E1 5lr2024

By: Senators Zirkin and Raskin

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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Criminal Law - Marijuana and Drug Paraphernalia - Medical Necessity

- FOR the purpose of requiring a court to dismiss a certain possession of marijuana charge if the court finds that the person used or possessed marijuana because of medical necessity; requiring a court to dismiss a certain possession of drug paraphernalia charge related to marijuana if the court finds that the person possessed the drug paraphernalia related to marijuana because of medical necessity; and generally relating to the use or possession of marijuana and drug paraphernalia.
- 9 BY repealing and reenacting, with amendments,
- 10 Article Criminal Law
- 11 Section 5–601 and 5–619
- 12 Annotated Code of Maryland
- 13 (2012 Replacement Volume and 2014 Supplement)
- 14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 15 That the Laws of Maryland read as follows:

16 Article - Criminal Law

- 17 5-601.
- 18 (a) Except as otherwise provided in this title, a person may not:
- 19 (1) possess or administer to another a controlled dangerous substance, 20 unless obtained directly or by prescription or order from an authorized provider acting in
- 21 the course of professional practice; or
- 22 (2) obtain or attempt to obtain a controlled dangerous substance, or 23 procure or attempt to procure the administration of a controlled dangerous substance by:

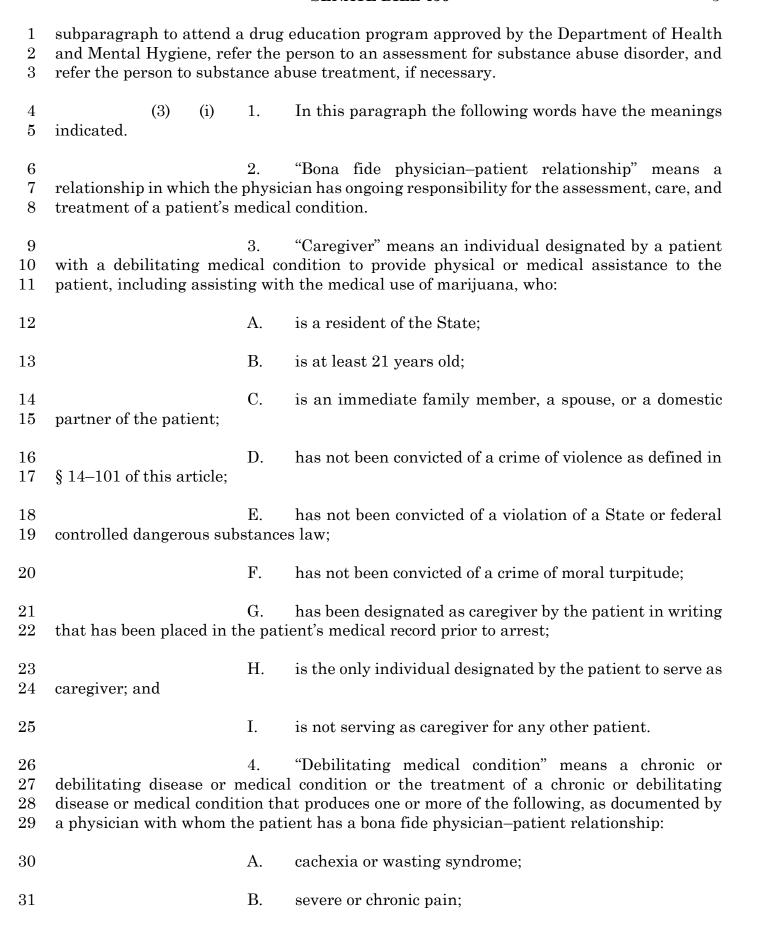


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SENATE BILL 456

1		(i)	fraud, deceit, misrepresentation, or subterfuge;					
2 3	order;	(ii)	the counterfeiting or alteration of a prescription or a written					
4		(iii)	the concealment of a material fact;					
5		(iv)	the use of a false name or address;					
6 7	manufacturer, dist	(v) cributo	falsely assuming the title of or representing to be a r, or authorized provider; or					
8 9	or written order.	(vi)	making, issuing, or presenting a false or counterfeit prescription					
10 11 12	(b) Information that is communicated to a physician in an effort to obtain a controlled dangerous substance in violation of this section is not a privileged communication.							
13 14 15	(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.							
16 17 18	(2) (i) Except as provided in subparagraph (ii) of this paragraph, a person whose violation of this section involves the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.							
19 20 21	(ii) 1. A first violation of this section involving the use or possession of less than 10 grams of marijuana is a civil offense punishable by a fine not exceeding \$100.							
22 23 24	possession of less exceeding \$250.	than 1	2. A second violation of this section involving the use or 0 grams of marijuana is a civil offense punishable by a fine not					
25 26 27	the use or possessifine not exceeding		3. A third or subsequent violation of this section involving ess than 10 grams of marijuana is a civil offense punishable by a					
28 29 30 31 32	2, or 3 of this s Department of Hea	ubpara alth an	4. A. In addition to a fine, a court shall order a person s who commits a violation punishable under subsubparagraph 1, agraph to attend a drug education program approved by the d Mental Hygiene, refer the person to an assessment for substance the person to substance abuse treatment, if necessary.					
33			B. In addition to a fine, a court shall order a person at least					

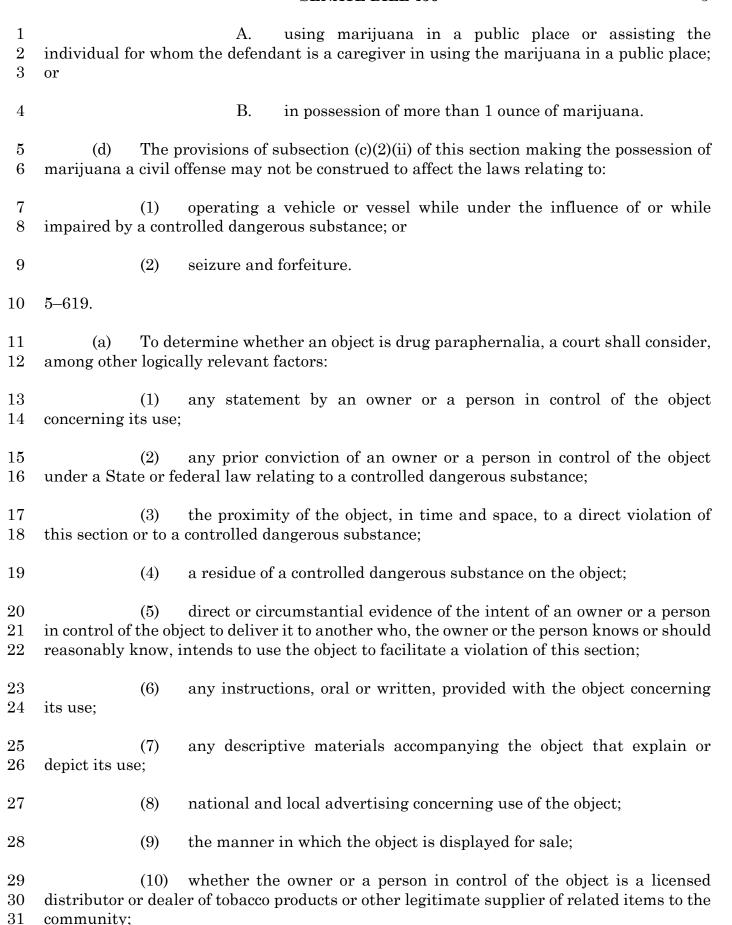
21 years old who commits a violation punishable under subsubparagraph 3 of this



be used if the defendant was:

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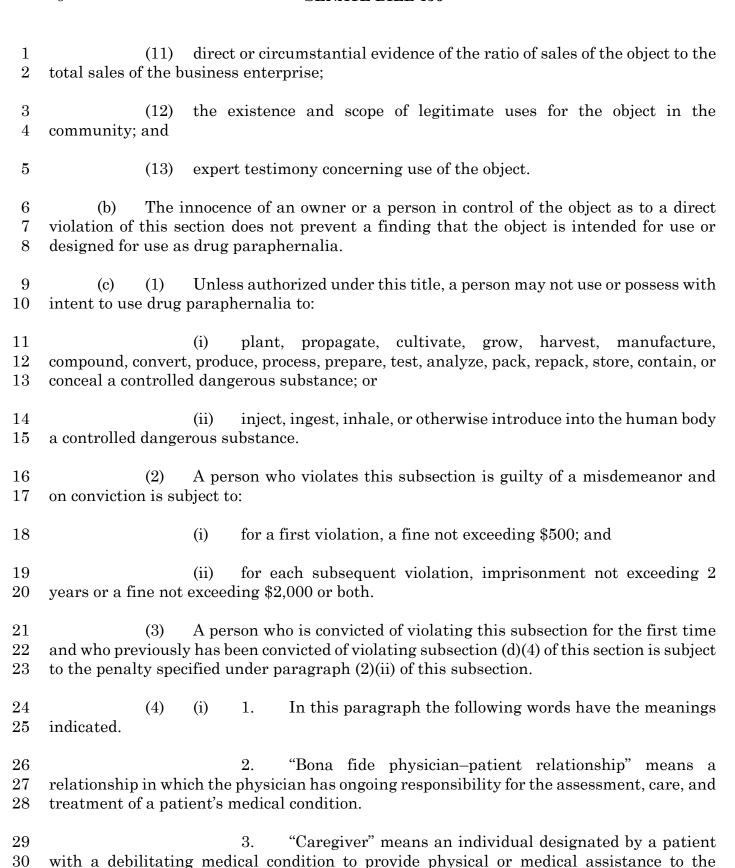
1	C.	se	vere nausea;
2	D.	se	izures;
3	E.	se	evere and persistent muscle spasms; or
4 5	F. conventional medicine.	an	ny other condition that is severe and resistant to
6 7 8	(ii) 1. defendant may introduce and of medical necessity.		a prosecution for the use or possession of marijuana, the court shall consider as a mitigating factor any evidence
9 10 11 12	conviction of a violation of the	sed or nis sec	otwithstanding paragraph (2) of this subsection, if the possessed marijuana because of medical necessity, [on etion, the maximum penalty that the court may impose ag \$100] THE COURT SHALL DISMISS THE CHARGE.
13 14 15	(iii) 1. under this section, it is an marijuana because:		a prosecution for the use or possession of marijuana mative defense that the defendant used or possessed
16 17 18	A. has been diagnosed by a physician–patient relationsh	phys	te defendant has a debilitating medical condition that sician with whom the defendant has a bona fide
19 20	B. to conventional medicine; and		e debilitating medical condition is severe and resistant
21 22	C. therapeutic or palliative relie		arijuana is likely to provide the defendant with a the debilitating medical condition.
23 24 25 26		ntend	ative defense that the defendant possessed marijuana led for medical use by an individual with a debilitating
27 28 29 30	intention to assert the affir	the d mativ of the	defendant may not assert the affirmative defense under lefendant notifies the State's Attorney of the defendant's we defense and provides the State's Attorney with all affirmative defense in accordance with the rules of ales 4–262 and 4–263.
32	3.	Ar	n affirmative defense under this subparagraph may not



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A. is a resident of the State;

patient, including assisting with the medical use of marijuana, who:

1		В.	is at least 21 years old;			
2 3	partner of the patient;	C.	is an immediate family member, a spouse, or a domestic			
4 5	§ 14–101 of this article;	D.	has not been convicted of a crime of violence as defined in			
6 7	E. has not been convicted of a violation of a State or federal controlled dangerous substances law;					
8		F.	has not been convicted of a crime of moral turpitude;			
9 10	that has been placed in t	G. he pati	has been designated as caregiver by the patient in writing tent's medical record prior to arrest;			
11 12	caregiver; and	H.	is the only individual designated by the patient to serve as			
13		I.	is not serving as caregiver for any other patient.			
14 15 16 17	4. "Debilitating medical condition" means a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician—patient relationship:					
18		A.	cachexia or wasting syndrome;			
19		В.	severe or chronic pain;			
20		C.	severe nausea;			
21		D.	seizures;			
22		E.	severe and persistent muscle spasms; or			
23 24	conventional medicine.	F.	any other condition that is severe and resistant to			
25 26 27	<u> </u>		In a prosecution under this subsection involving drug juana, the defendant may introduce and the court shall any evidence of medical necessity.			
28 29	court finds that the pers	2. son us	Notwithstanding paragraph (2) of this subsection, if the ed or possessed drug paraphernalia related to marijuana			

because of medical necessity, [on conviction of a violation of this subsection, the maximum

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- penalty that the court may impose on the person is a fine not exceeding \$100] THE COURT
 SHALL DISMISS THE CHARGE.
- 3 (iii) 1. In a prosecution under this subsection involving drug 4 paraphernalia related to marijuana, it is an affirmative defense that the defendant used or 5 possessed drug paraphernalia related to marijuana because:
- 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;
- 9 B. the debilitating medical condition is severe and resistant 10 to conventional medicine; and
- 11 C. marijuana is likely to provide the defendant with 12 therapeutic or palliative relief from the debilitating medical condition.
- 2. A. In a prosecution under this subsection involving drug paraphernalia related to marijuana, it is an affirmative defense that the defendant possessed drug paraphernalia related to marijuana because the drug paraphernalia related to marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver.
- B. A defendant may not assert the affirmative defense under 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 discovery provided in Maryland Rules 4–262 and 4–263.
- 3. An affirmative defense under this subparagraph may not be used if the defendant was:
- 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
- B. in possession of more than 1 ounce of marijuana.
- (d) (1) Unless authorized under this title, a person may not deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that the drug paraphernalia will be used to:
- 33 (i) plant, propagate, cultivate, grow, harvest, manufacture, 34 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or 35 conceal a controlled dangerous substance; or

- 1 (ii) inject, ingest, inhale, or otherwise introduce into the human body 2 a controlled dangerous substance. 3 A person who violates this subsection is guilty of a misdemeanor and 4 on conviction is subject to: 5 for a first violation, a fine not exceeding \$500; and (i) 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 time 9 and who previously has been convicted of violating paragraph (4) of this subsection is 10 subject to imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both. 11 If a person who is at least 18 years old violates paragraph (1) of this 12 subsection by delivering drug paraphernalia to a minor who is at least 3 years younger than 13 the person, the person is guilty of a separate misdemeanor and on conviction is subject to 14 imprisonment not exceeding 8 years or a fine not exceeding \$15,000 or both. 15 A person may not advertise in a newspaper, magazine, handbill, poster, (e) (1)sign, mailing, or other writing or publication, or by sound truck, knowing, or under 16 17 circumstances where one reasonably should know, that the purpose of the advertisement, 18 wholly or partly, is to promote the sale or delivery of drug paraphernalia. 19 A person who violates this subsection is guilty of a misdemeanor and 20 on conviction is subject to: 21(i) for a first violation, a fine not exceeding \$500; and
- 22 (ii) for each subsequent violation, imprisonment not exceeding 2 23 years or a fine not exceeding \$2,000 or both.
- 24SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 25October 1, 2015.