

1 **H. B. 4491**

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3 (By Delegate Manypenny)

4 [Introduced February 9, 2012; referred to the
5 Committee on Health and Human Resources then the Judiciary.]

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10 A BILL to amend and reenact §60A-5-506 of the Code of West
11 Virginia, 1931, as amended, relating to the uniformed
12 controlled substances act; and declaring that a defendant has
13 the right to a presumption of medical necessity in any trial,
14 hearing or other proceeding under this act, for use or
15 possession of medical marihuana.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §60A-5-506 of the Code of West Virginia, 1931, as
18 amended, be amended and reenacted, to read as follows:

19 **ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.**

20 **§60A-5-506. Burden of proof; liability of officers.**

21 (a) It is not necessary for the state to negate any exemption
22 or exception in this act in any complaint, information, indictment,
23 or other pleading or in any trial, hearing, or other proceeding

1 under this act. The burden of proof of any exemption or exception
2 is upon the person claiming it.

3 (b) In the absence of proof that a person is the duly
4 authorized holder of an appropriate registration or order form
5 issued under this act, he or she is presumed not to be the holder
6 of the registration or form. The burden of proof is upon him or
7 her to rebut the presumption.

8 (c) No liability is imposed by this act upon any authorized
9 state, county, or municipal officer, engaged in the lawful
10 performance of his or her duties.

11 (d) Notwithstanding any other provision of this code to the
12 contrary, it is hereby declared to be the intent of the Legislature
13 that a defendant has the right to a presumption of medical
14 necessity in any trial, hearing or other proceeding under this act,
15 for use or possession of medical marihuana.

NOTE: The purpose of this bill is to declare that a defendant has the right to a presumption of medical necessity in any trial, hearing or other proceeding under this act, for use or possession of medical marihuana.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.