

**Senate File 407 - Introduced**

SENATE FILE 407

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**A BILL FOR**

1 An Act relating to marijuana, including the manufacture,  
2 delivery, and possession of marijuana, providing fees,  
3 providing penalties, and including effective date  
4 provisions.

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

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

3 Except as authorized by this chapter or chapter 124E or  
4 124F, it is unlawful for any person to manufacture, deliver, or  
5 possess with the intent to manufacture or deliver, a controlled  
6 substance, a counterfeit substance, a simulated controlled  
7 substance, or an imitation controlled substance, or to act  
8 with, enter into a common scheme or design with, or conspire  
9 with one or more other persons to manufacture, deliver, or  
10 possess with the intent to manufacture or deliver a controlled  
11 substance, a counterfeit substance, a simulated controlled  
12 substance, or an imitation controlled substance.

13 Sec. 2. Section 124.401, subsection 1, paragraph a,  
14 subparagraph (6), Code 2021, is amended by striking the  
15 subparagraph.

16 Sec. 3. Section 124.401, subsection 1, paragraph b,  
17 subparagraph (6), Code 2021, is amended by striking the  
18 subparagraph.

19 Sec. 4. Section 124.401, subsection 1, paragraph c,  
20 subparagraph (5), Code 2021, is amended by striking the  
21 subparagraph.

22 Sec. 5. Section 124.401, subsection 1, paragraph c,  
23 subparagraph (9), Code 2021, is amended to read as follows:

24 (9) Any other controlled substance, counterfeit substance,  
25 simulated controlled substance, or imitation controlled  
26 substance classified in schedule I, II, or III, except as  
27 provided in paragraph "d", or in chapter 124E or 124F.

28 Sec. 6. Section 124.401, subsection 1, paragraph d, Code  
29 2021, is amended to read as follows:

30 d. Violation of this subsection, with respect to any other  
31 controlled substances, counterfeit substances, simulated  
32 controlled substances, or imitation controlled substances  
33 classified in schedule IV or V is an aggravated misdemeanor.  
34 However, violation of this subsection involving ~~fifty kilograms~~  
35 ~~or less of marijuana or involving flunitrazepam~~ is a class "D"

1 felony.

2 Sec. 7. Section 124.401, subsection 5, unnumbered paragraph  
3 2, Code 2021, is amended to read as follows:

4 ~~If the controlled substance is marijuana, the punishment~~  
5 ~~shall be by imprisonment in the county jail for not more than~~  
6 ~~six months or by a fine of not more than one thousand dollars,~~  
7 ~~or by both such fine and imprisonment for a first offense. If~~  
8 ~~the controlled substance is marijuana and the person has been~~  
9 ~~previously convicted of a violation of this subsection in which~~  
10 ~~the controlled substance was marijuana, the punishment shall be~~  
11 ~~as provided in section 903.1, subsection 1, paragraph "b". If~~  
12 ~~the controlled substance is marijuana and the person has been~~  
13 ~~previously convicted two or more times of a violation of this~~  
14 ~~subsection in which the controlled substance was marijuana,~~  
15 ~~the person is guilty of an aggravated misdemeanor. This~~  
16 ~~subsection does not apply to the possession of marijuana which~~  
17 ~~is punishable pursuant to chapter 124F.~~

18 Sec. 8. Section 124.401G, unnumbered paragraph 1, Code  
19 2021, is amended to read as follows:

20 Notwithstanding any provision of this chapter to the  
21 contrary, a person shall not be guilty of an offense under  
22 this chapter, including under section 124.401 ~~or 124.410~~,  
23 for producing, possessing, using, harvesting, handling,  
24 manufacturing, marketing, transporting, delivering, or  
25 distributing the plant cannabis, if all of the following apply:

26 Sec. 9. Section 124.407, subsection 2, Code 2021, is amended  
27 to read as follows:

28 2. ~~a.~~ Any person who violates this section and where the  
29 controlled substance is ~~any one~~ a controlled substance other  
30 than marijuana is guilty of a class "D" felony.

31 ~~b.~~ ~~Any person who violates this section, and where the~~  
32 ~~controlled substance is marijuana only, is guilty of a serious~~  
33 ~~misdemeanor.~~

34 Sec. 10. Section 124.411, subsection 2, Code 2021, is  
35 amended to read as follows:

1 2. For purposes of **this section**, an offense is considered  
2 a second or subsequent offense, if, prior to the person's  
3 having been convicted of the offense, the offender has ever  
4 been convicted under **this chapter** or under any state or federal  
5 statute relating to narcotic drugs or cocaine, ~~marijuana,~~  
6 depressant, stimulant, or hallucinogenic drugs.

7 Sec. 11. Section 124.413, subsection 2, Code 2021, is  
8 amended to read as follows:

9 2. **This section** shall not apply if:

10 ~~a. The offense is found to be an accommodation pursuant to~~  
11 ~~section 124.410; or~~

12 ~~b. The the controlled substance is marijuana.~~

13 Sec. 12. NEW SECTION. 124F.1 **Definitions.**

14 As used in this subchapter:

15 1. "*Counterfeit substance*" means the same as defined in  
16 section 124.101.

17 2. "*Imitation controlled substance*" means the same as  
18 defined in section 124.101.

19 3. "*Marijuana*" means the same as defined in section 124.101,  
20 and includes a counterfeit substance, imitation controlled  
21 substance, or simulated controlled substance containing a  
22 detectable amount of marijuana.

23 4. "*Simulated controlled substance*" means the same as  
24 defined in section 124.101.

25 Sec. 13. NEW SECTION. 124F.2 **Marijuana — penalties.**

26 1. Except as otherwise provided in this subchapter and  
27 chapter 124E, it is unlawful for any person to manufacture,  
28 deliver, or possess with the intent to manufacture or deliver  
29 marijuana, or to act with, enter into a common scheme or  
30 design with, or conspire with one or more other persons to  
31 manufacture, deliver, or possess with the intent to manufacture  
32 or deliver marijuana. A violation of this subsection involving  
33 the following amounts of marijuana shall be punishable as  
34 follows:

35 *a.* More than twenty-two kilograms shall be a class "C"

1 felony.

2 *b.* More than two kilograms but not more than twenty-two  
3 kilograms shall be a class "D" felony.

4 *c.* More than twelve ounces but not more than two kilograms  
5 shall be an aggravated misdemeanor.

6 *d.* More than four ounces but not more than twelve ounces  
7 shall be punishable as a serious misdemeanor.

8 *e.* Four ounces or less shall be punishable as a simple  
9 misdemeanor, except as provided in section 124F.3.

10 2. *a.* It is unlawful for any person knowingly or  
11 intentionally to possess marijuana unless such substance was  
12 obtained directly from, or pursuant to, a valid prescription  
13 or order of a practitioner while acting in the course of the  
14 practitioner's professional practice, or except as otherwise  
15 authorized by this subsection. A violation of this subsection  
16 involving the possession of the following amounts of marijuana  
17 shall be punishable as follows:

18 (1) More than six ounces but not more than twelve ounces is  
19 a serious misdemeanor.

20 (2) More than one-half ounce but not more than six ounces  
21 is a simple misdemeanor.

22 (3) One-half ounce or less is not a criminal offense but  
23 shall be assessed as a civil penalty in the amount of one  
24 hundred dollars, except if the person is under twenty-one years  
25 of age, the person commits a serious misdemeanor.

26 (a) The civil penalty shall be collected by the clerk of the  
27 district court pursuant to section 602.8105, subsection 5.

28 (b) Any records relating to the civil penalty shall not  
29 be displayed for public viewing on the Iowa court information  
30 system.

31 (c) Any records relating to the civil penalty shall not  
32 be kept in the criminal history data files maintained by the  
33 department of public safety. Any records relating to the civil  
34 penalty shall not be disseminated to other criminal or juvenile  
35 justice agencies.

1     *b.* Notwithstanding paragraph "a", a municipality may, by  
2 ordinance, allow for the legal possession of marijuana.

3     3. Upon the expiration of two years following a conviction  
4 for a violation of subsection 2, paragraph "a", subparagraph  
5 (3), or for a violation of subsection 2, paragraph "b",  
6 subparagraph (2), a person may petition the court to expunge  
7 the conviction, and if the person has had no other criminal  
8 convictions, other than local traffic violations or simple  
9 misdemeanor violations of chapter 321 during the two-year  
10 period, the conviction shall be expunged as a matter of  
11 law. The court shall enter an order that the record of the  
12 conviction be expunged by the clerk of the district court.  
13 Notwithstanding section 692.2, after receipt of notice from  
14 the clerk of the district court that a record of conviction  
15 has been expunged pursuant to this subsection, the record of  
16 conviction shall be removed from the criminal history data  
17 files maintained by the department of public safety.

18     Sec. 14. NEW SECTION. **124F.3 Delivery or possession with**  
19 **the intent to deliver — small amounts.**

20     If the amount of marijuana delivered or possessed with  
21 intent to deliver is one ounce or less and no remuneration was  
22 provided, the defendant shall not be prosecuted for a violation  
23 of this subchapter.

24     Sec. 15. NEW SECTION. **124F.4 Juvenile offenses.**

25     The juvenile court shall have exclusive original  
26 jurisdiction in a proceeding concerning a minor who is alleged  
27 to have committed a violation of this subchapter.

28     Sec. 16. NEW SECTION. **124F.5 Marijuana use in public.**

29     1. Marijuana shall not be consumed in areas open and  
30 accessible to the public, including but not limited to public  
31 transportation facilities, sporting or music venues, parks,  
32 playgrounds, sidewalks and roads, outdoor cafes, or indoor but  
33 public locations.

34     2. A person who violates this section commits a simple  
35 misdemeanor punishable as a scheduled violation under section

1 805.8C, subsection 14.

2 3. Upon the expiration of two years following conviction  
3 for a violation of subsection 1, a person may petition the  
4 court to expunge the conviction, and if the person has had no  
5 other criminal convictions, other than local traffic violations  
6 or simple misdemeanor violations of chapter 321 during the  
7 two-year period, the conviction shall be expunged as a matter  
8 of law. The court shall enter an order that the record of the  
9 conviction be expunged by the clerk of the district court.  
10 Notwithstanding section 692.2, after receipt of notice from  
11 the clerk of the district court that a record of conviction  
12 has been expunged pursuant to this subsection, the record of  
13 conviction shall be removed from the criminal history data  
14 files maintained by the department of public safety.

15 Sec. 17. Section 602.8105, Code 2021, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 5. The clerk of the district court shall  
18 collect the civil penalty assessed pursuant to section 124F.2,  
19 subsection 2, paragraph "a", subparagraph (3).

20 Sec. 18. Section 805.8C, Code 2021, is amended by adding the  
21 following new subsection:

22 NEW SUBSECTION. 14. *Marijuana violations.* For marijuana  
23 use in public violations under section 124F.5, the scheduled  
24 fine is fifty dollars for a first violation, and one hundred  
25 dollars for a second or subsequent violation.

26 Sec. 19. REPEAL. Section 124.410, Code 2021, is repealed.

27 Sec. 20. EFFECTIVE DATE. This Act takes effect January 1,  
28 2022.

29

#### EXPLANATION

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

32 This bill modifies criminal penalties relating to marijuana  
33 by eliminating and modifying certain criminal provisions in  
34 Code chapter 124 (uniform controlled substances Act), and  
35 transferring certain criminal provisions from Code chapter 124

1 to new Code chapter 124F.

2 MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO DELIVER  
3 MARIJUANA. The bill provides that an unauthorized person  
4 commits a class "C" felony punishable by confinement for  
5 no more than 10 years and a fine of at least \$1,370 but not  
6 more than \$13,660 if the person violates new Code section  
7 124F.2(1)(a) and the controlled substance involves more than  
8 22 kilograms of marijuana. Currently, such a person commits  
9 a class "B" felony punishable by confinement of no more than  
10 50 years if the controlled substance involves more than 1,000  
11 kilograms of a mixture or substance containing a detectable  
12 amount of marijuana, or a class "B" felony punishable by  
13 confinement of no more than 25 years if the controlled  
14 substance involves more than 100 kilograms of marijuana but not  
15 more than 1,000 kilograms.

16 The bill provides that an unauthorized person commits a  
17 class "D" felony if the person violates new Code section  
18 124F.2(1)(b) and the controlled substance involves more than  
19 2 kilograms of marijuana but not more than 22 kilograms. A  
20 class "D" felony is punishable by confinement for no more than  
21 five years and a fine of at least \$1,025 but not more than  
22 \$10,245. Currently, such a person commits a class "C" felony  
23 if the controlled substance involves more than 50 kilograms of  
24 marijuana but not more than 100 kilograms.

25 The bill provides that an unauthorized person commits an  
26 aggravated misdemeanor if the person violates new Code section  
27 124F.2(1)(c) and the controlled substance involves more than  
28 12 ounces of marijuana but not more than 2 kilograms. An  
29 aggravated misdemeanor is punishable by confinement for no more  
30 than two years and a fine of at least \$855 but not more than  
31 \$8,540. Currently, such a person commits a class "D" felony  
32 if the controlled substance involves 50 kilograms or less of  
33 marijuana.

34 The bill provides that an unauthorized person commits a  
35 serious misdemeanor if the person violates new Code section



1 124F.2(1)(d) and the controlled substance involves more than  
2 4 ounces of marijuana but not more than 12 ounces. A serious  
3 misdemeanor is punishable by confinement for no more than one  
4 year and a fine of at least \$430 but not more than \$2,560.  
5 Currently, such a person commits a class "D" felony.

6 The bill provides that an unauthorized person commits a  
7 simple misdemeanor if the person violates new Code section  
8 124F.2(1)(e) and the controlled substance involves 4 ounces or  
9 less of marijuana except as otherwise provided in the bill. A  
10 simple misdemeanor is punishable by confinement for no more  
11 than 30 days and a fine of at least \$105 but not more than \$855.  
12 Currently, such a person commits a class "D" felony.

13 POSSESSION OF MARIJUANA. The bill provides that if a person  
14 unlawfully possesses more than 6 ounces of marijuana but not  
15 more than 12 ounces, the person commits a serious misdemeanor.

16 The bill provides that if a person unlawfully possesses more  
17 than one-half ounce of marijuana but not more than 6 ounces,  
18 the person commits a simple misdemeanor.

19 The bill provides that if a person 21 years of age or older  
20 possesses one-half ounce or less of marijuana, the person  
21 does not commit a criminal offense but shall be assessed a  
22 civil penalty in the amount of \$100. If the person is under  
23 21 years of age, the offense shall be punishable as a serious  
24 misdemeanor, which may be expunged after two years if the  
25 person does not commit additional criminal violations other  
26 than traffic offenses. The bill provides that any records  
27 relating to the civil penalty shall not be displayed for public  
28 viewing on the Iowa court information system and such records  
29 shall not be kept in the criminal history files maintained by  
30 the department of public safety.

31 The bill allows a municipality to adopt an ordinance to allow  
32 for the legal possession of marijuana.

33 Currently, if a person unlawfully possesses marijuana, the  
34 person shall be punished by imprisonment in the county jail for  
35 not more than six months or by a fine of not more than \$1,000,

1 or by both for a first offense. If the person has previously  
2 been convicted of marijuana possession, the person commits a  
3 serious misdemeanor under current law, and if the person has  
4 been convicted of marijuana possession two or more times, the  
5 person commits an aggravated misdemeanor.

6 SMALL AMOUNTS OF MARIJUANA. If the amount of marijuana  
7 delivered or possessed with intent to deliver is one ounce or  
8 less and no remuneration was provided, the defendant shall not  
9 be prosecuted for a violation of the bill.

10 MARIJUANA USE IN PUBLIC. The bill prohibits the consumption  
11 of marijuana in areas open and accessible to the public,  
12 including but not limited to public transportation facilities,  
13 sporting or music venues, parks, playgrounds, sidewalks and  
14 roads, outdoor cafes, or indoor but public locations. A person  
15 who violates this provision commits a simple misdemeanor  
16 punishable as a scheduled violation in the amount of \$50 for  
17 a first offense and \$100 for a second or subsequent offense.  
18 This violation may be expunged after two years if the person  
19 does not commit additional criminal violations other than  
20 traffic offenses.

21 JUVENILE MARIJUANA OFFENSES. The bill specifies that the  
22 juvenile court shall have exclusive original jurisdiction in a  
23 proceeding concerning a minor who is alleged to have committed  
24 a violation of the bill.

25 GATHERINGS WHERE CONTROLLED SUBSTANCES UNLAWFULLY USED.  
26 The bill strikes a provision making it a serious misdemeanor  
27 for a person to sponsor, promote, or aid in the sponsoring  
28 or promoting of a meeting or gathering with the knowledge or  
29 intent that marijuana be distributed, used, or possessed at the  
30 meeting or gathering in violation of Code chapter 124.

31 ACCOMMODATION OFFENSE. The bill strikes a provision  
32 allowing a prosecution for unlawful delivery or possession with  
33 intent to deliver marijuana, if the prosecution proves that  
34 the defendant delivered or possessed with intent to deliver  
35 one-half ounce or less of marijuana which was not offered for

1 sale, the defendant is guilty of an accommodation offense  
2 and rather than being sentenced for a class "D" felony under  
3 Code section 124.401(1)(d), the person is sentenced for a  
4 misdemeanor in violation of Code section 124.401(5). The bill  
5 makes conforming changes to Code sections 124.401G (Iowa hemp  
6 Act) and 124.413 (mandatory minimum sentences — controlled  
7 substances).

8       SECOND OR SUBSEQUENT OFFENSES. Currently, a person  
9 convicted of a second or subsequent offense under Code chapter  
10 124 may be punished by imprisonment for a period not to exceed  
11 three times the term otherwise authorized, or fined not more  
12 than three times the amount otherwise authorized. The bill  
13 strikes the provision that allows for the use of a previous  
14 marijuana conviction in determining if a person has been  
15 convicted of a second or subsequent offense under Code chapter  
16 124.

17       The bill takes effect January 1, 2022.