR AFTER THE DATE OF ISSUANCE; AND~~

9 ~~(2) CONTAIN:~~

10 ~~(I) THE NAME, ADDRESS, AND DATE OF BIRTH OF THE~~
11 ~~PARTICIPATING PATIENT, AND OF THE PARTICIPATING PATIENT'S PRIMARY~~
12 ~~CAREGIVER, IF ANY;~~

13 ~~(II) THE DATE OF ISSUANCE AND EXPIRATION DATE OF THE~~
14 ~~PROGRAM PARTICIPATION CARD; AND~~

15 ~~(III) ANY OTHER INFORMATION THAT THE BOARD MAY SPECIFY IN~~
16 ~~ITS REGULATIONS.~~

17 ~~(D) (1) AN INDIVIDUAL WHO POSSESSES A PROGRAM PARTICIPATION CARD~~
18 ~~SHALL NOTIFY THE BOARD OF ANY CHANGE IN:~~

19 ~~(I) THE INDIVIDUAL'S NAME OR ADDRESS;~~

20 ~~(II) THE PARTICIPATING PATIENT'S PHYSICIAN OR PRIMARY~~
21 ~~CAREGIVER; OR~~

22 ~~(III) THE STATUS OF THE PARTICIPATING PATIENT'S DEBILITATING~~
23 ~~MEDICAL CONDITION.~~

24 ~~(2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION~~
25 ~~SHALL BE GIVEN WITHIN 10 DAYS AFTER THE OCCURRENCE OF A CHANGE~~
26 ~~DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.~~

27 ~~(3) IF NOTICE IS NOT GIVEN AS REQUIRED UNDER THIS SUBSECTION,~~
28 ~~THE INDIVIDUAL'S PROGRAM PARTICIPATION CARD SHALL BE DEEMED NULL AND~~
29 ~~VOID.~~

30 ~~(E) IF THE PATIENT FAILS TO ADHERE TO THE REQUIREMENTS OF THE~~
31 ~~PROGRAM, THE PATIENT'S PROGRAM PARTICIPATION CARD SHALL BE DEEMED NULL~~
32 ~~AND VOID.~~

33 ~~(F) THE POSSESSION OF OR APPLICATION FOR A PROGRAM PARTICIPATION~~
34 ~~CARD DOES NOT, IN ITSELF, CONSTITUTE PROBABLE CAUSE TO SEARCH THE PERSON~~
35 ~~OR PROPERTY OF AN INDIVIDUAL POSSESSING OR APPLYING FOR THE PROGRAM~~

1 PARTICIPATION CARD, OR OTHERWISE SUBJECT THE PERSON OR PROPERTY OF AN
 2 INDIVIDUAL POSSESSING THE PROGRAM PARTICIPATION CARD TO INSPECTION BY
 3 ANY GOVERNMENTAL AGENCY.

4 (G) (1) THE BOARD SHALL MAINTAIN A LIST OF THE INDIVIDUALS TO WHOM
 5 THE BOARD HAS ISSUED PROGRAM PARTICIPATION CARDS.

6 (2) THE NAMES OF INDIVIDUALS ON THE LIST ARE CONFIDENTIAL AND
 7 NOT SUBJECT TO DISCLOSURE EXCEPT TO:

8 (I) AUTHORIZED EMPLOYEES OF THE BOARD AS NECESSARY TO
 9 PERFORM OFFICIAL DUTIES OF THE BOARD; OR

10 (II) AUTHORIZED EMPLOYEES OF STATE OR LOCAL LAW
 11 ENFORCEMENT AGENCIES FOR THE PURPOSE OF VERIFYING THAT AN INDIVIDUAL
 12 WHO IS ENGAGED IN THE SUSPECTED OR ALLEGED MEDICAL USE OF MARIJUANA IS
 13 LAWFULLY IN POSSESSION OF A PROGRAM PARTICIPATION CARD.

14 ~~20-806.~~

15 ~~ON OR BEFORE DECEMBER 1, 2004, AND EVERY 2 YEARS THEREAFTER, THE~~
 16 ~~BOARD SHALL SUBMIT A REPORT OF ITS FINDINGS TO THE GOVERNOR AND, SUBJECT~~
 17 ~~TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.~~

18 **Article – Criminal Law**

19 ~~5-601.~~

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

21 (1) ~~possess or administer to another a controlled dangerous substance,~~
 22 ~~unless obtained directly or by prescription or order from an authorized provider~~
 23 ~~acting in the course of professional practice; or~~

24 (2) ~~obtain or attempt to obtain a controlled dangerous substance, or~~
 25 ~~procure or attempt to procure the administration of a controlled dangerous substance~~
 26 ~~by:~~

27 (i) ~~fraud, deceit, misrepresentation, or subterfuge;~~

28 (ii) ~~the counterfeiting or alteration of a prescription or a written~~
 29 ~~order;~~

30 (iii) ~~the concealment of a material fact;~~

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

32 (v) ~~falsely assuming the title of or representing to be a~~
 33 ~~manufacturer, distributor, or authorized provider; or~~

1 (vi) making, issuing, or presenting a false or counterfeit
2 prescription or written order.

3 5-610.

4 (A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
5 ~~INDICATED.~~

6 (2) ~~"ADEQUATE SUPPLY" MEANS AN AMOUNT OF MARIJUANA~~
7 ~~COLLECTIVELY POSSESSED BY A PARTICIPATING PATIENT AND THE PARTICIPATING~~
8 ~~PATIENT'S PRIMARY CAREGIVER THAT:~~

9 (4) ~~IS NOT MORE THAN IS REASONABLY NECESSARY TO ENSURE~~
10 ~~THE UNINTERRUPTED AVAILABILITY OF MARIJUANA FOR THE PURPOSE OF~~
11 ~~ALLEVIATING THE SYMPTOMS OR EFFECTS OF A PARTICIPATING PATIENT'S~~
12 ~~DEBILITATING MEDICAL CONDITION; AND~~

13 (H) ~~DOES NOT EXCEED THREE MATURE MARIJUANA PLANTS, FOUR~~
14 ~~IMMATURE MARIJUANA PLANTS, AND 1 OUNCE OF USABLE MARIJUANA PER EACH~~
15 ~~MATURE PLANT.~~

16 (3) ~~"DEBILITATING MEDICAL CONDITION" MEANS:~~

17 (4) ~~CANCER, GLAUCOMA, POSITIVE STATUS FOR HUMAN~~
18 ~~IMMUNODEFICIENCY VIRUS, ACQUIRED IMMUNE DEFICIENCY SYNDROME, OR THE~~
19 ~~TREATMENT OF THESE CONDITIONS;~~

20 (H) ~~A CHRONIC OR DEBILITATING DISEASE OR MEDICAL~~
21 ~~CONDITION, OR ITS TREATMENT, THAT PRODUCES ONE OR MORE OF THE~~
22 ~~FOLLOWING:~~

23 1. ~~CACHEXIA OR WASTING SYNDROME, SEVERE PAIN, OR~~
24 ~~SEVERE NAUSEA; OR~~

25 2. ~~SEVERE AND PERSISTENT MUSCLE SPASMS, INCLUDING~~
26 ~~THOSE THAT ARE CHARACTERISTIC OF MULTIPLE SCLEROSIS OR CROHN'S DISEASE;~~
27 ~~OR~~

28 (HI) ~~ANY OTHER MEDICAL CONDITION OR ITS TREATMENT~~
29 ~~APPROVED BY THE BOARD OF PHYSICIAN QUALITY ASSURANCE UNDER ITS~~
30 ~~AUTHORITY TO ADOPT REGULATIONS FOR CONSIDERING REQUESTS SUBMITTED BY~~
31 ~~PHYSICIANS OR PATIENTS TO ADD DEBILITATING MEDICAL CONDITIONS TO THOSE~~
32 ~~INCLUDED UNDER ITEMS (I) AND (II) OF THIS PARAGRAPH.~~

33 (4) ~~"MARIJUANA" INCLUDES MARIJUANA CONCENTRATE.~~

34 (5) ~~"MEDICAL MARIJUANA RESEARCH PROGRAM" MEANS A PROGRAM~~
35 ~~ADMINISTERED BY THE BOARD OF PHYSICIAN QUALITY ASSURANCE TO GATHER~~
36 ~~INFORMATION ON THE BASIC SAFETY, EFFICACY, FREQUENCY, AND NATURE OF THE~~
37 ~~MEDICAL USE OF MARIJUANA BY PARTICIPATING PATIENTS.~~

1 (6) "~~PARTICIPATING PATIENT~~" MEANS AN INDIVIDUAL WHO IS
2 ~~ENROLLED IN THE MEDICAL MARIJUANA RESEARCH PROGRAM.~~

3 (7) "~~PATIENT~~" MEANS AN INDIVIDUAL WHO HAS BEEN DIAGNOSED WITH
4 ~~A MEDICAL CONDITION BY A PHYSICIAN AND FOR WHOM THE POTENTIAL BENEFITS~~
5 ~~OF THE MEDICAL USE OF MARIJUANA TO TREAT THE MEDICAL CONDITION WOULD~~
6 ~~LIKELY OUTWEIGH THE HEALTH RISKS FOR THE INDIVIDUAL.~~

7 (8) "~~PATIENT EVALUATION FORM~~" MEANS A STANDARDIZED FORM
8 ~~PROVIDED BY THE BOARD OF PHYSICIAN QUALITY ASSURANCE UPON WHICH A~~
9 ~~PARTICIPATING PATIENT AND HIS OR HER PHYSICIAN DOCUMENT THE~~
10 ~~PARTICIPATING PATIENT'S MEDICAL USE OF MARIJUANA.~~

11 (9) "~~PHYSICIAN~~" MEANS AN INDIVIDUAL WHO HAS A LICENSE TO
12 ~~PRACTICE MEDICINE AND IS LICENSED TO PRESCRIBE DRUGS UNDER TITLE 14 OF~~
13 ~~THE HEALTH OCCUPATIONS ARTICLE.~~

14 (10) "~~PRIMARY CAREGIVER~~" MEANS AN INDIVIDUAL, OTHER THAN THE
15 ~~PARTICIPATING PATIENT AND THE PARTICIPATING PATIENT'S PHYSICIAN, WHO IS AT~~
16 ~~LEAST 18 YEARS OLD AND HAS AGREED TO UNDERTAKE RESPONSIBILITY FOR~~
17 ~~MANAGING THE WELL-BEING OF A PATIENT WITH RESPECT TO THE MEDICAL USE OF~~
18 ~~MARIJUANA.~~

19 (11) "~~PROGRAM PARTICIPATION CARD~~" MEANS A DOCUMENT ISSUED BY
20 ~~THE BOARD OF PHYSICIAN QUALITY ASSURANCE THAT IDENTIFIES AN INDIVIDUAL~~
21 ~~AS A PARTICIPATING PATIENT OR PRIMARY CAREGIVER IN THE MEDICAL MARIJUANA~~
22 ~~RESEARCH PROGRAM.~~

23 (12) (I) "~~USABLE MARIJUANA~~" MEANS THE DRIED LEAVES AND
24 ~~FLOWERS OF A MARIJUANA PLANT, AND ANY MIXTURE OR PREPARATION OF THE~~
25 ~~DRIED LEAVES AND FLOWERS, THAT ARE APPROPRIATE FOR THE MEDICAL USE OF~~
26 ~~MARIJUANA.~~

27 (II) "~~USABLE MARIJUANA~~" DOES NOT INCLUDE THE SEEDS, STALKS,
28 ~~AND ROOTS OF A MARIJUANA PLANT.~~

29 (13) "~~WRITTEN CERTIFICATION~~" MEANS A PATIENT'S MEDICAL RECORDS
30 ~~OR A STATEMENT SIGNED BY A PATIENT'S PHYSICIAN STATING THAT, IN THE~~
31 ~~PHYSICIAN'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL~~
32 ~~ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL~~
33 ~~CONDITION MADE IN THE COURSE OF A BONA FIDE PHYSICIAN PATIENT~~
34 ~~RELATIONSHIP, THE PATIENT HAS A DEBILITATING MEDICAL CONDITION AND THE~~
35 ~~POTENTIAL BENEFITS OF THE MEDICAL USE OF MARIJUANA WOULD LIKELY~~
36 ~~OUTWEIGH THE HEALTH RISKS FOR THE PATIENT.~~

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

39 (2) ~~IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ENSURE THAT:~~

1 (1) ~~THERE IS FURTHER RESEARCH AND EXPERIMENTATION~~
2 ~~REGARDING THE USE OF MARIJUANA UNDER CERTAIN CIRCUMSTANCES;~~

3 (II) ~~PHYSICIANS ARE NOT PENALIZED FOR DISCUSSING~~
4 ~~MARIJUANA AS A TREATMENT OPTION WITH THEIR PATIENTS; AND~~

5 (III) ~~SERIOUSLY ILL INDIVIDUALS WHO ENGAGE IN THE MEDICAL~~
6 ~~USE OF MARIJUANA ON THEIR PHYSICIANS' ADVICE ARE NOT ARRESTED AND~~
7 ~~INCARCERATED FOR USING MARIJUANA FOR MEDICAL PURPOSES.~~

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

9 (1) ~~A PATIENT WHO HAS IN THE PATIENT'S POSSESSION WRITTEN~~
10 ~~CERTIFICATION OR A PROGRAM PARTICIPATION CARD ISSUED BY THE BOARD OF~~
11 ~~PHYSICIAN QUALITY ASSURANCE MAY NOT BE SUBJECT TO ARREST OR~~
12 ~~PROSECUTION, OR BE PENALIZED IN ANY MANNER, FOR THE MEDICAL USE OF~~
13 ~~MARIJUANA, PROVIDED THE QUANTITY OF MARIJUANA DOES NOT EXCEED AN~~
14 ~~ADEQUATE SUPPLY;~~

15 (2) ~~WHEN THE ACQUISITION, POSSESSION, CULTIVATION,~~
16 ~~TRANSPORTATION, OR ADMINISTRATION OF MARIJUANA BY A PARTICIPATING~~
17 ~~PATIENT IS NOT PRACTICABLE, THE LEGAL PROTECTIONS ESTABLISHED BY THIS~~
18 ~~SECTION FOR A PARTICIPATING PATIENT SHALL EXTEND TO THE PARTICIPATING~~
19 ~~PATIENT'S PRIMARY CAREGIVER, PROVIDED THAT THE PRIMARY CAREGIVER'S~~
20 ~~ACTIONS ARE NECESSARY FOR THE PARTICIPATING PATIENT'S MEDICAL USE OF~~
21 ~~MARIJUANA; AND~~

22 (3) ~~A PHYSICIAN MAY NOT BE SUBJECTED TO ARREST OR CRIMINAL~~
23 ~~PROSECUTION, OR BE DENIED ANY RIGHT OR PRIVILEGE, FOR PROVIDING WRITTEN~~
24 ~~CERTIFICATION FOR THE MEDICAL USE OF MARIJUANA TO PATIENTS.~~

25 (D) (1) ~~ANY PROPERTY THAT IS POSSESSED, OWNED, OR USED IN~~
26 ~~CONNECTION WITH THE MEDICAL USE OF MARIJUANA OR ACTS INCIDENTAL TO THE~~
27 ~~MEDICAL USE OF MARIJUANA MAY NOT BE HARMED, NEGLECTED, INJURED, OR~~
28 ~~DESTROYED WHILE IN THE POSSESSION OF STATE OR LOCAL LAW ENFORCEMENT~~
29 ~~OFFICIALS, PROVIDED THAT LAW ENFORCEMENT AGENCIES SEIZING LIVE~~
30 ~~MARIJUANA PLANTS AS EVIDENCE SHALL NOT BE RESPONSIBLE FOR THE CARE AND~~
31 ~~MAINTENANCE OF THE PLANTS.~~

32 (2) ~~ANY PROPERTY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION~~
33 ~~MAY NOT BE FORFEITED UNDER ANY PROVISION OF STATE OR LOCAL LAW~~
34 ~~PROVIDING FOR THE FORFEITURE OF PROPERTY OTHER THAN AS A SENTENCE~~
35 ~~IMPOSED AFTER CONVICTION OF A CRIMINAL OFFENSE OR ENTRY OF A PLEA OF~~
36 ~~GUILTY TO A CRIMINAL OFFENSE.~~

37 (3) ~~MARIJUANA, PARAPHERNALIA, AND OTHER PROPERTY SEIZED IN~~
38 ~~CONNECTION WITH THE CLAIMED MEDICAL USE OF MARIJUANA SHALL BE~~
39 ~~RETURNED IMMEDIATELY ON THE DETERMINATION BY A COURT OR PROSECUTOR~~
40 ~~THAT THE PATIENT OR PRIMARY CAREGIVER IS ENTITLED TO THE PROTECTIONS~~

1 CONTAINED IN THIS SECTION, AS MAY BE EVIDENCED BY A DECISION NOT TO
2 PROSECUTE, A DISMISSAL OF CHARGES, OR AN ACQUITTAL.

3 ~~(E) AN INDIVIDUAL MAY NOT BE ARRESTED OR PROSECUTED FOR A CRIMINAL~~
4 ~~OFFENSE SOLELY FOR BEING IN THE PRESENCE OR VICINITY OF THE MEDICAL USE~~
5 ~~OF MARIJUANA.~~

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

8 ~~(2) THE DEFENSE SHALL BE PRESUMED VALID IF THE EVIDENCE SHOWS~~
9 ~~THAT:~~

10 ~~(I) THE PATIENT'S MEDICAL RECORDS INDICATE THAT, IN THE~~
11 ~~PHYSICIAN'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL MEDICAL~~
12 ~~EXAMINATION MADE IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT~~
13 ~~RELATIONSHIP, THE POTENTIAL BENEFITS OF THE MEDICAL USE OF MARIJUANA~~
14 ~~WOULD LIKELY OUTWEIGH THE HEALTH RISKS FOR THE PATIENT; AND~~

15 ~~(II) THE PATIENT AND THE PATIENT'S PRIMARY CAREGIVER WERE~~
16 ~~COLLECTIVELY IN POSSESSION OF A QUANTITY OF MARIJUANA THAT WAS~~
17 ~~MEDICALLY JUSTIFIED TO ADDRESS THE PATIENT'S DEBILITATING MEDICAL~~
18 ~~CONDITION.~~

19 ~~(G) THE AUTHORIZATION FOR THE MEDICAL USE OF MARIJUANA UNDER THIS~~
20 ~~SECTION DOES NOT APPLY TO:~~

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

24 ~~(2) THE SMOKING OF MARIJUANA IN PUBLIC, INCLUDING ON PUBLIC~~
25 ~~TRANSPORTATION; AND~~

26 ~~(3) THE USE OF MARIJUANA BY A PARTICIPATING PATIENT, PRIMARY~~
27 ~~CAREGIVER, OR ANY OTHER INDIVIDUAL FOR PURPOSES OTHER THAN MEDICAL USE~~
28 ~~AUTHORIZED UNDER THIS SECTION.~~

29 ~~(H) INSURANCE COVERAGE IS NOT REQUIRED FOR THE MEDICAL USE OF~~
30 ~~MARIJUANA.~~

31 ~~(I) THE ACCOMMODATION OF THE MEDICAL USE OF MARIJUANA MAY NOT BE~~
32 ~~REQUIRED IN ANY PLACE OF EMPLOYMENT.~~

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

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

4 Article - Criminal Law

5 5-601.

6 (c) (1) Except as provided in [paragraph (2)] PARAGRAPHS (2) AND (3) of
7 this subsection, a person who violates this section is guilty of a misdemeanor and on
8 conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding
9 \$25,000 or both.

10 (2) A person whose violation of this section involves the use or possession
11 of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding
12 \$1,000 or both.

13 (3) (I) IN A PROSECUTION FOR THE USE OR POSSESSION OF
14 MARIJUANA, THE DEFENDANT MAY INTRODUCE AND THE COURT SHALL CONSIDER
15 AS A MITIGATING FACTOR ANY EVIDENCE OF MEDICAL NECESSITY.

16 (II) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, IF
17 THE COURT FINDS THAT THE PERSON USED OR POSSESSED MARIJUANA BECAUSE OF
18 MEDICAL NECESSITY, ON CONVICTION OF A VIOLATION OF THIS SECTION, THE
19 MAXIMUM PENALTY THAT THE COURT MAY IMPOSE ON THE PERSON IS A FINE NOT
20 EXCEEDING \$100.

21 5-619.

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

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

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

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

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

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

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

1 (4) (I) IN A PROSECUTION UNDER THIS SUBSECTION INVOLVING
2 DRUG PARAPHERNALIA RELATED TO MARIJUANA, THE DEFENDANT MAY INTRODUCE
3 AND THE COURT SHALL CONSIDER AS A MITIGATING FACTOR ANY EVIDENCE OF
4 MEDICAL NECESSITY.

5 (II) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, IF
6 THE COURT FINDS THAT THE PERSON USED OR POSSESSED DRUG PARAPHERNALIA
7 RELATED TO MARIJUANA BECAUSE OF MEDICAL NECESSITY, ON CONVICTION OF A
8 VIOLATION OF THIS SUBSECTION, THE MAXIMUM PENALTY THAT THE COURT MAY
9 IMPOSE ON THE PERSON IS A FINE NOT EXCEEDING \$100.

10 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
11 Act or the application thereof to any person or circumstance is held invalid for any
12 reason in a court of competent jurisdiction, the invalidity does not affect other
13 provisions or any other application of this Act which can be given effect without the
14 invalid provision or application, and for this purpose the provisions of this Act are
15 declared severable.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
17 effect October 1, 2003.