

House File 198 - Introduced

HOUSE FILE 198

BY HUNTER

A BILL FOR

1 An Act relating to the creation of the medical cannabis Act and
2 providing for criminal penalties and fees.

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

1 Section 1. Section 124.401, subsection 5, unnumbered
2 paragraph 3, Code 2017, is amended to read as follows:

3 A person may knowingly or intentionally recommend, process,
4 produce, possess, use, dispense, deliver, transport, or
5 administer ~~cannabidiol~~ cannabis if the recommendation,
6 processing, production, possession, use, dispensing, delivery,
7 transporting, or administering is in accordance with the
8 provisions of ~~chapter 124D~~ 124E. For purposes of this
9 paragraph, ~~"cannabidiol"~~ "cannabis" means the same as defined in
10 section ~~124D.2~~ 124E.3.

11 Sec. 2. NEW SECTION. 124E.1 Short title.

12 This chapter shall be known and may be cited as the "*Medical*
13 *Cannabis Act*".

14 Sec. 3. NEW SECTION. 124E.2 Purpose.

15 The purpose of this chapter is to allow for the medical use
16 of cannabis in a regulated program for alleviating symptoms
17 caused by debilitating medical conditions and the medical
18 treatments for such conditions.

19 Sec. 4. NEW SECTION. 124E.3 Definitions.

20 As used in this chapter:

21 1. "*Adequate supply*" means an amount of cannabis, in any
22 form approved by the department, possessed by a qualified
23 patient or collectively possessed by a qualified patient and
24 the qualified patient's primary caregiver that is determined
25 by department rule to be no more than reasonably necessary to
26 ensure the uninterrupted availability of cannabis for a period
27 of three months and that is derived solely from an intrastate
28 source.

29 2. "*Cannabis*" means all parts of the plants of the genus
30 *Cannabis*, whether growing or not; the seeds thereof; the resin
31 extracted from any part of the plant; and every compound,
32 manufacture, salt, derivative, mixture, or preparation of the
33 plant, its seeds, or resin, including tetrahydrocannabinols.
34 "*Cannabis*" does not include the mature stalks of the plant;
35 fiber produced from the stalks; oil or cake made from the

1 seeds of the plant; any other compound, manufacture, salt,
2 derivative, mixture, or preparation of the mature stalks,
3 except the resin extracted therefrom; fiber; or oil or cake
4 or the sterilized seed of the plant which is incapable of
5 germination.

6 3. "*Debilitating medical condition*" means any of the
7 following:

- 8 a. Cancer.
- 9 b. Glaucoma.
- 10 c. Multiple sclerosis.
- 11 d. Epilepsy.
- 12 e. AIDS or HIV as defined in section 141A.1.
- 13 f. Spinal cord damage with intractable spasticity.
- 14 g. Any other medical condition, medical treatment, or
15 disease approved by the department.

16 4. "*Department*" means the department of public health.

17 5. "*Licensed producer*" means any qualified patient, primary
18 caregiver, or nonprofit private entity within this state that
19 the department determines to be qualified to process, produce,
20 possess, manufacture, distribute, dispense, deliver, and
21 transport cannabis in this state pursuant to this chapter and
22 that is licensed by the department. A qualified patient or
23 primary caregiver licensed as a producer shall produce no more
24 than an adequate supply of cannabis for the qualified patient's
25 personal use only.

26 6. "*Medical use of cannabis*" means the acquisition,
27 possession, cultivation, manufacture, use, delivery, transfer,
28 or transportation of cannabis or paraphernalia related to the
29 administration of cannabis to treat or alleviate a registered
30 qualified patient's debilitating medical condition or symptoms
31 associated with the patient's debilitating medical condition.

32 7. "*Practitioner*" means a person licensed in this state to
33 prescribe and administer a controlled substance regulated under
34 chapter 124.

35 8. a. "*Primary caregiver*" means a resident of this state,

1 at least eighteen years of age, who has been designated by
2 a qualified patient's practitioner or a person having legal
3 custody of a qualified patient, as being necessary to take
4 responsibility for managing the well-being of the qualified
5 patient with respect to the medical use of cannabis pursuant to
6 the provisions of this chapter. A qualified patient may have
7 more than one primary caregiver.

8 *b. "Primary caregiver"* includes an employee of a hospice
9 program, if the employee meets the definition of a primary
10 caregiver under paragraph "a".

11 9. "*Program*" means the medical use of cannabis program
12 established and administered by the department pursuant to
13 rule.

14 10. "*Qualified patient*" means a resident of this state who
15 has been diagnosed by a practitioner as having a debilitating
16 medical condition and who has received written certification
17 and been issued a registry identification card pursuant to this
18 chapter.

19 11. "*Registry identification card*" means a document issued
20 by the department that identifies a person as a registered
21 qualified patient or registered primary caregiver.

22 12. "*Written certification*" means a statement signed by a
23 qualified patient's practitioner that, in the practitioner's
24 professional opinion, the patient has a debilitating medical
25 condition and the practitioner believes that the potential
26 health benefits of the medical use of cannabis would likely
27 outweigh the health risks for the qualified patient. A written
28 certification shall expire at the end of one year from the date
29 of issuance.

30 Sec. 5. NEW SECTION. 124E.4 **Medical use of cannabis —**
31 **exemption from criminal and civil penalties.**

32 1. A qualified patient who has been issued and who possesses
33 a registry identification card shall not be subject to arrest
34 or prosecution, civil or criminal penalty, or the denial of any
35 right or privilege regarding the medical use of cannabis if the

1 quantity of cannabis does not exceed an adequate supply.

2 2. A qualified patient's primary caregiver shall not be
3 subject to arrest or prosecution, civil or criminal penalty, or
4 the denial of any right or privilege regarding the medical use
5 of cannabis on behalf of the qualified patient, if the quantity
6 of cannabis does not exceed an adequate supply.

7 3. Subsection 1 does not apply to a qualified patient under
8 the age of eighteen years unless all of the following apply:

9 a. The qualified patient's practitioner has explained the
10 potential risks and benefits of the medical use of cannabis
11 to the qualified patient and to a parent, guardian, or person
12 having legal custody of the qualified patient.

13 b. A parent, guardian, or person having legal custody agrees
14 in writing to do all of the following:

15 (1) Allow the qualified patient's medical use of cannabis.

16 (2) Serve as the qualified patient's primary caregiver.

17 (3) Control the dosage and the frequency of the medical use
18 of cannabis by the qualified patient.

19 (4) Designate one or more primary caregivers for the
20 qualified patient.

21 4. A qualified patient or a primary caregiver shall be
22 granted the full legal protections provided in this section if
23 the qualified patient or primary caregiver is in possession
24 of a registry identification card. If a qualified patient or
25 primary caregiver is arrested and is not in possession of the
26 person's registry identification card, any charge or charges
27 filed against the person shall be dismissed by the court if the
28 person produces to the clerk of the district court, prior to
29 the initial court date, a registry identification card issued
30 to that person and valid at the time of the person's arrest.

31 5. A practitioner shall not be subject to arrest or
32 prosecution, civil or criminal penalty, or the denial of
33 any right or privilege, for recommending the medical use of
34 cannabis or for providing a written certification for the
35 medical use of cannabis pursuant to this chapter.

1 6. A licensed producer shall not be subject to arrest
2 or prosecution, civil or criminal penalty, or the denial
3 of any right or privilege, for the processing, production,
4 possession, manufacture, distribution, dispensing, delivery, or
5 transporting of cannabis pursuant to this chapter.

6 7. Any property interest that is possessed, owned, or
7 used in connection with the medical use of cannabis, or acts
8 incidental to such use, and any property seized shall be
9 treated in accordance with the provisions of chapters 808, 809,
10 and 809A. Any such property seized is subject to forfeiture
11 as provided by chapter 809 or 809A. Cannabis, paraphernalia,
12 or other property seized from a qualified patient or primary
13 caregiver in connection with the claimed medical use of
14 cannabis shall be returned immediately upon the determination
15 by a court that the qualified patient or primary caregiver is
16 entitled to the protections of the provisions of this chapter,
17 as may be evidenced by a failure to actively investigate the
18 case, a decision not to prosecute, the dismissal of charges,
19 or acquittal.

20 8. A person shall not be subject to arrest or prosecution,
21 civil or criminal penalty, or the denial of any right or
22 privilege for a cannabis-related offense simply for being in
23 the presence of the medical use of cannabis as permitted under
24 the provisions of this chapter.

25 **Sec. 6. NEW SECTION. 124E.5 Prohibitions, restrictions, and**
26 **limitations on the medical use of cannabis — criminal penalties.**

27 1. Participation in a medical use of cannabis program
28 by a qualified patient or primary caregiver does not relieve
29 the qualified patient or primary caregiver from any of the
30 following:

31 a. Criminal prosecution or civil penalties for activities
32 not authorized under this chapter.

33 b. Criminal prosecution or liability for damages arising
34 out of the operation of a vehicle while under the influence of
35 cannabis.

1 c. Criminal prosecution or civil penalties for possession or
2 use of cannabis in any of the following places:

3 (1) In a school bus or public vehicle.

4 (2) On the grounds of any public or private preschool or
5 elementary or secondary school.

6 (3) In the workplace of the qualified patient's or primary
7 caregiver's employment.

8 (4) At a public park, recreation center, youth center, or
9 other public place.

10 2. A qualified patient or primary caregiver who makes
11 a fraudulent representation to a law enforcement officer
12 about the person's medical use of cannabis to avoid arrest
13 or prosecution for a cannabis-related offense is guilty of a
14 simple misdemeanor.

15 3. A licensed producer who does any of the following shall
16 be subject to arrest, prosecution, and civil or criminal
17 penalties under state or federal law:

18 a. Sells, distributes, dispenses, delivers, transfers, or
19 transports cannabis to a person not approved by the department
20 pursuant to this chapter.

21 b. Obtains, sells, distributes, dispenses, delivers,
22 transfers, or transports cannabis outside this state in
23 violation of federal law.

24 **Sec. 7. NEW SECTION. 124E.6 Medical cannabis advisory**
25 **council — duties.**

26 1. No later than August 15, 2017, the director of public
27 health shall establish a medical cannabis advisory council
28 consisting of eight practitioners representing the fields of
29 neurology, pain management, medical oncology, psychiatry,
30 infectious disease, family medicine, and gynecology. The
31 practitioners shall be nationally board-certified in their
32 area of specialty and knowledgeable about the medical use of
33 cannabis.

34 2. Advisory council members shall be chosen for appointment
35 by the director from a list proposed by the Iowa medical

1 society.

2 3. A quorum of the advisory council shall consist of five
3 members.

4 4. The advisory council shall have the following duties:

5 a. Review and recommend to the department for approval
6 additional debilitating medical conditions for persons who
7 would benefit from the medical use of cannabis.

8 b. Accept and review petitions to add medical conditions,
9 medical treatments, or diseases to the list of debilitating
10 medical conditions that qualify for the medical use of
11 cannabis.

12 c. Convene at least twice per year to conduct public
13 hearings and to evaluate petitions, which shall be maintained
14 as confidential personal health information, to add medical
15 conditions, medical treatments, or diseases to the list of
16 debilitating medical conditions that qualify for the medical
17 use of cannabis.

18 d. Issue recommendations concerning rules to be adopted for
19 the issuance of registry identification cards.

20 e. Recommend quantities of cannabis that are necessary
21 to constitute an adequate supply for qualified patients and
22 primary caregivers.

23 f. Review actions of the department in approving or
24 denying registry identification card applications to ensure
25 such approvals and denials are issued pursuant to the
26 requirements of section 124E.8. In reviewing such actions, the
27 advisory council shall be subject to the same confidentiality
28 restrictions imposed on the department pursuant to section
29 124E.7, subsection 2, paragraph "a".

30 **Sec. 8. NEW SECTION. 124E.7 Department rules and duties.**

31 1. No later than October 1, 2017, and after consultation
32 with the medical cannabis advisory council, the department
33 shall adopt rules pursuant to chapter 17A to establish and
34 implement a medical use of cannabis program consistent with the
35 purposes of this chapter. The department may adopt emergency

1 rules pursuant to chapter 17A to implement this section and the
2 rules shall be effective immediately upon filing unless a later
3 date is specified in the rules. The rules shall do all of the
4 following:

5 *a.* Govern the manner in which the department shall consider
6 applications for new and renewal registry identification cards
7 for qualified patients and primary caregivers.

8 *b.* Define the amount of cannabis that constitutes an
9 adequate supply, including amounts for topical treatments.

10 *c.* Identify criteria and set forth procedures for including
11 additional medical conditions, medical treatments, or diseases
12 on the list of debilitating medical conditions that qualify
13 for the medical use of cannabis. Procedures shall include a
14 petition process and shall allow for public comment and public
15 hearings before the advisory council.

16 *d.* Set forth additional medical conditions, medical
17 treatments, or diseases for inclusion on the list of
18 debilitating medical conditions that qualify for the medical
19 use of cannabis as recommended by the advisory council.

20 *e.* Establish requirements for the licensure of producers and
21 set forth procedures to obtain licenses.

22 *f.* Develop a distribution system for cannabis within
23 this state under this chapter that provides for all of the
24 following:

25 (1) Cannabis production facilities within this state housed
26 on secured grounds and operated by licensed producers.

27 (2) The distribution of cannabis to qualified patients
28 and their primary caregivers under this chapter at locations
29 designated by the department.

30 *g.* Establish application and renewal fees that generate
31 revenues sufficient to offset all expenses of implementing and
32 administering this chapter.

33 *h.* Specify and implement procedures that address public
34 safety including security procedures and product quality,
35 safety, and labeling.

1 2. The department shall do all of the following:

2 a. Maintain a confidential file containing the names
3 and addresses of the persons who have either applied for or
4 received a registry identification card. Individual names
5 contained in the file shall be confidential and shall not be
6 subject to disclosure, except as provided in subparagraph (1).

7 (1) Information in the confidential file maintained
8 pursuant to this paragraph "a" may be released to the following
9 persons under the following circumstances:

10 (a) To authorized employees or agents of the department as
11 necessary to perform the duties of the department pursuant to
12 this chapter.

13 (b) To authorized employees of state or local law
14 enforcement agencies, but only for the purpose of verifying
15 that a person is lawfully in possession of a registry
16 identification card issued pursuant to this chapter.

17 (2) Release of information pursuant to subparagraph
18 (1) shall be consistent with the federal Health Insurance
19 Portability and Accountability Act of 1996, Pub. L. No.
20 104-191.

21 b. Submit an annual report to the general assembly by
22 January 15 of each year that does not disclose any identifying
23 information about registry identification cardholders or
24 practitioners, but does contain, at a minimum, all of the
25 following information:

26 (1) The number of applications and renewal applications
27 submitted for registry identification cards.

28 (2) The number of registered qualified patients and
29 registered primary caregivers in each county.

30 (3) The nature of the debilitating medical conditions of the
31 qualified patients.

32 (4) The number of registry identification cards revoked.

33 (5) The number of practitioners providing written
34 certifications for qualified patients.

35 (6) The sufficiency of the overall supply of cannabis

1 available to qualified patients statewide.

2 Sec. 9. NEW SECTION. 124E.8 Registry identification cards.

3 1. The department shall issue a registry identification
4 card to a qualified patient and to any primary caregiver for
5 the qualified patient, if the qualified patient and primary
6 caregiver submit all of the following in an application to the
7 department, in accordance with the department's rules:

8 a. A written certification.

9 b. The name, address, and date of birth of the qualified
10 patient.

11 c. The name, address, and telephone number of the qualified
12 patient's practitioner.

13 d. The name, address, and date of birth of any primary
14 caregiver for the qualified patient.

15 2. a. The department shall verify the information contained
16 in an application submitted pursuant to subsection 1 and
17 shall approve or deny an application within thirty days of
18 receipt. The department may deny an application only if the
19 applicant did not provide the information required pursuant
20 to subsection 1 or if the department determines that the
21 information provided was falsified. A person whose application
22 has been denied shall not be allowed to reapply for a registry
23 identification card for six months from the date of the denial
24 unless otherwise authorized by the department.

25 b. The department's approval or denial of an application
26 under this section shall be subject to review by the medical
27 cannabis advisory council.

28 3. The department shall issue a registry identification
29 card within thirty days of receiving an application or a
30 renewal application. The card shall expire one year after the
31 date of issuance.

32 4. A registry identification card shall contain all of the
33 following:

34 a. The name, address, and date of birth of the qualified
35 patient and of any primary caregiver.

1 *b.* The date of issuance and expiration date of the registry
2 identification card.

3 *c.* Any other information that the department may require by
4 rule.

5 5. The department shall issue a registry identification
6 card to any primary caregiver named in the qualified patient's
7 approved application or renewal application provided the
8 primary caregiver meets the definitional requirements of
9 section 124E.3, subsection 8.

10 6. A qualified patient or primary caregiver who possesses
11 a registry identification card shall notify the department of
12 any change in the person's name or address, qualified patient's
13 practitioner, or qualified patient's primary caregiver, or
14 any change in status of the qualified patient's debilitating
15 medical condition within ten days of the change.

16 7. Possession of or application for a registry
17 identification card shall not constitute probable cause or
18 give rise to reasonable suspicion for a governmental agency
19 to search the person or property of the person possessing or
20 applying for the card.

21 Sec. 10. EMERGENCY RULES. The department may adopt
22 emergency rules under section 17A.4, subsection 3, and section
23 17A.5, subsection 2, paragraph "b", to implement the provisions
24 of this Act and the rules shall be effective immediately upon
25 filing unless a later date is specified in the rules. Any
26 rules adopted in accordance with this section shall also be
27 published as a notice of intended action as provided in section
28 17A.4.

29 Sec. 11. TRANSITION PROVISIONS. A cannabidiol registration
30 card issued under chapter 124D prior to the effective date
31 of this Act, remains effective and continues in effect as
32 issued for the twelve-month period following its issuance.
33 This Act does not preclude the permit holder from seeking to
34 renew the permit under this Act prior to the expiration of the
35 twelve-month period.

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EXPLANATION

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

This bill creates the medical cannabis Act and provides for criminal penalties.

The bill amends Code section 124.401, relating to prohibited acts involving controlled substances, to provide that it is lawful for a person to knowingly or intentionally recommend, process, produce, possess, use, dispense, deliver, transport, or administer medical cannabis if the recommendation, processing, production, possession, use, dispensing, delivery, transporting, or administering is in accordance with the provisions of the bill.

The bill establishes new Code chapter 124E, the medical cannabis Act, to allow for the medical use of cannabis for alleviating symptoms caused by debilitating medical conditions and their medical treatments. The bill defines "medical use of cannabis" to mean the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of cannabis or related paraphernalia to treat or alleviate a registered qualified patient's debilitating medical condition as defined in the bill. The bill defines "cannabis" to mean all parts of the plants of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom; fiber; or oil or cake or the sterilized seed of the plant which is incapable of germination (see also Code section 124.101(19)).

The bill provides that a qualified patient who has been issued and who possesses a registry identification card issued

1 by the department of public health shall not be subject to
2 arrest or prosecution, civil or criminal penalty, or the denial
3 of any right or privilege regarding the medical use of cannabis
4 if the quantity of cannabis does not exceed an adequate supply.
5 The bill also provides the same immunity for a qualified
6 patient's primary caregiver and for a licensed producer.

7 The bill defines a qualified patient as a resident of this
8 state who has been diagnosed by a practitioner as having a
9 debilitating medical condition as specified in the bill and
10 who has received written certification by a practitioner and
11 has been issued a registry identification card pursuant to the
12 new Code chapter. A qualified patient may designate one or
13 more primary caregivers. A primary caregiver is defined as a
14 resident of this state, at least 18 years old, who has been
15 designated by the patient's practitioner or a person having
16 legal custody of the qualified patient as being necessary to
17 take responsibility for managing the well-being of a qualified
18 patient with respect to the medical use of cannabis pursuant
19 to the provisions of the bill. "Licensed producer" is defined
20 as any qualified patient, primary caregiver, or nonprofit
21 private entity within this state that the department of public
22 health determines to be qualified to process, produce, possess,
23 manufacture, distribute, dispense, deliver, and transport
24 cannabis in this state under the bill. A qualified patient or
25 primary caregiver licensed as a producer shall produce no more
26 than an adequate supply of cannabis for the patient's personal
27 use only. "Practitioner" is defined as a person licensed in
28 this state to prescribe and administer a controlled substance
29 regulated under Code chapter 124.

30 The bill provides that participation in the medical use of
31 cannabis program by a qualified patient or primary caregiver
32 does not relieve the qualified patient or primary caregiver
33 from prosecution or civil penalties for activities not
34 authorized under the bill, liability for damages or criminal
35 prosecution arising out of the operation of a vehicle while

1 under the influence of cannabis, or other criminal prosecution
2 or civil penalties for possession or use of cannabis in certain
3 situations. A qualified patient or primary caregiver who
4 makes a fraudulent representation to a law enforcement officer
5 about the person's medical use of cannabis to avoid arrest
6 or prosecution for a cannabis-related offense is guilty of a
7 simple misdemeanor.

8 The bill directs the department of public health to
9 establish a medical cannabis advisory council no later
10 than August 15, 2017, consisting of eight practitioners
11 representing the fields of neurology, pain management, medical
12 oncology, psychiatry, infectious disease, family medicine,
13 and gynecology. The practitioners shall be nationally
14 board-certified in their area of specialty and knowledgeable
15 about the medical use of cannabis and appointed by the
16 director of public health from a list proposed by the Iowa
17 medical society. The advisory council, among other duties as
18 specified in the bill, is required to review and recommend to
19 the department for approval additional debilitating medical
20 conditions and accept and review petitions to add medical
21 conditions, medical treatments, or diseases to the list of
22 debilitating medical conditions that qualify for the medical
23 use of cannabis.

24 The department is required to adopt rules pursuant to
25 Code chapter 17A to establish and implement a medical use of
26 cannabis program consistent with the purpose of the bill no
27 later than October 1, 2017, and may adopt emergency rules. The
28 department is required to maintain confidential information
29 collected pursuant to the bill and provide for the release of
30 certain information to certain persons under confidentiality
31 guidelines and to submit an annual report to the general
32 assembly by January 15 of each year.

33 The department is also required to issue a registry
34 identification card to a qualified patient and any primary
35 caregiver named in the qualified patient's application, if the

1 qualified patient and each primary caregiver submit certain
2 information in an application to the department. The bill
3 provides that possession of or application for a registry
4 identification card shall not constitute probable cause or
5 give rise to reasonable suspicion for a governmental agency
6 to search the person or property of the person possessing or
7 applying for the card.

8 The bill provides that a cannabidiol registration card
9 issued under Code chapter 124D (medical cannabidiol Act) prior
10 to the effective date of the bill shall remain effective and
11 continues in effect as issued for the 12-month period following
12 its issuance.

13 Code chapter 124D, the medical cannabidiol Act, currently
14 allows an Iowa licensed neurologist who has examined and
15 treated a patient suffering from intractable epilepsy to
16 provide a written recommendation for the patient's medical use
17 of cannabidiol to treat or alleviate symptoms of intractable
18 epilepsy if no other satisfactory alternative treatment options
19 exist and if certain conditions apply. A patient who receives
20 a written recommendation from the patient's neurologist or
21 the patient's primary caregiver is required to have a valid
22 cannabidiol registration card to use or possess cannabidiol
23 for medical purposes. The cannabidiol must be obtained from
24 an out-of-state source. The medical cannabidiol Act provides
25 affirmative defenses to a neurologist, a patient, and a
26 primary caregiver from prosecution. A person who knowingly
27 or intentionally possesses or uses cannabidiol in violation
28 of the medical cannabidiol Act is subject to the penalties
29 provided under Code chapters 124 (controlled substances) and
30 453B (excise taxes on unlawful dealing in certain substances).

31 Code chapter 124D is repealed by its own terms on July 1,
32 2017.