

SENATE BILL 68

E1
SB 902/16 – JPR

(PRE-FILED)

7lr0922
CF 7lr1114

By: **Senator Young**

Requested: October 19, 2016

Introduced and read first time: January 11, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Veterans – Medical Cannabis**

3 FOR the purpose of adding posttraumatic stress disorder under a definition of “debilitating
4 medical condition” for the purposes of certain affirmative defenses to a charge of use
5 or possession of marijuana; establishing a certain affirmative defense for a charge of
6 use or possession of marijuana for a certain qualified veteran patient; establishing
7 that a certain qualified veteran patient who has been issued and possesses a certain
8 written certification is not subject to arrest, citation, prosecution, or civil or
9 administrative penalty by a professional licensing board and may not be denied a
10 right or privilege for the medical use of cannabis, under certain circumstances;
11 establishing that a qualified veteran patient may not be denied certain rights
12 relating to child custody or visitation or may not be presumed guilty of certain
13 charges based solely on certain conduct; establishing that a qualified veteran patient
14 is not disqualified from certain medical care for certain conduct; providing that a
15 certain physician is not subject to arrest, prosecution, or civil or administrative
16 penalty for providing a certain written certification or making certain statements;
17 establishing that this Act does not prevent certain sanctions from being imposed on
18 a physician; providing that cannabis and certain other property may not be seized or
19 forfeited under certain circumstances; establishing that a certain individual is not
20 subject to arrest or prosecution for a certain offense solely for being in a certain
21 location; providing that possession of a certain written certification may not be the
22 basis for a certain finding of probable cause; establishing that this Act does not
23 authorize certain conduct or prohibit the imposition of certain penalties; providing
24 that this Act does not require a public or private health care insurer to make a
25 certain reimbursement; providing a statutory form for a written certification of a
26 qualified veteran patient; defining certain terms; and generally relating to veterans
27 and medical cannabis.

28 BY repealing and reenacting, with amendments,
29 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 5–601(c)(3)
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

BY adding to
Article – Health – General
Section 13–3401 through 13–3405 to be under the new subtitle “Subtitle 34. Medical
Cannabis for Veterans”
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

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

Article – Criminal Law

5–601.

(c) (3) (i) 1. In this paragraph the following words have the meanings
indicated.

2. “Bona fide physician–patient relationship” means a
relationship in which the physician has ongoing responsibility for the assessment, care, and
treatment of a patient’s medical condition.

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:

A. is a resident of the State;

B. is at least 21 years old;

C. is an immediate family member, a spouse, or a domestic
partner of the patient;

D. has not been convicted of a crime of violence as defined in
§ 14–101 of this article;

E. has not been convicted of a violation of a State or federal
controlled dangerous substances law;

F. has not been convicted of a crime of moral turpitude;

G. has been designated as caregiver by the patient in writing
that has been placed in the patient’s medical record prior to arrest;

H. is the only individual designated by the patient to serve as caregiver; and

I. is not serving as caregiver for any other patient.

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:

A. cachexia or wasting syndrome;

B. severe or chronic pain;

C. severe nausea;

D. seizures;

E. severe and persistent muscle spasms;

F. POSTTRAUMATIC STRESS DISORDER; or

[F.] G. any other condition that is severe and resistant to conventional medicine.

5. “QUALIFIED VETERAN PATIENT” MEANS A VETERAN WHO HAS BEEN ISSUED A WRITTEN CERTIFICATION OF QUALIFIED VETERAN PATIENT UNDER § 13–3405 OF THE HEALTH – GENERAL ARTICLE.

6. “VETERAN” HAS THE MEANING STATED IN § 9–901 OF THE STATE GOVERNMENT ARTICLE.

(ii) 1. In a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.

2. Notwithstanding paragraph (2) of this subsection, **THE COURT SHALL DISMISS THE CHARGE** if the court finds that the person:

A. used or possessed marijuana because of medical necessity[, the court shall dismiss the charge]; **OR**

B. IS A QUALIFIED VETERAN PATIENT.

(iii) 1. In a prosecution for the use or possession of marijuana under this section, it is an affirmative defense that the defendant used or possessed 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;

B. the debilitating medical condition is severe and resistant to conventional medicine; and

C. marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition.

2. A. In a prosecution for the possession of marijuana under this section, it is an affirmative defense that the defendant possessed marijuana because the 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. IN A PROSECUTION FOR THE USE OR POSSESSION OF MARIJUANA UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A QUALIFIED VETERAN PATIENT.

[3.] 4. 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.

Article – Health – General

SUBTITLE 34. MEDICAL CANNABIS FOR VETERANS.

13–3401.

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

(B) “BONA FIDE PHYSICIAN–PATIENT RELATIONSHIP” HAS THE MEANING STATED IN § 5–601 OF THE CRIMINAL LAW ARTICLE.

(C) “DEBILITATING MEDICAL CONDITION” HAS THE MEANING STATED IN § 5–601 OF THE CRIMINAL LAW ARTICLE.

(D) (1) “MEDICAL USE” MEANS THE ACQUISITION, POSSESSION, PREPARATION, USE, DELIVERY, TRANSFER, OR TRANSPORTATION OF CANNABIS OR PARAPHERNALIA RELATING TO THE ADMINISTRATION OF CANNABIS TO TREAT OR ALLEVIATE A QUALIFIED VETERAN PATIENT’S MEDICAL CONDITION.

(2) “MEDICAL USE” DOES NOT INCLUDE THE USE OF CANNABIS BY A DESIGNATED CAREGIVER WHO IS NOT A QUALIFIED VETERAN PATIENT.

(E) “PHYSICIAN” MEANS AN INDIVIDUAL LICENSED BY THE STATE BOARD OF PHYSICIANS UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE TO PRACTICE MEDICINE.

(F) “QUALIFIED VETERAN PATIENT” MEANS A PERSON WHO IS:

(1) A VETERAN; AND

(2) A RESIDENT OF THE STATE WHO SUFFERS FROM A DEBILITATING MEDICAL CONDITION AND POSSESSES A WRITTEN CERTIFICATION ISSUED TO THE PATIENT BY A PHYSICIAN WITH WHOM THE PATIENT HAS A BONA FIDE PHYSICIAN–PATIENT RELATIONSHIP.

(G) “VETERAN” HAS THE MEANING STATED IN § 9–901 OF THE STATE GOVERNMENT ARTICLE.

(H) (1) “WRITTEN CERTIFICATION” MEANS A DOCUMENT THAT:

(I) IS IN THE FORM OR SUBSTANTIALLY IN THE FORM PROVIDED IN § 13–3405 OF THIS SUBTITLE;

(II) IS SIGNED AND DATED BY A PHYSICIAN;

(III) IS VALID FOR 1 YEAR; AND

(IV) STATES THAT IN THE PHYSICIAN’S PROFESSIONAL OPINION A PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE USE OF CANNABIS TO TREAT OR ALLEVIATE THE PATIENT’S MEDICAL CONDITION.

(2) "WRITTEN CERTIFICATION" DOES NOT INCLUDE A DOCUMENT THAT IS NOT PROVIDED IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP AFTER THE PHYSICIAN HAS COMPLETED A FULL ASSESSMENT OF THE QUALIFIED VETERAN PATIENT'S MEDICAL HISTORY.

13-3402.

(A) A QUALIFIED VETERAN PATIENT IS NOT SUBJECT TO ARREST, CITATION, PROSECUTION, OR CIVIL OR ADMINISTRATIVE PENALTY, INCLUDING DISCIPLINARY ACTION BY A PROFESSIONAL LICENSING BOARD, AND MAY NOT BE DENIED A RIGHT OR PRIVILEGE, FOR THE MEDICAL USE OF CANNABIS.

(B) A PERSON OTHERWISE ENTITLED TO CUSTODY OF, OR VISITATION OR PARENTING TIME WITH, A MINOR MAY NOT:

(1) BE DENIED THE RIGHT SOLELY FOR CONDUCT ALLOWED UNDER THIS SUBTITLE; OR

(2) BE PRESUMED GUILTY OF NEGLECT OR CHILD ENDANGERMENT.

(C) FOR THE PURPOSES OF MEDICAL CARE, INCLUDING ORGAN TRANSPLANTS, A QUALIFIED VETERAN PATIENT'S AUTHORIZED USE OF CANNABIS IN ACCORDANCE WITH THIS SUBTITLE IS THE EQUIVALENT OF THE AUTHORIZED USE OF ANY OTHER MEDICATION USED AT THE DIRECTION OF A PHYSICIAN, AND DOES NOT CONSTITUTE THE USE OF AN ILLICIT SUBSTANCE OR OTHERWISE DISQUALIFY A QUALIFIED VETERAN PATIENT FROM NEEDED MEDICAL CARE.

(D) (1) A PHYSICIAN IS NOT SUBJECT TO ARREST, PROSECUTION, OR CIVIL OR ADMINISTRATIVE PENALTY, INCLUDING DISCIPLINARY ACTION BY THE STATE BOARD OF PHYSICIANS OR ANY OTHER OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU AND MAY NOT BE DENIED A RIGHT OR PRIVILEGE SOLELY FOR PROVIDING WRITTEN CERTIFICATIONS OR FOR OTHERWISE STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, A PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF CANNABIS TO TREAT OR ALLEVIATE THE PATIENT'S DEBILITATING MEDICAL CONDITION.

(2) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT A PROFESSIONAL LICENSING BOARD FROM SANCTIONING A PHYSICIAN FOR FAILING TO PROPERLY EVALUATE A PATIENT'S MEDICAL CONDITION.

(E) CANNABIS, PROPERTY, OR INTEREST IN PROPERTY THAT IS POSSESSED, OWNED, OR USED IN CONNECTION WITH THE MEDICAL USE OF CANNABIS BY A QUALIFIED VETERAN PATIENT AS ALLOWED UNDER THIS SUBTITLE, OR ACTS

INCIDENTAL TO THE POSSESSION, OWNERSHIP, OR USE, MAY NOT BE SEIZED OR FORFEITED ON THE BASIS OF THE USE OR POSSESSION OF CANNABIS.

(F) AN INDIVIDUAL IS NOT SUBJECT TO ARREST OR PROSECUTION FOR CONSTRUCTIVE POSSESSION, CONSPIRACY, OR OTHER OFFENSE SOLELY FOR BEING IN THE PRESENCE OR VICINITY OF THE MEDICAL USE OF CANNABIS BY A QUALIFIED VETERAN PATIENT AS ALLOWED UNDER THIS SUBTITLE.

(G) THE POSSESSION OF A WRITTEN CERTIFICATION MAY NOT BE THE BASIS FOR A FINDING OF PROBABLE CAUSE TO SEARCH AN INDIVIDUAL OR THE PROPERTY OF AN INDIVIDUAL OR TO OTHERWISE SUBJECT THE INDIVIDUAL OR THE PROPERTY OF THE INDIVIDUAL TO INSPECTION BY A GOVERNMENTAL UNIT.

13-3403.

THIS SUBTITLE DOES NOT AUTHORIZE AN INDIVIDUAL TO ENGAGE IN OR PREVENT THE IMPOSITION OF CIVIL, CRIMINAL, OR OTHER PENALTIES FOR:

(1) PERFORMING A TASK UNDER THE INFLUENCE OF CANNABIS WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE;

(2) OPERATING, NAVIGATING, OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE, AIRCRAFT, OR BOAT WHILE UNDER THE INFLUENCE OF CANNABIS;

(3) SMOKING CANNABIS IN A PUBLIC PLACE;

(4) SMOKING CANNABIS IN A MOTOR VEHICLE; OR

(5) SMOKING CANNABIS ON PRIVATE PROPERTY THAT:

(i) 1. IS RENTED FROM A LANDLORD; AND

2. IS SUBJECT TO A POLICY THAT PROHIBITS THE SMOKING OF CANNABIS ON THE PROPERTY; OR

(ii) IS SUBJECT TO A POLICY THAT PROHIBITS THE SMOKING OF CANNABIS ON THE PROPERTY OF AN ATTACHED DWELLING ADOPTED BY:

1. THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF A CONDOMINIUM REGIME; OR

2. THE GOVERNING BODY OF A HOMEOWNERS
ASSOCIATION.

13-3404.

THIS SUBTITLE DOES NOT REQUIRE A PUBLIC OR PRIVATE HEALTH INSURER
TO REIMBURSE AN INDIVIDUAL FOR THE COSTS ASSOCIATED WITH THE MEDICAL
USE OF CANNABIS.

13-3405.

THE FOLLOWING FORM SHALL BE USED TO PROVIDE WRITTEN CERTIFICATION
OF THE STATUS OF A QUALIFIED VETERAN PATIENT UNDER THIS SUBTITLE:

“WRITTEN CERTIFICATION OF QUALIFIED VETERAN PATIENT

PHYSICIAN’S NAME:

STATE BOARD OF PHYSICIANS
NUMBER:

PHYSICIAN’S ADDRESS

(STREET):

(CITY, STATE, ZIP CODE):

TELEPHONE:

PATIENT INFORMATION:

PATIENT’S NAME:

PATIENT’S DATE OF BIRTH:

PATIENT’S ADDRESS IN PHYSICIAN’S RECORDS:

EXPIRATION DATE OF CERTIFICATION (12 MONTHS FROM DATE OF
PHYSICIAN’S SIGNATURE):

BY SIGNING THIS FORM, I HEREBY CERTIFY THAT THE ABOVE-NAMED PATIENT IN
POSSESSION OF THIS WRITTEN CERTIFICATION HAS PRESENTED A DD-214 FORM (A
COPY OF WHICH IS ATTACHED) AND HAS BEEN DIAGNOSED WITH A DEBILITATING
MEDICAL CONDITION, AS DEFINED IN § 13-3401 OF THE HEALTH – GENERAL

1 ARTICLE OF THE ANNOTATED CODE OF MARYLAND THAT IS SEVERE AND
2 RESISTANT TO CONVENTIONAL MEDICINE.

3 BY SIGNING THIS FORM, I FURTHER CERTIFY THAT I AM THE PHYSICIAN OF RECORD
4 FOR THE ABOVE-NAMED PATIENT, AND THAT EVIDENCE OF MY ASSESSMENT,
5 DIAGNOSIS, AND TREATMENT OF THE CONDITION FOR WHICH I AM PROVIDING THIS
6 CERTIFICATION CAN BE FOUND IN THE PATIENT'S MEDICAL RECORDS WHICH I
7 MAINTAIN. I FURTHER CERTIFY THAT I HAVE A BONA FIDE PHYSICIAN-PATIENT
8 RELATIONSHIP WITH THIS PATIENT, AS DEFINED IN § 13-3401 OF THE HEALTH -
9 GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

10 BASED ON MY ASSESSMENT, DIAGNOSIS, AND TREATMENT OF THIS PATIENT, IT IS MY
11 CONCLUSION THAT THE ABOVE-NAMED PATIENT MAY BENEFIT FROM THE MEDICAL
12 USE OF CANNABIS AND HAS A QUALIFIED MEDICAL CONDITION.

13 PRINTED NAME: _____

14 SIGNATURE: _____ DATE: _____

15 **KEY DEFINITIONS**

16 A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP IS DEFINED IN § 13-3401 OF THE
17 HEALTH - GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS
18 FOLLOWS:

19 "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP" MEANS A RELATIONSHIP IN
20 WHICH THE PHYSICIAN HAS ONGOING RESPONSIBILITY FOR THE ASSESSMENT,
21 CARE, AND TREATMENT OF A PATIENT'S DEBILITATING MEDICAL CONDITION.

22 A DEBILITATING MEDICAL CONDITION IS DEFINED IN § 13-3401 OF THE HEALTH -
23 GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS FOLLOWS:

24 "DEBILITATING MEDICAL CONDITION" MEANS A CHRONIC OR DEBILITATING
25 DISEASE OR MEDICAL CONDITION OR THE TREATMENT OF A CHRONIC OR
26 DEBILITATING DISEASE OR MEDICAL CONDITION THAT PRODUCES ONE OR MORE OF
27 THE FOLLOWING, AS DOCUMENTED BY A PHYSICIAN WITH WHOM THE PATIENT HAS
28 A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP:

29 (1) CACHEXIA OR WASTING SYNDROME;

30 (2) SEVERE OR CHRONIC PAIN;

31 (3) SEVERE NAUSEA;

1 **(4) SEIZURES;**

2 **(5) SEVERE AND PERSISTENT MUSCLE SPASMS;**

3 **(6) POSTTRAUMATIC STRESS DISORDER; OR**

4 **(7) ANY OTHER CONDITION THAT IS SEVERE AND RESISTANT TO**
5 **CONVENTIONAL MEDICINE.**

6 **A WRITTEN CERTIFICATION IS DEFINED IN § 13-3401 OF THE HEALTH – GENERAL**
7 **ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS FOLLOWS:**

8 **“WRITTEN CERTIFICATION” MEANS A DOCUMENT IN THE FORM OR SUBSTANTIALLY**
9 **IN THE FORM PROVIDED IN § 13-3405 OF THE HEALTH – GENERAL ARTICLE, SIGNED**
10 **AND DATED BY A PHYSICIAN, THAT IS VALID FOR 1 YEAR AND THAT STATES THAT IN**
11 **THE PHYSICIAN’S PROFESSIONAL OPINION A PATIENT IS LIKELY TO RECEIVE**
12 **THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF CANNABIS TO**
13 **TREAT OR ALLEVIATE THE PATIENT’S DEBILITATING MEDICAL CONDITION OR**
14 **SYMPTOMS ASSOCIATED WITH THE DEBILITATING MEDICAL CONDITION. A WRITTEN**
15 **CERTIFICATION MAY BE MADE ONLY IN THE COURSE OF A BONA FIDE**
16 **PHYSICIAN-PATIENT RELATIONSHIP AFTER THE PHYSICIAN HAS COMPLETED A**
17 **FULL ASSESSMENT OF THE QUALIFIED VETERAN PATIENT’S MEDICAL HISTORY.”.**

18 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
19 **October 1, 2017.**