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SENATE FILE 243

BY WIECK

JUDICIARY

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act defining the term "possession" for purposes of the
2 criminal law.

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

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SF 243 JUDICIARY

1 Section 1. Section 124.101, Code 2005, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 22A. "Possess" or "possession" means as
4 defined in section 702.13A.

5 Sec. 2. Section 124A.2, Code 2005, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 5. "Possess" means the same as defined in
8 section 702.13A.

9 Sec. 3. NEW SECTION. 702.13A POSSESSION.

10 "Possess" or "possession" means having knowledge of the
11 presence and nature of an object or substance and having
12 either actual or constructive possession of the object or
13 substance. Possession may be sole or joint. A person may be
14 in possession of an object or substance without having a
15 proprietary interest in the object or substance or a right to
16 possess the object or substance.

17 1. A person has "actual possession" when a person has
18 direct physical control of an object or substance on the
19 person or within reach and convenient control.

20 2. A person has "constructive possession" when a person is
21 not in actual possession, but has knowledge of the presence
22 and nature of an object or substance and has the power and
23 intent to exercise control over the object or substance,
24 either directly or through another person. Constructive
25 possession may be inferred, and no further proof of knowledge
26 or intent is required, when an object or substance is found in
27 a place exclusively accessible to the person. When a person
28 does not have exclusive access to the place where the object
29 or substance is found, a trier of fact may determine a
30 person's knowledge and intent from the totality of the
31 circumstances, including the person's proximity to the object
32 or substance, the person's access to the area where it is
33 found, whether it is in plain view, any incriminating
34 statements or actions by the person, whether the object or
35 substance is found in or near the person's belongings, and any

1 other relevant circumstances. In the context of possession of
2 controlled substances, a trier of fact may also consider the
3 person's possession of drug paraphernalia and evidence of
4 recent drug use by the person and any other relevant
5 circumstances.

6 EXPLANATION

7 This bill defines the term "possess" or "possession" for
8 purposes of a criminal case to mean having knowledge of the
9 presence and nature of an object or substance and having
10 either actual or constructive possession of the object or
11 substance. Possession may be sole or joint. Under the bill,
12 a person may be in possession of an object or substance
13 without having a proprietary interest in the object or
14 substance or a right to possess the object or substance.

15 The bill defines "actual possession" to mean when a person
16 has direct physical control of an object or substance on the
17 person or within reach and convenient control of the person.

18 The bill defines "constructive possession" to mean when a
19 person is not in actual possession, but has knowledge of the
20 presence and nature of an object or substance and has the
21 power and intent to exercise control over the object or
22 substance, either directly or through another person.

23 Constructive possession may be inferred, and no further proof
24 of knowledge or intent is required, when an object or
25 substance is found in a place exclusively accessible to the
26 person. The bill provides that when a person does not have
27 exclusive access to the place where the object or substance is
28 found, a trier of fact may determine a person's knowledge and
29 intent from the totality of the circumstances, including the
30 person's proximity to the object or substance, the person's
31 access to the area where it is found, whether it is in plain
32 view, any incriminating statements or actions by the person,
33 whether the object or substance is found in or near the
34 person's belongings, and any other relevant circumstances. In
35 the context of possession of controlled substances, a trier of

1 fact may also consider the person's possession of drug
2 paraphernalia and evidence of recent drug use by the person
3 and any other relevant circumstances.

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