

House Study Bill 61 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON BAUDLER)

A BILL FOR

1 An Act relating to controlled substances, including by
2 temporarily designating substances as controlled substances,
3 modifying the penalties for imitation controlled substances
4 and certain controlled substances, modifying the controlled
5 substances listed in schedules I, III, and IV, and providing
6 penalties.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

TEMPORARY CONTROLLED SUBSTANCES

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Section 1. Section 124.201, subsection 4, Code 2017, is amended to read as follows:

4. If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under **this chapter** after the expiration of thirty days from publication in the federal register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under **this chapter** by the board, control under **this chapter** is stayed until the board publishes its decision. If a substance is designated as controlled by the board under **this subsection** the control shall be considered a temporary and if, within sixty days after the next regular session of the general assembly convenes, the general assembly has not made the corresponding changes in **this chapter**, the temporary designation of control of the substance by the board shall be nullified amendment to the schedules of controlled substances in this chapter. If the board so designates a substance as controlled, which is considered a temporary amendment to the schedules of controlled substances in this chapter, and if the general assembly does not amend this chapter to enact the temporary amendment and make the enactment effective within two years from the date the temporary amendment first became effective, the temporary amendment is repealed by operation of law two years from the effective date of the temporary amendment. A temporary amendment repealed by operation of law is subject to

1 section 4.13 relating to the construction of statutes and the
2 application of a general savings provision.

3 DIVISION II

4 IMITATION CONTROLLED SUBSTANCES

5 Sec. 2. Section 124.101, Code 2017, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 15A. "*Imitation controlled substance*" means
8 a substance which is not a controlled substance but which by
9 color, shape, size, markings, and other aspects of dosage unit
10 appearance, and packaging or other factors, appears to be or
11 resembles a controlled substance. The board may designate a
12 substance as an imitation controlled substance pursuant to the
13 board's rulemaking authority and in accordance with chapter
14 17A. "*Imitation controlled substance*" also means any substance
15 determined to be an imitation controlled substance pursuant to
16 section 124.101B.

17 Sec. 3. NEW SECTION. 124.101B **Factors indicating an**
18 **imitation controlled substance.**

19 If a substance has not been designated as an imitation
20 controlled substance by the board and if dosage unit appearance
21 alone does not establish that a substance is an imitation
22 controlled substance, the following factors may be considered
23 in determining whether the substance is an imitation controlled
24 substance:

25 1. The person in control of the substance expressly or
26 impliedly represents that the substance has the effect of a
27 controlled substance.

28 2. The person in control of the substance expressly
29 or impliedly represents that the substance because of its
30 nature or appearance can be sold or delivered as a controlled
31 substance or as a substitute for a controlled substance.

32 3. The person in control of the substance either demands or
33 receives money or other property having a value substantially
34 greater than the actual value of the substance as consideration
35 for delivery of the substance.

1 Sec. 4. Section 124.401, subsection 1, unnumbered paragraph
2 1, Code 2017, is amended to read as follows:

3 Except as authorized by **this chapter**, it is unlawful for any
4 person to manufacture, deliver, or possess with the intent to
5 manufacture or deliver, a controlled substance, a counterfeit
6 substance, ~~or a simulated controlled substance,~~ or an imitation
7 controlled substance, or to act with, enter into a common
8 scheme or design with, or conspire with one or more other
9 persons to manufacture, deliver, or possess with the intent to
10 manufacture or deliver a controlled substance, a counterfeit
11 substance, ~~or a simulated controlled substance,~~ or an imitation
12 controlled substance.

13 Sec. 5. Section 124.401, subsection 1, paragraph a,
14 unnumbered paragraph 1, Code 2017, is amended to read as
15 follows:

16 Violation of **this subsection**, with respect to the following
17 controlled substances, counterfeit substances, ~~or simulated~~
18 controlled substances, or imitation controlled substances, is a
19 class "B" felony, and notwithstanding section 902.9, subsection
20 1, paragraph "b", shall be punished by confinement for no
21 more than fifty years and a fine of not more than one million
22 dollars:

23 Sec. 6. Section 124.401, subsection 1, paragraph b,
24 unnumbered paragraph 1, Code 2017, is amended to read as
25 follows:

26 Violation of **this subsection** with respect to the following
27 controlled substances, counterfeit substances, ~~or simulated~~
28 controlled substances, or imitation controlled substances is a
29 class "B" felony, and in addition to the provisions of section
30 902.9, subsection 1, paragraph "b", shall be punished by a
31 fine of not less than five thousand dollars nor more than one
32 hundred thousand dollars:

33 Sec. 7. Section 124.401, subsection 1, paragraph c,
34 unnumbered paragraph 1, Code 2017, is amended to read as
35 follows:

1 Violation of [this subsection](#) with respect to the following
2 controlled substances, counterfeit substances, ~~or~~ simulated
3 controlled substances, or imitation controlled substances is a
4 class "C" felony, and in addition to the provisions of section
5 902.9, subsection 1, paragraph "d", shall be punished by a
6 fine of not less than one thousand dollars nor more than fifty
7 thousand dollars:

8 Sec. 8. Section 124.401, subsection 1, paragraph c,
9 subparagraph (8), Code 2017, is amended to read as follows:

10 (8) Any other controlled substance, counterfeit substance,
11 ~~or~~ simulated controlled substance, or imitation controlled
12 substance classified in schedule I, II, or III, except as
13 provided in paragraph "d".

14 Sec. 9. Section 124.401, subsection 2, Code 2017, is amended
15 to read as follows:

16 2. If the same person commits two or more acts which are in
17 violation of [subsection 1](#) and the acts occur in approximately
18 the same location or time period so that the acts can be
19 attributed to a single scheme, plan, or conspiracy, the acts
20 may be considered a single violation and the weight of the
21 controlled substances, counterfeit substances, ~~or~~ simulated
22 controlled substances, or imitation controlled substances
23 involved may be combined for purposes of charging the offender.

24 Sec. 10. Section 124.401, subsection 5, unnumbered
25 paragraph 1, Code 2017, is amended to read as follows:

26 It is unlawful for any person knowingly or intentionally
27 to possess a controlled substance unless such substance was
28 obtained directly from, or pursuant to, a valid prescription
29 or order of a practitioner while acting in the course of the
30 practitioner's professional practice, or except as otherwise
31 authorized by [this chapter](#). Any person who violates this
32 subsection is guilty of a serious misdemeanor for a first
33 offense. A person who commits a violation of [this subsection](#)
34 and who has previously been convicted of violating [this chapter](#)
35 or [chapter ~~124A~~, ~~124B~~, or 453B](#), or chapter 124A as it existed

1 prior to July 1, 2017, is guilty of an aggravated misdemeanor.
2 A person who commits a violation of **this subsection** and has
3 previously been convicted two or more times of violating this
4 chapter or **chapter ~~124A~~, ~~124B~~, or ~~453B~~**, or chapter 124A as it
5 existed prior to July 1, 2017, is guilty of a class "D" felony.

6 Sec. 11. Section 124.401A, Code 2017, is amended to read as
7 follows:

8 **124.401A Enhanced penalty for manufacture or distribution to**
9 **persons on certain real property.**

10 In addition to any other penalties provided in **this chapter**,
11 a person who is eighteen years of age or older who unlawfully
12 manufactures with intent to distribute, distributes, or
13 possesses with intent to distribute a substance or counterfeit
14 substance listed in schedule I, II, or III, or a simulated or
15 imitation controlled substance represented to be a controlled
16 substance classified in schedule I, II, or III, to another
17 person who is eighteen years of age or older in or on, or within
18 one thousand feet of the real property comprising a public or
19 private elementary or secondary school, public park, public
20 swimming pool, public recreation center, or on a marked school
21 bus, may be sentenced up to an additional term of confinement
22 of five years.

23 Sec. 12. Section 124.401B, Code 2017, is amended to read as
24 follows:

25 **124.401B Possession of controlled substances on certain real**
26 **property — additional penalty.**

27 In addition to any other penalties provided in **this chapter**
28 or another chapter, a person who unlawfully possesses a
29 substance listed in schedule I, II, or III, or a simulated or
30 imitation controlled substance represented to be a controlled
31 substance classified in schedule I, II, or III, in or on, or
32 within one thousand feet of the real property comprising a
33 public or private elementary or secondary school, public park,
34 public swimming pool, public recreation center, or on a marked
35 school bus, may be sentenced to one hundred hours of community

1 service work for a public agency or a nonprofit charitable
2 organization. The court shall provide the offender with a
3 written statement of the terms and monitoring provisions of the
4 community service.

5 Sec. 13. Section 124.406, subsection 2, Code 2017, is
6 amended to read as follows:

7 2. A person who is eighteen years of age or older who:

8 a. Unlawfully distributes or possesses with the intent to
9 distribute a counterfeit substance listed in schedule I or II,
10 or a simulated or imitation controlled substance represented
11 to be a substance classified in schedule I or II, to a person
12 under eighteen years of age commits a class "B" felony.

13 However, if the substance was distributed in or on, or within
14 one thousand feet of, the real property comprising a public or
15 private elementary or secondary school, public park, public
16 swimming pool, public recreation center, or on a marked school
17 bus, the person shall serve a minimum term of confinement of
18 ten years.

19 b. Unlawfully distributes or possesses with intent to
20 distribute a counterfeit substance listed in schedule III, or
21 a simulated or imitation controlled substance represented to
22 be any substance listed in schedule III, to a person under
23 eighteen years of age who is at least three years younger than
24 the violator commits a class "C" felony.

25 c. Unlawfully distributes a counterfeit substance listed
26 in schedule IV or V, or a simulated or imitation controlled
27 substance represented to be a substance listed in schedule IV
28 or V, to a person under eighteen years of age who is at least
29 three years younger than the violator commits an aggravated
30 misdemeanor.

31 Sec. 14. Section 124.415, Code 2017, is amended to read as
32 follows:

33 **124.415 Parental and school notification — persons under**
34 **eighteen years of age.**

35 A peace officer shall make a reasonable effort to identify a

1 person under the age of eighteen discovered to be in possession
2 of a controlled substance, counterfeit substance, ~~or simulated~~
3 controlled substance, or imitation controlled substance in
4 violation of this chapter, and if the person is not referred
5 to juvenile court, the law enforcement agency of which the
6 peace officer is an employee shall make a reasonable attempt
7 to notify the person's custodial parent or legal guardian
8 of such possession, whether or not the person is arrested,
9 unless the officer has reasonable grounds to believe that such
10 notification is not in the best interests of the person or will
11 endanger that person. If the person is taken into custody,
12 the peace officer shall notify a juvenile court officer who
13 shall make a reasonable effort to identify the elementary or
14 secondary school the person attends, if any, and to notify the
15 superintendent of the school district, the superintendent's
16 designee, or the authorities in charge of the nonpublic school
17 of the taking into custody. A reasonable attempt to notify
18 the person includes but is not limited to a telephone call or
19 notice by first-class mail.

20 Sec. 15. NEW SECTION. 124.417 Imitation controlled
21 **substances — exceptions.**

22 It is not unlawful under this chapter for a person registered
23 under section 124.302, to manufacture, deliver, or possess with
24 the intent to manufacture or deliver, or to act with, one or
25 more other persons to manufacture, deliver, or possess with
26 the intent to manufacture or deliver an imitation controlled
27 substance for use as a placebo by a registered practitioner in
28 the course of professional practice or research.

29 Sec. 16. Section 124.502, subsection 1, paragraph a, Code
30 2017, is amended to read as follows:

31 a. A district judge or district associate judge, within
32 the court's jurisdiction, and upon proper oath or affirmation
33 showing probable cause, may issue warrants for the purpose of
34 conducting administrative inspections under this chapter or
35 a related rule ~~or under chapter 124A~~. The warrant may also

1 permit seizures of property appropriate to the inspections.
2 For purposes of the issuance of administrative inspection
3 warrants, probable cause exists upon showing a valid public
4 interest in the effective enforcement of the statute or related
5 rules, sufficient to justify administrative inspection of the
6 area, premises, building, or conveyance in the circumstances
7 specified in the application for the warrant.

8 Sec. 17. Section 155A.6, subsection 3, Code 2017, is amended
9 to read as follows:

10 3. The board shall establish standards for
11 pharmacist-intern registration and may deny, suspend,
12 or revoke a pharmacist-intern registration for failure to meet
13 the standards or for any violation of the laws of this state,
14 another state, or the United States relating to prescription
15 drugs, controlled substances, or nonprescription drugs, or for
16 any violation of [this chapter](#) or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#),
17 [147](#), or [205](#), or any rule of the board.

18 Sec. 18. Section 155A.6A, subsection 5, Code 2017, is
19 amended to read as follows:

20 5. The board may deny, suspend, or revoke the registration
21 of, or otherwise discipline, a registered pharmacy technician
22 for any violation of the laws of this state, another state, or
23 the United States relating to prescription drugs, controlled
24 substances, or nonprescription drugs, or for any violation of
25 this chapter or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#), [147](#), [205](#), or
26 [272C](#), or any rule of the board.

27 Sec. 19. Section 155A.6B, subsection 5, Code 2017, is
28 amended to read as follows:

29 5. The board may deny, suspend, or revoke the registration
30 of a pharmacy support person or otherwise discipline the
31 pharmacy support person for any violation of the laws of
32 this state, another state, or the United States relating to
33 prescription drugs, controlled substances, or nonprescription
34 drugs, or for any violation of [this chapter](#) or [chapter 124](#),
35 ~~[124A](#)~~, [124B](#), [126](#), [147](#), [205](#), or [272C](#), or any rule of the board.

1 any detectable amount of those substances identified in section
2 124.204, subsection 9.

3 Sec. 26. Section 124.401, subsection 1, paragraph c, Code
4 2017, is amended by adding the following new subparagraph:

5 NEW SUBPARAGRAPH. (7A) Five kilograms or less of a
6 mixture or substance containing any detectable amount of those
7 substances identified in section 124.204, subsection 9.

8 Sec. 27. Section 124.401, subsection 1, paragraph d, Code
9 2017, is amended to read as follows:

10 *d.* Violation of **this subsection**, with respect to any other
11 controlled substances, counterfeit substances, ~~or~~ simulated
12 controlled substances ~~classified in section 124.204, subsection~~
13 ~~4, paragraph "a", or section 124.204, subsection 6, paragraph~~
14 ~~"i", or, or imitation controlled substances classified in~~
15 schedule IV or V is an aggravated misdemeanor. However,
16 violation of **this subsection** involving fifty kilograms or less
17 of marijuana or involving flunitrazepam is a class "D" felony.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to controlled substances, including by
22 modifying procedures relating to the temporary designation
23 of substances as controlled substances, and modifying the
24 penalties for imitation controlled substances and certain
25 controlled substances.

26 TEMPORARY CONTROLLED SUBSTANCE DESIGNATION. Under current
27 law and in the bill, the board of pharmacy may designate a new
28 substance as a controlled substance, by administrative rule,
29 without legislation amending Code chapter 124, only if the
30 substance is designated as a controlled substance under federal
31 law.

32 If the board of pharmacy designates a substance as
33 controlled, the bill specifies that the temporary designation
34 is considered a temporary amendment to the schedules of
35 controlled substances in Code chapter 124, and if the general

1 assembly does not amend Code chapter 124 to enact the temporary
2 amendment and make the enactment effective within two years
3 from the date the temporary amendment first became effective,
4 the temporary amendment is repealed by operation of law two
5 years from the effective date of the temporary amendment. A
6 temporary amendment repealed by operation of law is subject to
7 Code section 4.13 relating to the construction of statutes and
8 the application of a general savings provision.

9 Current law provides that if within 60 days after the next
10 general assembly convenes the general assembly has not made
11 the corresponding changes in Code chapter 124, the temporary
12 designation of a substance as a controlled substance is
13 nullified.

14 IMITATION CONTROLLED SUBSTANCES. Under current law,
15 imitation controlled substances are regulated under Code
16 chapter 124A. The bill repeals Code chapter 124A and transfers
17 the regulation of imitation controlled substances to Code
18 chapter 124. The definition and designation of an imitation
19 controlled substance in Code chapter 124 remains identical
20 to the definition and designation of an imitation controlled
21 substance under current law in Code chapter 124A.

22 Under the bill and in current law, an imitation controlled
23 substance means a substance which is not a controlled substance
24 but by color, shape, size, markings, and other aspects of
25 dosage unit appearance, and packaging or other factors, appears
26 to be or resembles a controlled substance. The board of
27 pharmacy may designate a substance as an imitation controlled
28 substance pursuant to the board's rulemaking authority and in
29 accordance with Code chapter 17A.

30 In addition, under current law and in the bill, if a
31 substance has not been designated as an imitation controlled
32 substance by the board of pharmacy and when dosage unit
33 appearance alone does not establish that a substance is an
34 imitation controlled substance, the following factors may
35 be considered in determining whether the substance is an

1 imitation controlled substance: the substance is represented
2 as having the effect of a controlled substance; the substance
3 is represented as a controlled substance or as a substitute for
4 a controlled substance because of its nature or appearance;
5 or a person receives money or other property having a value
6 substantially greater than the actual value of the substance
7 when sold.

8 Under the bill, if a person unlawfully manufactures,
9 delivers, or possesses with the intent to deliver an imitation
10 controlled substance containing any detectable amount of those
11 substances identified in Code section 124.204(9), or unlawfully
12 acts with, enters into a common scheme or design with, or
13 conspires with one or more persons to manufacture, deliver,
14 or possess such imitation controlled substances, the person
15 commits the following offense: a class "B" felony punishable
16 by confinement of no more than 50 years and a fine of not more
17 than \$1 million if the imitation controlled substance is more
18 than 10 kilograms; a class "B" felony punishable by confinement
19 of no more than 25 years and a fine of not less than \$5,000 but
20 not more than \$100,000 if the imitation controlled substance
21 is more than five kilograms but not more than 10 kilograms; a
22 class "C" felony punishable by a fine of not less than \$1,000
23 but not more than \$50,000 if the imitation controlled substance
24 is five kilograms or less; or an aggravated misdemeanor if the
25 imitation controlled substance is classified in schedule IV or
26 V; or a serious misdemeanor for a first possession offense,
27 an aggravated misdemeanor for a second possession offense,
28 or a class "D" felony for two or more previous possession
29 offenses. Current law in Code section 124A.4 provides that if
30 a person unlawfully manufactures, delivers, or possesses with
31 intent to deliver an imitation controlled substance, the person
32 commits an aggravated misdemeanor, or if the person delivers
33 to a person under 18 years of age who is at least three years
34 younger than the violator, the person commits a class "D"
35 felony. In addition, under current law, if a person unlawfully

1 and knowingly publishes an advertisement or distributes in a
2 public place a promotion for an imitation controlled substance
3 the person commits a serious misdemeanor.

4 The bill provides that if the same person commits two or
5 more acts which are in violation of Code section 124.401(1)
6 and the acts occur in the same location or time period so the
7 acts are attributable to a single scheme, the acts may be
8 considered a single violation and the weights of the imitation
9 controlled substance may be combined for purposes of charging
10 the offender.

11 The amendment to Code section 124.401A provides that
12 a person who is 18 years of age or older who unlawfully
13 manufactures with the intent to distribute, distributes,
14 or possesses with the intent to distribute an imitation
15 controlled substance to another person 18 years of age or older
16 within 1,000 feet of the real property comprising a public or
17 nonpublic school, may be sentenced up to an additional term of
18 confinement of five years in addition to any other penalty.

19 The amendment to Code section 124.401B provides that
20 a person who unlawfully possesses an imitation controlled
21 substance within 1,000 feet of the real property comprising a
22 school, public park, public pool, public recreation center, or
23 marked school bus may be sentenced up to 100 hours of community
24 service.

25 The amendments to Code section 124.406 relate to the
26 distribution or possession with the intent to distribute an
27 imitation controlled substance to a person under 18 years of
28 age. A person who distributes or possesses with the intent to
29 distribute an imitation controlled substance, represented to
30 be a substance listed in schedule I or schedule II, to a person
31 under 18 years of age commits a class "B" felony. The required
32 penalty for such a violation is a minimum term of confinement
33 of 10 years if the substance was distributed within 1,000
34 feet of the real property comprising a public or nonpublic
35 school, public park, public pool, or public recreation center.

1 A person who distributes or possesses with the intent to
2 distribute an imitation controlled substance, represented to be
3 a substance listed in schedule III, to a person under 18 years
4 of age, who is at least three years younger than the violator,
5 commits a class "C" felony. A person who distributes or
6 possesses with the intent to distribute an imitation controlled
7 substance, represented to be a substance listed in schedule
8 IV or schedule V, to a person under 18 years of age, who is
9 at least three years younger than the violator, commits an
10 aggravated misdemeanor.

11 The amendment to Code section 124.415 requires that a peace
12 officer make a reasonable effort to identify a person under 18
13 years of age discovered to be in possession of an imitation
14 controlled substance, and if the person is not referred to
15 juvenile court, the peace officer shall make a reasonable
16 effort to notify the person's custodial parent of the
17 possession unless the officer has reasonable grounds to believe
18 such notification is not in the best interests of the person.
19 The bill specifies that if the person is taken into custody
20 the juvenile court officer shall make a reasonable effort to
21 identify the school of attendance and to notify the school or
22 nonpublic school of the taking into custody of the person.

23 The bill creates Code section 124.417, which is similar to
24 Code section 124A.5 repealed by the bill. A person registered
25 under Code section 124.302 does not violate the bill if the
26 person manufactures, delivers, possesses, or possesses with the
27 intent to manufacture or deliver, or acts with others to do
28 such activities, if the person uses the imitation controlled
29 substance for use as a placebo by a registered practitioner in
30 the court of professional practice or research.

31 CONTROLLED SUBSTANCES — PENALTIES. The bill enhances the
32 criminal penalties for controlled substances classified in Code
33 sections 124.204(4)(ai) and 124.204(6)(i) from an aggravated
34 misdemeanor to a class "C" felony punishable pursuant to Code
35 section 124.401(1)(c)(8). This change equalizes the criminal

1 penalties with violations involving other schedule I controlled
2 substances.

3 The bill enhances the criminal penalties for a schedule I
4 controlled substance identified in Code section 124.204(9).
5 Under the bill, a person commits a class "B" felony punishable
6 by confinement for no more than 50 years and a fine of not more
7 than \$1 million for a violation of Code section 124.401(1)(a)
8 involving more than 10 kilograms of a mixture or substance
9 containing any detectable amount of those substances identified
10 in Code section 124.204(9). A person commits a class "B"
11 felony punishable by confinement for no more than 25 years and
12 a fine of not less than \$5,000 but not more than \$100,000 for
13 a violation of Code section 124.401(1)(b) involving more than
14 five kilograms but not more than 10 kilograms of a mixture or
15 substance containing any detectable amount of those substances
16 identified in Code section 124.204(9). A person commits a
17 class "C" felony punishable by confinement for no more than
18 10 years and a fine of not less than \$1,000 but not more than
19 \$50,000 for a violation of Code section 124.401(1)(c) involving
20 five kilograms or less of a mixture or substance containing
21 any detectable amount of those substances identified in Code
22 section 124.204(9). Currently, all violations involving a
23 schedule I controlled substance identified in Code section
24 124.204(9) are punishable under Code section 124.401(1)(c)(8)
25 as a class "C" felony by confinement for no more than 10 years
26 and a fine of at least \$1,000 but not more than \$10,000,
27 regardless of the amount of the controlled substance involved.

28 A person who illegally possesses a controlled substance
29 commits a criminal violation which ranges in punishment from a
30 serious misdemeanor to a class "D" felony under Code section
31 124.401(5).