

House Study Bill 108

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

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

A BILL FOR

1 An Act defining the term "possession" for purposes of the
2 criminal law.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2124HC 81
5 jm/sh/8

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1 1 Section 1. Section 124.101, Code 2005, is amended by
1 2 adding the following new subsection:
1 3 NEW SUBSECTION. 22A. "Possess" or "possession" means as
1 4 defined in section 702.13A.
1 5 Sec. 2. Section 124A.2, Code 2005, is amended by adding
1 6 the following new subsection:
1 7 NEW SUBSECTION. 5. "Possess" means the same as defined in
1 8 section 702.13A.
1 9 Sec. 3. NEW SECTION. 702.13A POSSESSION.
1 10 "Possess" or "possession" means having knowledge of the
1 11 presence and nature of an object or substance and having
1 12 either actual or constructive possession of the object or
1 13 substance. Possession may be sole or joint. A person may be
1 14 in possession of an object or substance without having a
1 15 proprietary interest in the object or substance or a right to
1 16 possess the object or substance.
1 17 1. A person has "actual possession" when a person has
1 18 direct physical control of an object or substance on the
1 19 person or within reach and convenient control.
1 20 2. A person has "constructive possession" when a person is
1 21 not in actual possession, but has knowledge of the presence
1 22 and nature of an object or substance and has the power and
1 23 intent to exercise control over the object or substance,
1 24 either directly or through another person. Constructive
1 25 possession may be inferred, and no further proof of knowledge
1 26 or intent is required, when an object or substance is found in
1 27 a place exclusively accessible to the person. When a person
1 28 does not have exclusive access to the place where the object
1 29 or substance is found, a trier of fact may determine a
1 30 person's knowledge and intent from the totality of the
1 31 circumstances, including the person's proximity to the object
1 32 or substance, the person's access to the area where it is
1 33 found, whether it is in plain view, any incriminating
1 34 statements or actions by the person, whether the object or
1 35 substance is found in or near the person's belongings, and any
2 1 other relevant circumstances. In the context of possession of
2 2 controlled substances, a trier of fact may also consider the
2 3 person's possession of drug paraphernalia and evidence of
2 4 recent drug use by the person and any other relevant
2 5 circumstances.

EXPLANATION

2 6 This bill defines the term "possess" or "possession" for
2 7 purposes of a criminal case to mean having knowledge of the
2 8 presence and nature of an object or substance and having
2 9 either actual or constructive possession of the object or
2 10 substance. Possession may be sole or joint. Under the bill,
2 11 a person may be in possession of an object or substance
2 12 without having a proprietary interest in the object or
2 13 substance or a right to possess the object or substance.
2 14 The bill defines "actual possession" to mean when a person
2 15 has direct physical control of an object or substance on the
2 16 person or within reach and convenient control of the person.
2 17 The bill defines "constructive possession" to mean when a
2 18

2 19 person is not in actual possession, but has knowledge of the
2 20 presence and nature of an object or substance and has the
2 21 power and intent to exercise control over the object or
2 22 substance, either directly or through another person.
2 23 Constructive possession may be inferred, and no further proof
2 24 of knowledge or intent is required, when an object or
2 25 substance is found in a place exclusively accessible to the
2 26 person. The bill provides that when a person does not have
2 27 exclusive access to the place where the object or substance is
2 28 found, a trier of fact may determine a person's knowledge and
2 29 intent from the totality of the circumstances, including the
2 30 person's proximity to the object or substance, the person's
2 31 access to the area where it is found, whether it is in plain
2 32 view, any incriminating statements or actions by the person,
2 33 whether the object or substance is found in or near the
2 34 person's belongings, and any other relevant circumstances. In
2 35 the context of possession of controlled substances, a trier of
3 1 fact may also consider the person's possession of drug
3 2 paraphernalia and evidence of recent drug use by the person
3 3 and any other relevant circumstances.
3 4 LSB 2124HC 81
3 5 jm:rj/sh/8