

Senate File 83 - Introduced

SENATE FILE 83

BY BOLKCOM

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 four ounces but not more than six ounces is a
21 simple misdemeanor.

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

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

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

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

1 justice agencies.

2 *b.* (1) Except as provided in subparagraph (2), a person
3 does not violate this subsection if the amount of marijuana
4 involved is one ounce or less.

5 (2) If the person is under twenty-one years of age, the
6 person commits a simple misdemeanor.

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

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

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

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

29 The juvenile court shall have exclusive original
30 jurisdiction in a proceeding concerning a minor who is alleged
31 to have committed a violation of this subchapter.

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

33 1. Marijuana shall not be consumed in areas open and
34 accessible to the public, including but not limited to public
35 transportation facilities, sporting or music venues, parks,

1 playgrounds, sidewalks and roads, outdoor cafes, or indoor but
2 public locations.

3 2. A person who violates this section commits a simple
4 misdemeanor punishable as a scheduled violation under section
5 805.8C, subsection 14.

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

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

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

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

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

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

31 Sec. 20. EFFECTIVE DATE. This Act takes effect January 1,
32 2022.

33

EXPLANATION

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

1 This bill modifies criminal penalties relating to marijuana
2 by eliminating and modifying certain criminal provisions in
3 Code chapter 124 (uniform controlled substances Act), and
4 transferring certain criminal provisions from Code chapter 124
5 to new Code chapter 124F.

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

20 The bill provides that an unauthorized person commits a
21 class "D" felony if the person violates new Code section
22 124F.2(1)(b) and the controlled substance involves more than
23 2 kilograms of marijuana but not more than 22 kilograms. A
24 class "D" felony is punishable by confinement for no more than
25 five years and a fine of at least \$1,025 but not more than
26 \$10,245. Currently, such a person commits a class "C" felony
27 if the controlled substance involves more than 50 kilograms of
28 marijuana but not more than 100 kilograms.

29 The bill provides that an unauthorized person commits an
30 aggravated misdemeanor if the person violates new Code section
31 124F.2(1)(c) and the controlled substance involves more than
32 12 ounces of marijuana but not more than 2 kilograms. An
33 aggravated misdemeanor is punishable by confinement for no more
34 than two years and a fine of at least \$855 but not more than
35 \$8,540. Currently, such a person commits a class "D" felony

1 if the controlled substance involves 50 kilograms or less of
2 marijuana.

3 The bill provides that an unauthorized person commits a
4 serious misdemeanor if the person violates new Code section
5 124F.2(1)(d) and the controlled substance involves more than
6 4 ounces of marijuana but not more than 12 ounces. A serious
7 misdemeanor is punishable by confinement for no more than one
8 year and a fine of at least \$430 but not more than \$2,560.
9 Currently, such a person commits a class "D" felony.

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

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

20 The bill provides that if a person unlawfully possesses more
21 than 4 ounces of marijuana but not more than 6 ounces, the
22 person commits a simple misdemeanor.

23 The bill provides that if a person 21 years of age or older
24 possesses more than 1 ounce of marijuana but not more than
25 4 ounces, the person does not commit a criminal offense but
26 shall be assessed a civil penalty in the amount of \$100. If
27 the person is under 21 years of age, the offense shall be
28 punishable as a serious misdemeanor, which may be expunged
29 after two years if the person does not commit additional
30 criminal violations other than traffic offenses. The bill
31 provides that any records relating to the civil penalty
32 shall not be displayed for public viewing on the Iowa court
33 information system and such records shall not be kept in the
34 criminal history files maintained by the department of public
35 safety.

1 A person does not unlawfully possesses marijuana under the
2 bill if the amount of marijuana possessed is one ounce or less.
3 However, if the person is under 21 years of age, the person
4 commits a simple misdemeanor, which may be expunged after
5 two years if the person does not commit additional criminal
6 violations other than traffic offenses.

7 Currently, if a person unlawfully possesses marijuana, the
8 person shall be punished by imprisonment in the county jail for
9 not more than six months or by a fine of not more than \$1,000,
10 or by both for a first offense. If the person has previously
11 been convicted of marijuana possession, the person commits a
12 serious misdemeanor under current law, and if the person has
13 been convicted of marijuana possession two or more times, the
14 person commits an aggravated misdemeanor.

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

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

30 JUVENILE MARIJUANA OFFENSES. The bill specifies that the
31 juvenile court shall have exclusive original jurisdiction in a
32 proceeding concerning a minor who is alleged to have committed
33 a violation of the bill.

34 GATHERINGS WHERE CONTROLLED SUBSTANCES UNLAWFULLY USED.

35 The bill strikes a provision making it a serious misdemeanor

1 for a person to sponsor, promote, or aid in the sponsoring
2 or promoting of a meeting or gathering with the knowledge or
3 intent that marijuana be distributed, used, or possessed at the
4 meeting or gathering in violation of Code chapter 124.

5 ACCOMMODATION OFFENSE. The bill strikes a provision
6 allowing a prosecution for unlawful delivery or possession with
7 intent to deliver marijuana, if the prosecution proves that
8 the defendant delivered or possessed with intent to deliver
9 one-half ounce or less of marijuana which was not offered for
10 sale, the defendant is guilty of an accommodation offense
11 and rather than being sentenced for a class "D" felony under
12 Code section 124.401(1)(d), the person is sentenced for a
13 misdemeanor in violation of Code section 124.401(5). The bill
14 makes conforming changes to Code sections 124.401G (Iowa hemp
15 Act) and 124.413 (mandatory minimum sentences — controlled
16 substances).

17 SECOND OR SUBSEQUENT OFFENSES. Currently, a person
18 convicted of a second or subsequent offense under Code chapter
19 124 may be punished by imprisonment for a period not to exceed
20 three times the term otherwise authorized, or fined not more
21 than three times the amount otherwise authorized. The bill
22 strikes the provision that allows for the use of a previous
23 marijuana conviction in determining if a person has been
24 convicted of a second or subsequent offense under Code chapter
25 124.

26 The bill takes effect January 1, 2022.