

SF 113

PAG LIN

1 1 Section 1. Section 124.401, subsection 5, Code 2001, is
1 2 amended by adding the following new unnumbered paragraph:
1 3 NEW UNNUMBERED PARAGRAPH. It is lawful for a person to
1 4 knowingly or intentionally possess marijuana if the possession
1 5 is in accordance with the provisions of section 124.401G or
1 6 124.511.

1 7 Sec. 2. NEW SECTION. 124.401G MARIJUANA FOR THERAPEUTIC
1 8 PURPOSES.

1 9 Notwithstanding other provisions of law to the contrary,
1 10 the following provisions apply to possession of marijuana for
1 11 therapeutic purposes in accordance with this section or
1 12 section 124.511.

1 13 1. It is lawful for a person who is eighteen years of age
1 14 or older to knowingly or intentionally possess marijuana if
1 15 any of the following circumstances exist:

1 16 a. The person possessing the marijuana was diagnosed by a
1 17 physician as having glaucoma before the person was alleged to
1 18 unlawfully possess the marijuana.

1 19 b. The person possessing the marijuana is being treated
1 20 with chemotherapy or radiation therapy and has suffered from
1 21 significant nausea or vomiting as a result of the treatment.

1 22 c. The person possessing the marijuana was diagnosed by a
1 23 physician as having multiple sclerosis, hyperparathyroidism,
1 24 nail patella syndrome, or acquired immune deficiency syndrome,
1 25 and having symptoms of pain or spasms due to the diagnosed
1 26 condition, before the person was alleged to unlawfully possess
1 27 the marijuana.

1 28 d. The person possessing the marijuana has obtained the
1 29 marijuana from a licensed physician or surgeon, osteopath,
1 30 osteopathic physician or surgeon, or pharmacist and the
1 31 marijuana is dispensed in accordance with section 147.107.

1 32 2. Possession of marijuana in accordance with this section
1 33 or section 124.511 is an affirmative defense to a prosecution
1 34 for possession of marijuana.

1 35 3. A person who possesses marijuana in accordance with
2 1 this section or section 124.511 is not subject to the
2 2 provisions of chapters 809 and 809A, relating to seizable and
2 3 forfeitable property, based upon that possession.

2 4 Sec. 3. Section 124.506, subsection 2, Code 2001, is
2 5 amended to read as follows:

2 6 2. Upon written application by the board, the court by
2 7 whom the forfeiture of controlled substances has been decreed
2 8 may order the delivery of any of them, except controlled
2 9 substances listed in schedule I, to the board for distribution
2 10 or destruction, as provided by this section or section
2 11 124.511.

2 12 Sec. 4. NEW SECTION. 124.511 MARIJUANA THERAPEUTIC
2 13 RESEARCH PROGRAM.

2 14 1. The general assembly finds that research has indicated
2 15 that the use of marijuana may alleviate nausea and other side
2 16 effects of chemotherapy and radiation therapy as well as some
2 17 symptoms of glaucoma and other conditions with symptoms of
2 18 pain, stress, spasms, nausea, or loss of appetite. The
2 19 general assembly finds that further research and strictly
2 20 controlled experimentation regarding the therapeutic uses of
2 21 marijuana is necessary and desirable. The purpose of this
2 22 section is to encourage this research and experimentation.

2 23 2. As used in this section, unless the context otherwise
2 24 requires, "program" means the marijuana therapeutic research
2 25 program established in this section.

2 26 3. A marijuana therapeutic research program is established
2 27 under the board. The board shall adopt rules for the proper
2 28 administration of the program. In adopting rules, the board
2 29 shall consider pertinent rules adopted by the United States
2 30 drug enforcement agency, United States food and drug
2 31 administration, national institute on drug abuse, and any
2 32 other applicable federal agency.

2 33 4. The board shall contract with the national institute on
2 34 drug abuse for the receipt of marijuana under pertinent rules
2 35 adopted by the national institute on drug abuse, the United
3 1 States food and drug administration, and the United States
3 2 drug enforcement administration. However, if within a
3 3 reasonable period of time, the board is unable to complete a
3 4 contract with the national institute on drug abuse, the board
3 5 shall apply to the court for delivery of marijuana under
3 6 section 124.506. The board may receive the confiscated
3 7 marijuana and shall distribute it in accordance with this
3 8 section. Any marijuana received under this subsection shall
3 9 be made free of impurities and analyzed for potency by the
3 10 board.

3 11 5. The board shall deliver marijuana received under

3 12 subsection 4 to appropriate licensed pharmacists designated by
3 13 the board. Any marijuana delivered to a pharmacist shall only
3 14 be distributed to a patient pursuant to a written prescription
3 15 of a licensed physician who is approved by the participation
3 16 review committee established by this section. A pharmacist
3 17 designated by the board is not liable, except for intentional
3 18 misconduct or gross negligence, in any civil action related to
3 19 marijuana distributed to a patient in accordance with this
3 20 section.

3 21 6. A participation review committee is established and
3 22 staffing for the committee shall be provided by the board.
3 23 The membership of the committee shall consist of three members
3 24 appointed as follows: a registered pharmacist appointed by
3 25 the board of pharmacy examiners, a licensed physician who is
3 26 board certified in ophthalmology or otorhinolaryngology
3 27 appointed by the board of medical examiners, and a licensed
3 28 physician who is board certified in internal medicine with a
3 29 subspecialty certification in medical oncology appointed by
3 30 the board of medical examiners. Committee members shall serve
3 31 at the pleasure of the appointing authority and are eligible
3 32 for payment of per diem and reimbursement of actual and
3 33 necessary expenses incurred while performing official duties.
3 34 The committee shall have authority to review and approve
3 35 physician applications to participate in the program. The
4 1 committee meetings to review applications shall be closed in
4 2 the same manner as a meeting to discuss the contents of a
4 3 licensing examination in accordance with section 21.5,
4 4 subsection 1, paragraph "d". Applicants must submit a twenty-
4 5 five dollar fee with the application.

4 6 7. A physician approved by the participation review
4 7 committee for participation in the program is authorized to
4 8 prescribe marijuana for a patient under any of the following
4 9 circumstances:

4 10 a. The patient is diagnosed as having glaucoma by the
4 11 physician.

4 12 b. The patient is being treated with chemotherapy or
4 13 radiation therapy and has suffered from significant nausea or
4 14 vomiting as a result of the treatment.

4 15 c. The patient is diagnosed by a physician as having
4 16 multiple sclerosis, hyperparathyroidism, nail patella
4 17 syndrome, acquired immune deficiency syndrome, or other
4 18 condition with symptoms of pain or spasms.

4 19 8. A physician approved by the participation review

4 20 committee for participation in the program is expressly
 4 21 authorized to prescribe marijuana. A patient for whom
 4 22 marijuana is prescribed by a physician approved to participate
 4 23 in the program is expressly authorized to possess marijuana.
 4 24 A registered pharmacist designated by the board under this
 4 25 section is expressly authorized to possess and distribute
 4 26 marijuana under this section.

4 27 9. Only the following persons shall have access to the
 4 28 name and other identifying characteristics of a patient for
 4 29 whom marijuana is prescribed under this section:

4 30 a. The board.

4 31 b. The attorney general or a designee of the attorney
 4 32 general.

4 33 c. A person directly connected with the program who has a
 4 34 legitimate need for the information.

4 35 d. A person for whom access has been specifically
 5 1 authorized by that patient.

5 2 10. The board and the participation review committee shall
 5 3 annually report findings and recommendations concerning the
 5 4 program to the governor and the general assembly.

5 5 Sec. 5. Section 453B.6, Code 2001, is amended by adding
 5 6 the following new unnumbered paragraph:

5 7 NEW UNNUMBERED PARAGRAPH. A person who is in possession of
 5 8 marijuana for medical purposes in accordance with section
 5 9 124.401G or 124.511 is in lawful possession of a taxable
 5 10 substance and is not subject to the requirements of this
 5 11 chapter.

5 12 EXPLANATION

5 13 This bill relates to the use of marijuana for therapeutic
 5 14 purposes by expressly authorizing its use for certain medical
 5 15 conditions and establishing a marijuana therapeutic research
 5 16 program.

5 17 Code section 124.401, relating to prohibited acts involving
 5 18 controlled substances, is amended to provide that it is lawful
 5 19 to knowingly possess marijuana if the possession is in
 5 20 accordance with the provisions of the bill.

5 21 New Code section 124.401G authorizes adult persons to
 5 22 possess marijuana under any of the following circumstances:
 5 23 the person was diagnosed as having glaucoma before being
 5 24 charged with unlawful possession; the person is being treated
 5 25 with chemotherapy or radiation therapy and has suffered from
 5 26 significant nausea or vomiting due to that treatment; the
 5 27 person was diagnosed as having any of the following illnesses:

5 28 multiple sclerosis, hyperparathyroidism, nail patella
5 29 syndrome, or acquired immune deficiency syndrome, and as
5 30 having pain or spasms due to the illness; or the person
5 31 obtained the marijuana in accordance with a legal
5 32 prescription. Possession in accordance with the bill's
5 33 requirements is an affirmative defense to prosecution for
5 34 possession of marijuana and such possession is not subject to
5 35 Code chapters 809 and 809A, relating to seizable and
6 1 forfeitable property.

6 2 Code section 124.506, relating to disposal of controlled
6 3 substances, is amended to allow the board of pharmacy
6 4 examiners to apply to the court to take possession of
6 5 confiscated controlled substances, except those listed in
6 6 schedule I. Upon taking possession, the board may either
6 7 destroy the drugs or utilize them in the marijuana therapeutic
6 8 research program.

6 9 The therapeutic research program is created in new Code
6 10 section 124.511. The bill includes legislative findings as to
6 11 the need for the program. The program is to be administered
6 12 by the board of pharmacy examiners. The board is to consult
6 13 with various federal bodies in implementing the program and to
6 14 enter into a contract to receive illegal drugs from the
6 15 national institute on drug abuse. If unable to contract
6 16 within a reasonable period, the board is to apply to the court
6 17 to receive confiscated drugs. The board is to establish a
6 18 participation review committee to review and approve physician
6 19 applications to participate in the program. Approved
6 20 physicians may legally prescribe the drug for the illnesses
6 21 and medical conditions specified in the bill. Physicians,
6 22 pharmacists, and patients participating in the program are
6 23 expressly authorized to prescribe, dispense, and possess
6 24 marijuana. The bill contains provisions to address
6 25 confidentiality. The board and the committee are to report
6 26 annually to the governor and general assembly.

6 27 Code section 453B.6, relating to tax stamps for controlled
6 28 substances, is amended to specify that possession in
6 29 accordance with the bill is lawful possession and a tax stamp
6 30 is not required.

6 31 LSB 2010SS 79

6 32 jp/gg/8