

Senate File 266 - Introduced

SENATE FILE 266

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A BILL FOR

1 An Act relating to marijuana and cannabidiol by modifying
2 penalties and creating a drug court revolving fund.

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

1 Section 1. Section 124.401, subsection 5, Code 2017, is
2 amended to read as follows:

3 5. a. (1) It is unlawful for any person knowingly or
4 intentionally to possess a controlled substance unless such
5 substance was obtained directly from, or pursuant to, a valid
6 prescription or order of a practitioner while acting in the
7 course of the practitioner's professional practice, or except
8 as otherwise authorized by [this chapter](#). Any person who
9 violates [this subsection](#) is guilty of a serious misdemeanor
10 for a first offense. A person who commits a violation of this
11 subsection and who has previously been convicted of violating
12 this chapter or [chapter 124A, 124B, or 453B](#) is guilty of an
13 aggravated misdemeanor. A person who commits a violation of
14 this subsection and has previously been convicted two or more
15 times of violating [this chapter](#) or [chapter 124A, 124B, or 453B](#)
16 is guilty of a class "D" felony.

17 ~~If the controlled substance is marijuana, the punishment~~
18 ~~shall be by imprisonment in the county jail for not more than~~
19 ~~six months or by a fine of not more than one thousand dollars,~~
20 ~~or by both such fine and imprisonment for a first offense. If~~
21 ~~the controlled substance is marijuana and the person has been~~
22 ~~previously convicted of a violation of [this subsection](#) in which~~
23 ~~the controlled substance was marijuana, the punishment shall be~~
24 ~~as provided in [section 903.1, subsection 1](#), paragraph "b". If~~
25 ~~the controlled substance is marijuana and the person has been~~
26 ~~previously convicted two or more times of a violation of this~~
27 ~~subsection in which the controlled substance was marijuana, the~~
28 ~~person is guilty of an aggravated misdemeanor.~~

29 A person may knowingly or intentionally recommend, possess,
30 use, dispense, deliver, transport, or administer cannabidiol
31 if the recommendation, possession, use, dispensing, delivery,
32 transporting, or administering is in accordance with the
33 provisions of [chapter 124D](#). For purposes of this paragraph,
34 "*cannabidiol*" means the same as defined in [section 124D.2](#).

35 (2) This subsection does not apply to the possession of

1 marijuana which is punishable pursuant to section 124.401G.

2 b. All or any part of a sentence imposed pursuant to
3 this subsection may be suspended and the person placed upon
4 probation upon such terms and conditions as the court may
5 impose including the active participation by such person in a
6 drug treatment, rehabilitation or education program approved
7 by the court.

8 c. If a person commits a violation of **this subsection**, the
9 court shall order the person to serve a term of imprisonment of
10 not less than forty-eight hours. Any sentence imposed may be
11 suspended, and the court shall place the person on probation
12 upon such terms and conditions as the court may impose. If
13 the person is not sentenced to confinement under the custody
14 of the director of the department of corrections, the terms
15 and conditions of probation shall require submission to random
16 drug testing. If the person fails a drug test, the court may
17 transfer the person's placement to any appropriate placement
18 permissible under the court order.

19 d. If the controlled substance is amphetamine, its salts,
20 isomers, or salts of its isomers, or methamphetamine, its
21 salts, isomers, or salts of its isomers, the court shall order
22 the person to serve a term of imprisonment of not less than
23 forty-eight hours. Any sentence imposed may be suspended,
24 and the court shall place the person on probation upon such
25 terms and conditions as the court may impose. The court may
26 place the person on intensive probation. However, the terms
27 and conditions of probation shall require submission to random
28 drug testing. If the person fails a drug test, the court may
29 transfer the person's placement to any appropriate placement
30 permissible under the court order.

31 **Sec. 2. NEW SECTION. 124.401G Possession of marijuana and**
32 **cannabidiol — civil penalties — offenses.**

33 1. *Definitions.* For purposes of this section, "cannabidiol"
34 means the same as defined in section 124D.2.

35 2. *Marijuana possession.*

1 *a.* One ounce or less.

2 (1) A person shall not possess marijuana unless
3 such substance was obtained pursuant to a valid written
4 recommendation in accordance with the provisions of chapter
5 124D, or except as otherwise authorized by this chapter. A
6 person who unlawfully possesses one ounce or less of marijuana
7 does not commit a criminal offense but shall be required to pay
8 the following civil penalty:

9 (a) Fifty dollars for a first offense.

10 (b) One hundred dollars for a second offense.

11 (c) Two hundred dollars for a third or subsequent offense.

12 (2) In order to determine the number of previous offenses
13 under subparagraph (1), a previous conviction involving
14 possession of marijuana under section 124.401, subsection 5,
15 Code 2017, or a conviction under paragraph "b", shall also be
16 counted as a previous offense.

17 (3) The civil penalty shall be collected by the clerk of the
18 district court pursuant to section 602.8105, subsection 5.

19 (4) Any records relating to the civil penalty shall not
20 be displayed for public viewing on the Iowa court information
21 system. The judicial branch shall allow a county attorney
22 viewing access to the Iowa court information for purposes of
23 determining the number of previous offenses under subparagraph
24 (1).

25 (5) Any records relating to the civil penalty shall not
26 be kept in the criminal history data files maintained by the
27 department of public safety. Any records relating to the civil
28 penalty shall not be disseminated to other criminal or juvenile
29 justice agencies.

30 *b.* More than one ounce.

31 (1) For all other unlawful possession of marijuana offenses
32 that involve more than one ounce of marijuana, the following
33 apply:

34 (a) For a first offense, the punishment shall be by
35 imprisonment in the county jail for not more than six months or

1 by a fine of not more than one thousand dollars, or by both such
2 fine and imprisonment.

3 (b) For a second offense, the punishment shall be as
4 provided in section 903.1, subsection 1, paragraph "b".

5 (c) For a third or subsequent offense, violation of this
6 subsection in which the controlled substance was marijuana, the
7 person is guilty of an aggravated misdemeanor.

8 (2) In order to determine the number of previous offenses
9 under subparagraph (1), a previous conviction involving
10 marijuana or cannabidiol under section 124.401, Code 2017, or
11 a conviction under this paragraph, shall also be counted as a
12 previous offense.

13 3. *Cannabidiol.* A person may knowingly or intentionally
14 recommend the use of, possess, use, dispense, deliver,
15 transport, or administer cannabidiol if the recommendation,
16 possession, use, dispensing, delivery, transporting, or
17 administering is in accordance with the provisions of chapter
18 124D.

19 4. *Juvenile violations.* A violation of this section
20 committed by a person under eighteen years of age shall be
21 adjudicated as a delinquent act exclusively in juvenile court
22 pursuant to chapter 232.

23 Sec. 3. Section 124.407, unnumbered paragraph 3, Code 2017,
24 is amended by striking the unnumbered paragraph.

25 Sec. 4. Section 124.410, Code 2017, is amended to read as
26 follows:

27 **124.410 Accommodation offense.**

28 In a prosecution for unlawful delivery or possession with
29 intent to deliver marijuana, if the prosecution proves that
30 the defendant violated the provisions of section 124.401,
31 subsection 1, by proving that the defendant delivered or
32 possessed with intent to deliver one-half ounce or less of
33 marijuana which was not offered for sale, the defendant is
34 guilty of an accommodation offense and rather than being
35 sentenced as if convicted for a violation of section 124.401,

1 subsection 1, paragraph "d", shall be sentenced as if convicted
2 of a violation of ~~section 124.401, subsection 5~~ 124.401G,
3 subsection 2, paragraph "b". An accommodation offense may be
4 proved as an included offense under a charge of delivering or
5 possessing with the intent to deliver marijuana in violation
6 of section 124.401, subsection 1. This section does not apply
7 to hashish, hashish oil, or other derivatives of marijuana as
8 defined in section 124.101, subsection 19.

9 Sec. 5. Section 232.2, subsection 12, Code 2017, is amended
10 by adding the following new paragraph:

11 NEW PARAGRAPH. d. The violation of section 124.401G which
12 is committed by a child.

13 Sec. 6. Section 232.19, subsection 3, Code 2017, is amended
14 to read as follows:

15 3. Notwithstanding any other provision of this chapter,
16 a child shall not be placed in detention as a result of a
17 violation by that child of section 123.47 or 124.401G.

18 Sec. 7. NEW SECTION. 602.1306 Drug court — revolving fund.

19 1. A drug court revolving fund is created in the state
20 treasury under the control of the judicial branch. The
21 fund shall consist of moneys deposited into the fund from
22 civil penalties assessed pursuant to section 124.401G and
23 appropriations made to the fund. Moneys in the fund shall
24 be used by the judicial branch to establish, administer, and
25 maintain drug courts throughout the state.

26 2. Notwithstanding section 8.33, unencumbered and
27 unobligated receipts in the revolving fund at the end of a
28 fiscal year do not revert to the general fund of the state.
29 Notwithstanding section 12C.7, subsection 2, interest or
30 earnings on moneys deposited in the fund shall be credited to
31 the fund.

32 3. The judicial branch shall on or before each February 1
33 file a financial accounting of the moneys in the revolving fund
34 with the legislative services agency. The accounting shall
35 include an estimate of disbursements from the revolving fund

1 for the remainder of the fiscal year and for the next fiscal
2 year.

3 Sec. 8. Section 602.8105, Code 2017, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 5. The clerk of the district court shall
6 collect a civil penalty assessed pursuant to section 124.401G.
7 Any moneys collected from the civil penalty shall be deposited
8 into the drug court revolving fund created in section 602.1306.

9 Sec. 9. Section 809A.4, Code 2017, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 8. Except items described in subsections
12 2 through 6 are not subject to forfeiture for a violation of
13 section 124.401G, subsection 2, paragraph "a".

14 EXPLANATION

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

17 This bill relates to marijuana and cannabidiol by modifying
18 penalties and creating a drug court revolving fund.

19 The bill strikes provisions relating to the possession
20 of marijuana in Code section 124.401(5) and creates new
21 Code section 124.401G relating to marijuana possession. The
22 bill also strikes a provision relating to the lawful use of
23 cannabidiol in Code section 124.401(5), and moves the provision
24 to new Code section 124.401G. Cannabidiol is a derivative
25 of marijuana and is punished as if one possessed or used the
26 controlled substance of marijuana, except that prosecutions
27 related to cannabidiol are limited under Code chapter 124D
28 (medical cannabidiol Act).

29 ACCOMMODATION OFFENSE. The bill makes a conforming change
30 to Code section 124.410, but does not change the criminal
31 penalties for an accommodation offense.

32 JUVENILE POSSESSION. The bill punishes a juvenile who
33 possesses marijuana differently than a person 18 years of
34 age or older who possesses marijuana. The bill modifies
35 the definition of "delinquent act" to include possession of

1 marijuana and specifies that a juvenile who possesses marijuana
2 commits a delinquent act to be adjudicated exclusively in
3 juvenile court. However, the bill provides that a juvenile
4 who possesses marijuana shall not be held in detention.
5 Code section 232.2(15) defines "detention" to mean the
6 temporary care of a child in a physically restricting facility
7 designed to ensure the continued custody of the child at any
8 point between the child's initial contact with the juvenile
9 authorities and the final disposition of the child's case.

10 POSSESSION OF MARIJUANA — CIVIL PENALTIES — OFFENSES.

11 The bill creates a new civil penalty for the possession of
12 one ounce or less of marijuana. Under the bill, a person who
13 unlawfully possesses one ounce or less of marijuana does not
14 commit a criminal offense but shall be subject to the following
15 civil penalty: \$50 for a first offense, \$100 for a second
16 offense, and \$200 for a third or subsequent offense.

17 The bill specifies that a previous conviction involving
18 possession of marijuana under current Code section 124.401(5)
19 or possession of more than one ounce of marijuana in violation
20 of the bill shall also be counted as a previous offense.

21 The bill provides that any records relating to the civil
22 penalty shall not be displayed for public viewing on the Iowa
23 court information system. However, the bill does specify
24 that the judicial branch shall allow a county attorney
25 viewing access to the Iowa court information for purposes of
26 determining the number of previous marijuana offenses the
27 person has had in order to determine the amount of the civil
28 penalty to be assessed.

29 The bill provides that any records relating to the civil
30 penalty shall not be kept in the criminal history data files
31 maintained by the department of public safety. The bill
32 further states any records relating to the civil penalty shall
33 not be disseminated to other criminal or juvenile justice
34 agencies.

35 The bill does not change the criminal penalties related to

1 the possession of more than one ounce of marijuana. Under
2 current law and the bill, a person who unlawfully possesses
3 more than one ounce of marijuana commits the following: for
4 a first offense, the punishment shall be by imprisonment in
5 the county jail for not more than six months or by a fine of
6 not more than \$1,000, or by both such fine and imprisonment;
7 for a second offense, the punishment shall be imprisonment
8 not to exceed one year and a fine of at least \$315 but not
9 more than \$1,875; and for a third or subsequent offense, the
10 person commits an aggravated misdemeanor which is punishable by
11 confinement for no more than two years and a fine of at least
12 \$625 but not more than \$6,250.

13 However, the bill does change the penalties related to
14 the driving privileges of a person convicted of possession
15 of marijuana. Currently, the driver's license of a person
16 convicted of possession of marijuana is revoked for 180 days at
17 sentencing. By moving the possession penalties for marijuana
18 to new Code section 124.401G under the bill, the driver's
19 license of a person convicted of possession of marijuana is no
20 longer revoked pursuant to Code section 901.5(10).

21 CANNABIDIOL. The bill does not change the cannabidiol
22 provision moved from Code section 124.104(5) to new Code
23 section 124.401G. Under current law and the bill, a person
24 may knowingly or intentionally recommend, possess, use,
25 dispense, deliver, transport, or administer cannabidiol if
26 the recommendation, possession, use, dispensing, delivery,
27 transporting, or administering is in accordance with the
28 provisions of Code chapter 124D (medical cannabidiol Act). The
29 bill does not extend the repeal of Code chapter 124D beyond
30 July 1, 2017.

31 GATHERINGS WHERE MARIJUANA IS USED. The bill strikes a
32 provision in Code section 124.407 that makes it unlawful for
33 any person to sponsor, promote, or aid, or assist in the
34 sponsoring or promoting of a gathering of people with the
35 knowledge or intent that marijuana will be distributed, used,

1 or possessed at such a gathering. A person who violates this
2 provision under current law commits a serious misdemeanor.

3 DRUG COURT REVOLVING FUND. The bill creates a drug court
4 revolving fund in the state treasury under the control of the
5 judicial branch. The fund shall consist of moneys deposited
6 into the fund from civil penalties assessed for offenses
7 involving one ounce or less of marijuana, and appropriations
8 made to the fund. The bill requires that moneys in the fund
9 be used by the judicial branch to establish, administer, and
10 maintain drug courts throughout the state.

11 The bill provides that unencumbered and unobligated receipts
12 in the drug court revolving fund at the end of a fiscal year
13 do not revert to the general fund of the state. The bill also
14 provides that interest or earnings on moneys deposited in the
15 drug court revolving fund shall be credited to the fund.

16 The bill also requires the judicial branch to file, on or
17 before February 1 of each year, a financial accounting of the
18 moneys in the drug court revolving fund with the legislative
19 services agency.

20 FORFEITURE. The bill provides that a person who violates the
21 bill by possessing 1 ounce or less of marijuana (civil penalty)
22 shall not be subject to forfeiture of certain property pursuant
23 to Code section 809A.4, except that the marijuana shall be
24 seized and forfeited.