

MAR 20 2001
HUMAN RESOURCES

HOUSE FILE 658
BY FALLON and MASCHER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the possession or use of marijuana for medical
2 purposes, providing exemptions from certain criminal and civil
3 penalties associated with such possession or use, and
4 providing a penalty and an effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 658

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

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

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

9 The general assembly finds the following regarding
10 marijuana:

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

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

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

32 4. Although federal law expressly prohibits the use of
33 marijuana, the general assembly recognizes that the laws of
34 Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon,
35 and Washington permit the medical use and cultivation of

1 marijuana. The general assembly intends to join in this
2 effort for the health and welfare of Iowa citizens. However,
3 the general assembly does not intend to make marijuana legally
4 available for other than medical purposes.

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

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

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

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

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

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

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

32 b. A chronic or debilitating disease or medical condition
33 or treatment for the disease or condition that produces one or
34 more of the following: cachexia or wasting syndrome; severe
35 pain; severe nausea; seizures, including those characteristic

1 of epilepsy; or severe and persistent muscle spasms, including
2 but not limited to those characteristic of multiple sclerosis
3 or Crohn's disease.

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

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

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

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

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

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

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

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

33 10. "Written certification" means a certified copy of a
34 statement contained in the qualifying patient's medical
35 records or a statement signed by a physician, stating that in

1 the physician's professional opinion, after having completed a
2 full assessment of the qualifying patient's medical history
3 and current medical condition made in the course of a bona
4 fide physician-patient relationship, the qualifying patient
5 has a debilitating medical condition and the potential
6 benefits of the medical use of marijuana would likely outweigh
7 the health risks for the qualifying patient.

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

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

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

19 a. The qualifying patient's physician has explained the
20 potential risks and benefits of the medical use of marijuana
21 to the qualifying patient and to the qualifying patient's
22 parent, guardian, or custodian.

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

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

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

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

32 3. When the acquisition, possession, cultivation,
33 transportation, or administration of marijuana by a qualifying
34 patient is not practicable, the legal protections established
35 by this chapter for a qualifying patient shall extend to the

1 qualifying patient's primary caregiver, provided that the
2 primary caregiver's actions are necessary for the qualifying
3 patient's medical use of marijuana.

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

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

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

1 marijuana as permitted under this chapter.

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

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

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

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

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

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

15 (3) School grounds.

16 (4) A correctional facility.

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

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

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

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

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

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

1 following are applicable:

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

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

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

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

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

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

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

34 Sec. 9. EMERGENCY RULES. The Iowa department of public
35 health shall adopt the rules required under section 124D.6 as

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

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

11 EXPLANATION

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

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

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

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

31 New Code section 124D.3 provides that a qualifying patient
32 with a debilitating medical condition who possesses a written
33 certification from a physician is not subject to arrest or
34 prosecution for the use or possession of marijuana for medical
35 purposes, provided the quantity possessed does not exceed an

1 adequate supply as defined in the bill. The same legal
2 protections apply to a minor with a debilitating medical
3 condition for whom the requirements for informed consent by
4 the minor's parent, guardian, or custodian have been met. In
5 addition, the legal protections apply to a qualifying
6 patient's primary caregiver if various actions by the patient
7 are not practicable and the caregiver's actions are necessary
8 for the patient's medical use of marijuana. A physician is
9 not subject to arrest, prosecution, or penalty for providing a
10 written certification for a qualifying patient's medical use
11 of marijuana.

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

16 New Code section 124D.4 provides prohibitions,
17 restrictions, and limitations regarding the medical use of
18 marijuana, including use that endangers the health or well-
19 being of another person, smoking marijuana in various places,
20 or use of marijuana for purposes other than medical use. A
21 person who fraudulently misrepresents to a peace officer the
22 use of marijuana as medical use commits a simple misdemeanor.

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

29 New Code section 124D.6 directs the Iowa department of
30 public health to adopt rules outlining how a person may
31 petition for a debilitating condition to be included with
32 those eligible for the medical use of marijuana. The bill
33 directs that the department hold a public hearing and issue a
34 decision on the petition. The agency action approving or
35 denying the petition is a final agency action and is subject

1 to judicial review in accordance with Code chapter 17A, the
2 Iowa administrative procedure Act. The bill requires the
3 department to adopt rules for the petition process within 90
4 days of the bill's effective date and authorizes using
5 emergency procedures in the rulemaking process.

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

10 The bill takes effect upon enactment.

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