

House Study Bill 187 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC SAFETY BILL)

A BILL FOR

1 An Act providing for the regulation of hemp, including by
2 creating an affirmative defense in cases of criminal
3 prosecution, and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 124.204, subsection 7, Code 2021, is
2 amended to read as follows:

3 7. *Exclusions.* Schedule I does not consist of the plant
4 cannabis if it is any of the following:

5 a. Hemp as defined in section 204.2 that is or was produced
6 in this state, or was produced in another state, in accordance
7 with the provisions of chapter 204 ~~with a maximum delta-9~~
8 ~~tetrahydrocannabinol concentration that does not exceed~~
9 ~~three-tenths of one percent on a dry weight basis.~~

10 b. A hemp product as ~~provided in chapter 204~~ with a maximum
11 ~~delta-9 tetrahydrocannabinol concentration that does not exceed~~
12 ~~three-tenths of one percent on a dry weight basis~~ defined in
13 section 204.2.

14 Sec. 2. Section 124.401, subsection 6, unnumbered paragraph
15 1, Code 2021, is amended to read as follows:

16 Notwithstanding any other provision in this section to
17 the contrary, and subject to section 124.401G, a person may
18 produce, possess, use, harvest, handle, manufacture, market,
19 transport, deliver, or distribute any of the following:

20 Sec. 3. Section 124.401G, Code 2021, is amended to read as
21 follows:

22 **124.401G Iowa hemp Act — ~~negligent violation program~~**
23 **compliance — affirmative defenses.**

24 1. Notwithstanding any provision of this chapter to the
25 contrary, a person shall not be guilty of an offense under
26 this chapter, including under section 124.401 or 124.410, ~~for~~
27 if the person proves by a preponderance of the evidence an
28 affirmative defense of compliance with chapter 204 as provided
29 in an applicable subsection of this section.

30 2. It is an affirmative defense to a prosecution
31 for producing, possessing, using, harvesting, handling,
32 manufacturing, marketing, transporting, delivering, or
33 distributing the plant cannabis that the person complied with
34 section 204.7, subsection 5 or 6.

35 3. It is an affirmative defense to a prosecution

1 for producing, possessing, using, harvesting, handling,
2 manufacturing, marketing, transporting, delivering, or
3 distributing the plant cannabis pursuant to the results of a
4 test conducted pursuant to section 204.8, if that all of the
5 following apply:

6 ~~1. a.~~ The person holds a valid hemp license issued is a
7 licensee under the negligent violation program administered by
8 the department of agriculture and land stewardship as provided
9 in ~~chapter 204~~ section 204.15.

10 ~~2. b.~~ The plant is or was produced on the licensee's crop
11 site as provided in chapter 204.

12 ~~3. c.~~ The offense arises out of a test of a sample of
13 plants that are part of a crop produced on the licensee's crop
14 site and the test indicates that the sample does not qualify
15 as hemp under section 204.8 and does not exceed a maximum
16 concentration of two percent delta-9 tetrahydrocannabinol on a
17 dry weight basis.

18 ~~4. d.~~ The licensee is participating in or has successfully
19 completed the negligent violation program that applies to the
20 licensee's crop site described in subsection 3 if such program
21 is established by the department of agriculture and land
22 stewardship pursuant to section 204.15 paragraph "c".

23 4. a. It is an affirmative defense to a prosecution for
24 possessing, using, handling, manufacturing, selling, marketing,
25 transporting, delivering, or distributing an item derived from
26 or made by processing the plant cannabis that the product meets
27 the definition of a hemp product as defined in section 204.2.

28 b. It is an affirmative defense to a prosecution for
29 manufacturing, selling, or consuming a consumable hemp product
30 as defined in section 204.2 that the consumable hemp product
31 was manufactured, sold, or consumed in compliance with section
32 204.7, subsection 8.

33 Sec. 4. Section 453B.5, Code 2021, is amended to read as
34 follows:

35 **453B.5 Defense or immunity.**

1 ~~This~~ Except as provided in section 453B.18, this chapter
2 does not provide in any manner a defense or affirmative defense
3 to or immunity for a dealer from criminal prosecution pursuant
4 to Iowa law.

5 Sec. 5. Section 453B.18, Code 2021, is amended by striking
6 the section and inserting in lieu thereof the following:

7 **453B.18 Iowa hemp Act — affirmative defense.**

8 1. Notwithstanding any provision of this chapter to the
9 contrary, a person shall not be guilty of an offense under
10 this chapter if the person proves by a preponderance of the
11 evidence an affirmative defense of compliance with chapter 204
12 as provided in an applicable subsection of this section.

13 2. It is an affirmative defense to a prosecution for
14 manufacturing, producing, acquiring, purchasing, possessing,
15 distributing, or offering for sale the plant cannabis that the
16 person complied with section 204.7, subsection 5 or 6.

17 3. It is an affirmative defense to a prosecution for
18 producing, possessing, using, harvesting, handling, or
19 distributing the plant cannabis pursuant to the results of
20 a test conducted pursuant to section 204.8 that all of the
21 following apply:

22 a. The person is a licensee under the negligent violation
23 program administered by the department of agriculture and land
24 stewardship as provided in section 204.15.

25 b. The plant is or was produced on the licensee's crop site
26 as provided in chapter 204.

27 c. The offense arises out of a test of a sample of plants
28 that are part of a crop produced on the licensee's crop site
29 and the test indicates that the sample does not qualify as hemp
30 under section 204.8 and does not exceed a maximum concentration
31 of two percent delta-9 tetrahydrocannabinol on a dry weight
32 basis.

33 d. The licensee is participating in or has successfully
34 completed the negligent violation program that applies to the
35 licensee's crop site described in paragraph "c".

1 4. a. It is an affirmative defense to a prosecution for
2 manufacturing, producing, acquiring, purchasing, possessing,
3 distributing, or offering for sale an item derived from or made
4 by processing the plant cannabis that the product meets the
5 definition of a hemp product as defined in section 204.2.

6 b. It is an affirmative defense to a prosecution for
7 manufacturing, selling, or consuming a consumable hemp product
8 as defined in section 204.2 that the consumable hemp product
9 was manufactured, sold, or consumed in compliance with section
10 204.7, subsection 8.

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EXPLANATION

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

14 GENERAL. This bill relates to criminal offenses involving
15 hemp, which is a type of cannabis (*sativa* L.) plant that
16 meets the legal threshold of having a maximum delta-9
17 tetrahydrocannabinol (THC) concentration of not more than
18 three-tenths of one percent. Specifically, the bill provides
19 an affirmative defense may be pled and proven by a person
20 accused of committing the criminal offense, based on the
21 defendant's compliance with certain requirements associated
22 with the legal production of hemp as provided in the Iowa
23 hemp Act (IHA) codified in Code chapter 204. This includes
24 having obtained a number of documents including a license to
25 produce hemp (Code section 204.4), a certificate of analysis
26 testing the hemp's THC concentration, a temporary harvest and
27 transportation permit, and a bill of lading when transporting
28 hemp (Code section 204.7(5)). A person other than a licensee
29 may also plead and prove an affirmative defense if the person
30 is authorized to be on the licensee's crop site by the licensee
31 (Code section 204.7(6)). For certain prosecutions, the
32 affirmative defense must include participation in the negligent
33 violation program in which a qualified person required to be
34 licensed by the department of agriculture and land stewardship
35 (DALs) is not subject to criminal liability by complying with a

1 corrective plan approved by DALs (Code section 204.15). The
2 licensee cannot participate in the program if the results of
3 a test of the licensee's crop exceeds 2 percent THC. The
4 affirmative defense may also be pled and proven for a criminal
5 offense involving an item derived from or made by processing
6 the plant cannabis. In that case it must be proven that the
7 item qualifies as a hemp product, meaning that it meets the
8 minimum legal threshold (Code section 204.2(11)). If the hemp
9 product is a consumable hemp product, an additional burden
10 is placed on the defendant to plead and prove that the item
11 was manufactured in this state, it derives from hemp, was
12 produced in compliance with Code chapter 204, it complies with
13 packaging and labeling requirements adopted by the department
14 of inspections and appeals, and the manufacturer is registered
15 with the department of inspections and appeals (Code section
16 204.7(8)). The affirmative defense applies to prosecutions
17 brought under Code chapter 124 regulating controlled substances
18 and Code chapter 453B imposing an excise tax on the unlawful
19 possession and dealing of certain substances.

20 BACKGROUND — IOWA HEMP ACT. DALs administers and
21 enforces the IHA in cooperation with the department of public
22 safety (Code section 204.3). Regulation of hemp products is
23 administered and enforced by the department of inspections and
24 appeals (Code section 204.7). The original law included a
25 number of coordinating provisions, including amendments that
26 removed hemp from the list of schedule I controlled substances
27 (Code chapter 124) and eliminated the associated excise tax
28 imposed on controlled substances (Code chapter 453B). The
29 law was amended last year, which in part changed compliance
30 requirements (2020 Iowa Acts, chapters 1065 and 1121).

31 CRIMINAL PENALTIES. A number of criminal penalties apply to
32 a criminal conviction involving cannabis, including possession,
33 manufacture, and distribution. These include a serious and
34 aggravated misdemeanor (Code sections 124.401 and 124.410) and
35 class "D", class "C", and class "B" felonies (Code sections

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1 124.401, 124.410, and 453B.12). A serious misdemeanor is
2 punishable by confinement for no more than one year and a fine
3 of at least \$430 but not more than \$2,560. An aggravated
4 misdemeanor is punishable by confinement for no more than two
5 years and a fine of at least \$855 but not more than \$8,540. A
6 class "D" felony is punishable by confinement for no more than
7 five years and a fine of at least \$1,025 but not more than
8 \$10,245. A class "C" felony is punishable by confinement for
9 no more than 10 years and a fine of at least \$1,370 but not
10 more than \$13,660. And a class "B" felony is punishable by
11 confinement for no more than 25 years.