

# MEMORANDUM

To: Senator Democrats  
From: Aaron Todd, Senate Democratic Research Staff  
Date: April 24, 2014  
Subject: [SF 2360](#): Medical Cannabidiol Act

This bill legalizes the possession and medical use of cannabidiol under certain conditions. Cannabidiol is a non-psychoactive component of marijuana that possesses a wide range of therapeutic benefits. The Act is repealed July 1, 2017.

## Who is eligible to possess and/or use medical cannabidiol?

- Only permanent Iowa residents at least 18 years of age with a written recommendation from a neurologist and registration card for the medical treatment of intractable epilepsy may possess and use cannabidiol. No other medical conditions are eligible.
- Primary caregivers, including parents, hospice employees and community-based healthcare service providers, are also authorized to possess and administer the use of cannabidiol on behalf of a patient, including those under 18 years of age.

## Who can recommend the medical use of cannabidiol for the treatment of epilepsy?

- Only a licensed neurologist in Iowa or another state may recommend oral or transdermal administration of medical cannabidiol.
- The neurologist must have tried alternative treatment options that have not alleviated symptoms, determine that any risks are reasonable compared to the potential benefit, and maintain a treatment plan.

## Does the State track medical cannabidiol use?

- The Department of Public Health (DPH) is directed to establish a confidential registry for persons seeking the medical use of cannabidiol for epilepsy and their primary caregivers.
- The DPH may approve and the Department of Transportation (DOT) may issue registration cards to persons and primary caregivers meeting eligibility criteria.
- The State will recognize as valid medical cannabidiol registration cards or its equivalent issued in other U.S. jurisdictions.
- Access to names on the registry is only allowed for DPH employees who need the names to perform the duties necessary to establish and maintain the registry, and to state and local law enforcement agencies that need to verify that a person is lawfully in possession of a cannabidiol registration card. Any release of information must be consistent with the federal Health and Insurance Portability and Accountability Act (HIPAA).

## Where can medical cannabidiol be legally obtained?

- Medical cannabidiol must be obtained from an out-of-state source.
- The medical cannabis must have a tetrahydrocannabinol level of no more than 3%.

## What legal protections are provided?

- Neurologists authorized to recommend the medical use of cannabidiol are protected from prosecution for the unlawful recommendation, possession, and administration of marijuana for activities related to the recommendation or use of medical cannabidiol for the treatment of intractable epilepsy.
- It is an affirmative and complete defense to the prosecution for the unlawful possession of marijuana if the person has been diagnosed with intractable epilepsy and has used or possessed medical cannabidiol under recommendation by their doctor. The same protection is provided to a primary caregiver when that person's possession or administration of medical cannabidiol is on behalf of the patient for the patient's use only.
- No government agency, including law enforcement, may remove or initiate proceedings to remove a minor from the home of a parent based solely upon the parent's or the minor's legal possession or use of medical cannabidiol.

## **SECTION BY SECTION OVERVIEW**

### Section 1 – Legalization of Use, Possession of Cannabidiol

Within the Controlled Substances Chapter, this section allows a person to knowingly or intentionally recommend, possess, use, dispense, deliver, transport, or administer marijuana if it is done in accordance with the Medical Cannabidiol Act.

### Section 2 – Medical Cannabidiol Act Title

Titles a new Iowa Code Chapter 124D as the Medical Cannabidiol Act.

### Section 3 – Definitions

Definitions, including:

- Cannabidiol = a nonpsychoactive cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that is essentially free from plant material, and has a tetrahydrocannabinol level of no more than 3%.
- Department = the Department of Public Health (DPH).
- Intractable Epilepsy = an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures of for which standard medical treatment results in harmful side effects.
- Neurologist = an allopathic or osteopathic physician board-certified in neurology in good standing and licensed under Chapter 148 or an allopathic or osteopathic physician board-certified in neurology in good standing and licensed in another state.
- Primary Care Giver = a person, at least 18 years of age, who has been designated by a patient’s neurologist or a person having custody of a patient, as being necessary to take responsibility for managing the well-being of the patient with respect to the medical use of cannabidiol pursuant to the provisions of this chapter. A person may have one or more primary caregivers.
  - This definition includes but is not limited to an employee of a hospice program, if the employee meets the definition of a primary caregiver above, and an individual providing home and community based services, and including a home health agency, licensed, certified, or otherwise authorized or permitted by law of this state or another state to administer health care in the ordinary course of business or in the practice of a profession, if the individual meets the definition of primary caregiver.

### Section 4 – Neurologist Recommendation for Medical Cannabis Use

A neurologist who has examined and treated a patient suffering from intractable epilepsy may but has not duty to provide a written recommendation for the use of cannabidiol to treat or alleviate symptoms of intractable epilepsy if no other satisfactory treatment options exist and all of the following conditions apply:

- The patient is a permanent resident of Iowa.
- The neurologist or another neurologist has treated the patient for intractable epilepsy for at least six months.
- The neurologist has tried alternative treatment options that have not alleviated symptoms.
- The neurologist determines the risk of cannabidiol use are reasonable in light of the potential benefit.
- The neurologist must maintain a treatment plan.

### Section 5 – Cannabidiol Registration Card

The DPH may approve the issuance a cannabidiol registration card by the Department of Transportation (DOT) to a patient who meets the following:

- Is at least 18 years old.
- Is a permanent resident of Iowa.
- Provides the DPH with a written recommendation signed by a neurologist that the patient may benefit from the medical use of cannabidiol.
- Submits an application to the DPH on a form created by the DPH in consultation with the DOT. The application must include the following:
  - Patient’s name, address, date of birth, and phone number.
  - Copy of the patient’s valid photo identification.
  - Name, address, and phone number of the patient’s neurologist.
  - Name, address, date of birth, and phone number of each primary caregiver, if any.

A cannabidiol registration card issued by the DOT to a patient must contain, at a minimum, the following:

- Patient's name, address, and date of birth.
- Patient's photo.
- Date of issuance and expiration date.
- Any other information as directed by administrative rule.

For a patient in a primary caregiver's care, the DPH may approve the issuance of a cannabidiol registration card to a primary caregiver who:

- Is at least 18 years of age.
- Provides the DPH with a written recommendation by a neurologist that the patient in the primary caregiver's care may benefit from the medical use of cannabidiol.
- Submits an application on the approved application form, containing all of the following:
  - Primary caregiver's name, address, date of birth, and phone number.
  - Patient's name.
  - Copy of the primary caregiver's photo identification.
  - Name, address, and phone number of the patient's neurologist.
  - Any other information as directed by administrative rule.

A cannabidiol registration card issued by the DOT to a primary caregiver must contain, at a minimum, the following:

- Primary caregiver's name, address, and date of birth.
- Primary caregiver's photo.
- Name of all patients in the primary caregiver's care.
- Date of issuance and expiration date.
- Any other information as directed by administrative rule.

The DPH may enter into a 28E agreement with the DOT to facilitate the issuance of cannabidiol registration cards. Cannabidiol registration cards expire one year after the date of issuance and may be renewed.

The State of Iowa will recognize as valid medical cannabidiol registration card or its equivalent that is issued by another state, district, territory, or possession of the United States that allows a patient to possess or use only cannabidiol for medical purposes in the jurisdiction of issuance.

#### Section 6 – Department Rules & Registry Confidentiality

The DPH is directed to maintain a confidential file with the names of each patient to or for whom a cannabidiol registration card is issued and the name of the primary caregiver who issued a cannabidiol registration card. Individual names are to be kept confidential and not be disclosed unless authorized employees of the DPH need the names to perform the duties of the DPH under the Medical Cannabidiol Act and/or state or local law enforcement agencies need to verify that a person is lawfully in possession of a cannabidiol registration card. Release of information must be consistent with federal Health and Insurance Portability and Accountability Act (HIPAA).

The DPH, in consultation with the DOT, is directed to adopt emergency administrative rules implement this Act, subject to prior approval by the administrative rules coordinator and Administrative Rules Review Committee (ARRC). The rules will be effective July 1, 2014, unless delayed by the ARRC and will expire 180 days after the effective date.

#### Section 7 – Legal Protections/Defense

Only a neurologist may provide a written recommendation for the possession or use of cannabidiol for a patient who has been diagnosed with intractable epilepsy (no other medical conditions qualify). A neurologist has the sole authority to recommend the use or amount of cannabidiol in treatment.

Cannabidiol must be obtained from an out-of-state source and may only be recommended for oral or transdermal administration.

A neurologist authorized to recommend cannabidiol shall not be subject to prosecution for the unlawful recommendation, possession, or administration of marijuana under Iowa law for activities arising directly out of or directly related to the recommendation or use of cannabidiol in the treatment of intractable epilepsy.

It is an affirmative and complete defense to the prosecution for the unlawful possession of marijuana that the patient has been diagnosed with intractable epilepsy, used or possessed cannabidiol under recommendation by an authorized neurologist, and possess a valid cannabidiol registration card as authorized in this Act. This same defense is provided for primary caregivers when the primary caregiver's possession of cannabidiol is on behalf of the patient for the patient's use only and is in possession of a valid cannabidiol registration card.

If a patient or primary caregiver is charged with a crime and is not in possession of a cannabidiol registration card, any of the charges filed against the person are to be dismissed if the person produces to the clerk of district court prior to the initial court date a cannabidiol registration card issued to that person and valid at the time the person was charged.

No government agency, including law enforcement, may remove or initiate proceedings to remove a minor from the home of a parent based solely upon the parent's or the minor's possession or use of cannabidiol under this chapter.

#### Section 8 – Penalties

A person who knowingly or intentionally possesses or uses cannabidiol in violation of this Act is subject to penalties provided in Chapter 124 (Controlled Substances) and 453B (Excise Tax on Unlawful Dealing in Certain Circumstances).

#### Section 9 – Repeal & Effective Date

Chapter 124D – the Medical Cannabidiol Act – is automatically repealed July 1, 2017. The section of this Act authorizing emergency administrative rules is effective upon enactment.