

HF 658

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1 1 Section 1. Section 124.401, subsection 5, Code 2001, is
1 2 amended by adding the following new unnumbered paragraph:

1 3 NEW UNNUMBERED PARAGRAPH. It is lawful for a person to
1 4 knowingly or intentionally possess, acquire, manufacture,
1 5 transfer, or transport marijuana if the possession,
1 6 acquisition, manufacture, transfer, or transport is in
1 7 accordance with the provisions of chapter 124D.

1 8 Sec. 2. NEW SECTION. 124D.1 FINDINGS.

1 9 The general assembly finds the following regarding
1 10 marijuana:

1 11 1. Modern medical research has discovered a beneficial use
1 12 for marijuana in treating or alleviating the pain or other
1 13 symptoms associated with certain debilitating medical
1 14 conditions, as found by the national academy of sciences'
1 15 institute of medicine in March 1999.

1 16 2. It would be preferable for the federal government to
1 17 permit marijuana to be prescribed by physicians and to be
1 18 dispensed at pharmacies. However, the general assembly finds
1 19 that the federal government has given no indication that it
1 20 will change federal policy with regard to medical use of
1 21 marijuana, as evidenced by the federal government's reluctance
1 22 to allow even the federal food and drug administration-
1 23 approved clinical trials to move forward.

1 24 3. According to the United States sentencing commission
1 25 and the federal bureau of investigation, more than ninety-nine
1 26 out of every one hundred marijuana arrests are made under
1 27 state law, rather than under federal law. Consequently, the
1 28 general assembly finds that changing state law will have the
1 29 practical effect of protecting from arrest the vast majority
1 30 of persons with a serious illness who have a medical need to
1 31 use marijuana.

1 32 4. Although federal law expressly prohibits the use of
1 33 marijuana, the general assembly recognizes that the laws of
1 34 Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon,
1 35 and Washington permit the medical use and cultivation of
2 1 marijuana. The general assembly intends to join in this
2 2 effort for the health and welfare of Iowa citizens. However,
2 3 the general assembly does not intend to make marijuana legally

2 4 available for other than medical purposes.

2 5 5. The state is not required to enforce federal law or to
2 6 prosecute people for engaging in activities prohibited by
2 7 federal law. Therefore, compliance with this chapter does not
2 8 put the state in violation of federal law.

2 9 6. State law should make a distinction between the medical
2 10 and nonmedical use of marijuana. Hence, the purpose of this
2 11 chapter is to ensure that physicians are not penalized for
2 12 discussing marijuana as a treatment option with their
2 13 seriously ill patients, and persons with a serious illness who
2 14 engage in the medical use of marijuana upon their physicians'
2 15 advice are not arrested and incarcerated for using marijuana
2 16 for medical purposes.

2 17 Sec. 3. NEW SECTION. 124D.2 DEFINITIONS.

2 18 For the purposes of this chapter, unless the context
2 19 otherwise requires:

2 20 1. "Adequate supply" means an amount of marijuana
2 21 collectively possessed between the qualifying patient and the
2 22 qualifying patient's primary caregivers that is not more than
2 23 is reasonably necessary to ensure the uninterrupted
2 24 availability of marijuana for the purpose of alleviating the
2 25 symptoms or effects of a qualifying patient's debilitating
2 26 medical condition.

2 27 2. "Debilitating medical condition" means any of the
2 28 following:

2 29 a. Cancer, glaucoma, positive status for the human
2 30 immunodeficiency virus, acquired immune deficiency syndrome,
2 31 or the treatment of these conditions.

2 32 b. A chronic or debilitating disease or medical condition
2 33 or treatment for the disease or condition that produces one or
2 34 more of the following: cachexia or wasting syndrome; severe
2 35 pain; severe nausea; seizures, including those characteristic
3 1 of epilepsy; or severe and persistent muscle spasms, including
3 2 but not limited to those characteristic of multiple sclerosis
3 3 or Crohn's disease.

3 4 c. Any other medical condition or treatment of the
3 5 condition approved by the department and listed in rule
3 6 adopted by the department for this purpose under section
3 7 124D.6.

3 8 3. "Department" means the Iowa department of public
3 9 health.

3 10 4. "Marijuana" means the same as defined in section
3 11 124.101.

3 12 5. "Medical use" means the acquisition, possession,
3 13 cultivation, use, transfer, or transportation of marijuana or
3 14 paraphernalia relating to the administration of marijuana to
3 15 alleviate the symptoms or effects of a qualifying patient's
3 16 debilitating medical condition. For purposes of this
3 17 paragraph, "transfer" means the transfer of marijuana and what
3 18 would otherwise be drug paraphernalia between a primary
3 19 caregiver and a qualifying patient.

3 20 6. "Peace officer" means the same as defined in section
3 21 801.4.

3 22 7. "Physician" means a person who is licensed by the state
3 23 board of medical examiners to practice medicine and surgery or
3 24 osteopathic medicine and surgery and is authorized to
3 25 prescribe drugs, controlled substances, and medical devices.

3 26 8. "Primary caregiver" means an adult person who has
3 27 agreed to undertake responsibility for managing the well-being
3 28 of a qualifying patient with respect to the medical use of
3 29 marijuana.

3 30 9. "Qualifying patient" means a person who has been
3 31 determined by a physician to have a debilitating medical
3 32 condition.

3 33 10. "Written certification" means a certified copy of a
3 34 statement contained in the qualifying patient's medical
3 35 records or a statement signed by a physician, stating that in
4 1 the physician's professional opinion, after having completed a
4 2 full assessment of the qualifying patient's medical history
4 3 and current medical condition made in the course of a bona
4 4 fide physician-patient relationship, the qualifying patient
4 5 has a debilitating medical condition and the potential
4 6 benefits of the medical use of marijuana would likely outweigh
4 7 the health risks for the qualifying patient.

4 8 Sec. 4. NEW SECTION. 124D.3 EXEMPTION FROM CRIMINAL AND
4 9 CIVIL PENALTIES FOR THE MEDICAL USE OF MARIJUANA.

4 10 1. A qualifying patient who has in the qualifying
4 11 patient's possession a written certification shall not be
4 12 subject to arrest, prosecution, or penalty in any manner for
4 13 the qualifying patient's use or possession of marijuana for
4 14 medical purposes, provided however that the quantity of
4 15 marijuana possessed does not exceed an adequate supply.

4 16 2. Subsection 1 does not apply to a qualifying patient who
4 17 is less than eighteen years of age, unless both of the
4 18 following conditions apply:

4 19 a. The qualifying patient's physician has explained the

4 20 potential risks and benefits of the medical use of marijuana
4 21 to the qualifying patient and to the qualifying patient's
4 22 parent, guardian, or custodian.

4 23 b. The qualifying patient's parent, guardian, or custodian
4 24 consents in writing to all of the following:

4 25 (1) To allow the qualifying patient's medical use of
4 26 marijuana.

4 27 (2) To serve as the qualifying patient's primary
4 28 caregiver.

4 29 (3) To control the acquisition of the marijuana, the
4 30 dosage, and the frequency of the medical use of marijuana by
4 31 the qualifying patient.

4 32 3. When the acquisition, possession, cultivation,
4 33 transportation, or administration of marijuana by a qualifying
4 34 patient is not practicable, the legal protections established
4 35 by this chapter for a qualifying patient shall extend to the
5 1 qualifying patient's primary caregiver, provided that the
5 2 primary caregiver's actions are necessary for the qualifying
5 3 patient's medical use of marijuana.

5 4 4. A physician shall not be subject to arrest or
5 5 prosecution, penalized in any manner, or denied any right or
5 6 privilege for providing written certification for the medical
5 7 use of marijuana by a qualifying patient.

5 8 5. If a person possesses or uses, manufactures, acquires,
5 9 transfers, or transports marijuana in accordance with this
5 10 chapter, any interest in property that is possessed, owned, or
5 11 used by that person in connection with the medical use of
5 12 marijuana, or any acts incidental to such use, the property
5 13 interest shall not be harmed, neglected, injured, or destroyed
5 14 while in the possession of a peace officer. However, a peace
5 15 officer seizing a live marijuana plant as evidence shall not
5 16 be responsible for the care and maintenance of the plant. Any
5 17 such property interest shall not be forfeited under any
5 18 provision of state or local law providing for the forfeiture
5 19 of property unless the property interest is forfeited as part
5 20 of a sentence imposed after conviction of a criminal offense
5 21 or imposed after a trial or entry of a plea of guilty to a
5 22 criminal offense unrelated to the medical use of marijuana or
5 23 for the use of marijuana not protected under this chapter.
5 24 Marijuana, marijuana drug paraphernalia, or other property
5 25 seized from a qualifying patient or primary caregiver in
5 26 connection with the claimed medical use of marijuana shall be
5 27 returned immediately upon the determination by a court or

5 28 prosecutor that the qualifying patient or primary caregiver is
5 29 entitled to the protections of this chapter, as may be
5 30 evidenced by a decision not to prosecute, the dismissal of
5 31 charges, or an acquittal.

5 32 6. A person shall not be subject to arrest or prosecution
5 33 for "constructive possession", "conspiracy", or any other
5 34 offense related to the use or possession of marijuana for
5 35 simply being in the presence or vicinity of the medical use of
6 1 marijuana as permitted under this chapter.

6 2 Sec. 5. NEW SECTION. 124D.4 PROHIBITIONS, RESTRICTIONS,
6 3 AND LIMITATIONS REGARDING THE MEDICAL USE OF MARIJUANA.

6 4 1. The authorization for the medical use of marijuana
6 5 under this chapter is not applicable to any of the following:

6 6 a. The medical use of marijuana that endangers the health
6 7 or well-being of another person, including but not limited to
6 8 driving or operating heavy machinery while under the influence
6 9 of marijuana.

6 10 b. The smoking of marijuana in any of the following
6 11 locations:

6 12 (1) A school bus, public bus, or other public vehicle for
6 13 rent or hire.

6 14 (2) The place of a person's employment.

6 15 (3) School grounds.

6 16 (4) A correctional facility.

6 17 (5) A public park, public beach, public recreation center,
6 18 or youth center.

6 19 c. The use or possession of marijuana by a qualifying
6 20 patient or primary caregiver, for purposes other than medical
6 21 use permitted by this chapter.

6 22 2. An insurance company is not required to cover the costs
6 23 associated with medical use of marijuana.

6 24 3. A person who makes a fraudulent representation to a
6 25 peace officer of any fact or circumstance relating to the
6 26 medical use of marijuana to avoid arrest or prosecution
6 27 commits a simple misdemeanor. This penalty shall be in
6 28 addition to any other penalty that may apply to the nonmedical
6 29 use of marijuana.

6 30 Sec. 6. NEW SECTION. 124D.5 ESTABLISHING A DEFENSE FOR
6 31 QUALIFIED PATIENTS AND PRIMARY CAREGIVERS.

6 32 A qualifying patient and a qualifying patient's primary
6 33 caregiver may assert the medical use of marijuana as a defense
6 34 to any prosecution involving marijuana, and the defense shall
6 35 be presumed valid where the evidence shows that both of the

7 1 following are applicable:

7 2 1. The person's medical records contain a statement, or a
7 3 physician has signed a statement that, in the physician's
7 4 professional opinion, after having completed a full assessment
7 5 of the person's medical history and current medical condition
7 6 made in the course of a bona fide physician-patient
7 7 relationship, that the person is a qualified patient for which
7 8 the potential benefits of the medical use of marijuana would
7 9 likely outweigh the health risks for the person.

7 10 2. The person and the person's primary caregiver were
7 11 collectively in possession of a quantity of marijuana that
7 12 does not exceed an adequate supply.

7 13 Sec. 7. NEW SECTION. 124D.6 RULES.

7 14 The department shall adopt rules regarding the manner by
7 15 which the department will add additional debilitating medical
7 16 conditions to those listed in this chapter under the
7 17 definition of "debilitating medical condition" in section
7 18 124D.2. Any debilitating medical condition added by rule
7 19 shall be consistent with the serious nature of the conditions
7 20 listed in the definition.

7 21 The department shall hold a public hearing in considering a
7 22 petition. Within one hundred eighty days of receiving the
7 23 petition and after the public hearing the department shall
7 24 approve or deny the petition. The department's approval or
7 25 denial of the petition shall be considered final agency action
7 26 and is subject to judicial review in accordance with chapter
7 27 17A.

7 28 Sec. 8. Section 453B.6, Code 2001, is amended by adding
7 29 the following new unnumbered paragraph:

7 30 NEW UNNUMBERED PARAGRAPH. A person who possesses marijuana
7 31 for medical use in accordance with chapter 124D is in lawful
7 32 possession of a taxable substance and is not subject to the
7 33 requirements of this chapter.

7 34 Sec. 9. EMERGENCY RULES. The Iowa department of public
7 35 health shall adopt the rules required under section 124D.6 as
8 1 enacted by this Act within ninety days of the effective date
8 2 of this Act. The department may adopt emergency rules under
8 3 section 17A.4, subsection 2, and section 17A.5, subsection 2,
8 4 paragraph "b", to implement the provisions of this section and
8 5 the rules shall be effective immediately upon filing unless a
8 6 later date is specified in the rules. Any rules adopted in
8 7 accordance with this section shall also be published as a
8 8 notice of intended action as provided in section 17A.4.

8 9 Sec. 10. EFFECTIVE DATE. This Act, being deemed of
8 10 immediate importance, takes effect upon enactment.

8 11 EXPLANATION

8 12 This bill establishes new Code chapter 124D, relating to
8 13 the possession or use of marijuana for medical purposes, and
8 14 provides exemptions from certain criminal and civil penalties
8 15 associated with the possession or use of marijuana.

8 16 Code section 124.401, relating to prohibited acts involving
8 17 controlled substances, is amended to provide that it is lawful
8 18 to knowingly possess marijuana or marijuana drug paraphernalia
8 19 if the possession is in accordance with the provisions of the
8 20 bill.

8 21 New Code section 124D.1 provides legislative findings
8 22 relating to the use of marijuana for medical purposes.

8 23 New Code section 124D.2 provides definitions of the
8 24 following terms: "adequate supply", "debilitating medical
8 25 condition", "department", "marijuana", "medical use", "peace
8 26 officer", "physician", "primary caregiver", "qualifying
8 27 patient", and "written certification". The debilitating
8 28 medical conditions include cancer, glaucoma, chronic diseases
8 29 that produce certain symptoms, or other medical conditions
8 30 adopted in rules.

8 31 New Code section 124D.3 provides that a qualifying patient
8 32 with a debilitating medical condition who possesses a written
8 33 certification from a physician is not subject to arrest or
8 34 prosecution for the use or possession of marijuana for medical
8 35 purposes, provided the quantity possessed does not exceed an
9 1 adequate supply as defined in the bill. The same legal
9 2 protections apply to a minor with a debilitating medical
9 3 condition for whom the requirements for informed consent by
9 4 the minor's parent, guardian, or custodian have been met. In
9 5 addition, the legal protections apply to a qualifying
9 6 patient's primary caregiver if various actions by the patient
9 7 are not practicable and the caregiver's actions are necessary
9 8 for the patient's medical use of marijuana. A physician is
9 9 not subject to arrest, prosecution, or penalty for providing a
9 10 written certification for a qualifying patient's medical use
9 11 of marijuana.

9 12 Property interests related to the medical use of marijuana
9 13 are also protected. Other persons are not subject to arrest
9 14 for merely being in the presence or vicinity of the medical
9 15 use of marijuana.

9 16 New Code section 124D.4 provides prohibitions,

9 17 restrictions, and limitations regarding the medical use of
9 18 marijuana, including use that endangers the health or well-
9 19 being of another person, smoking marijuana in various places,
9 20 or use of marijuana for purposes other than medical use. A
9 21 person who fraudulently misrepresents to a peace officer the
9 22 use of marijuana as medical use commits a simple misdemeanor.

9 23 New Code section 124D.5 authorizes a person, who is either
9 24 a qualified patient, or the patient's primary caregiver, to
9 25 assert the medical use of marijuana as a defense in any
9 26 prosecution involving marijuana, and the defense is to be
9 27 presumed valid if conditions specified in the bill are
9 28 applicable.

9 29 New Code section 124D.6 directs the Iowa department of
9 30 public health to adopt rules outlining how a person may
9 31 petition for a debilitating condition to be included with
9 32 those eligible for the medical use of marijuana. The bill
9 33 directs that the department hold a public hearing and issue a
9 34 decision on the petition. The agency action approving or
9 35 denying the petition is a final agency action and is subject
10 1 to judicial review in accordance with Code chapter 17A, the
10 2 Iowa administrative procedure Act. The bill requires the
10 3 department to adopt rules for the petition process within 90
10 4 days of the bill's effective date and authorizes using
10 5 emergency procedures in the rulemaking process.

10 6 Code section 453B.6, relating to tax stamps for controlled
10 7 substances, is amended to specify that possession in
10 8 accordance with the bill is lawful possession and a tax stamp
10 9 is not required.

10 10 The bill takes effect upon enactment.

10 11 LSB 2010HH 79

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