

130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
April 20, 2017

Kevin Koester
4207 SW Walnut St
Ankeny, IA 50023

Re: S.F. 506 (medical use of cannabis)

Dear Representative Koester,

On Wednesday, April 12, S.F. 506 passed by a vote of 19-1-1 in the Iowa Senate Appropriations Committee, [S.J. 1000](#). On Thursday, April 13, S.F. 506 passed by a vote of 14-1 in the Iowa Senate Ways and Means Committee, [S.J. 1019](#). On Monday, April 17, S.F. 506 passed by a vote of 45-5 in the Iowa Senate, [S.J. 1037](#). S.F. 506 was messaged to the House on Monday, April 17, [H.J. 1034](#)

S.F. 506 removes marijuana and tetrahydrocannabinols^[1] from schedule 1 (substances with no accepted medical use), Iowa Code §§ 124.204(4)(m) (2017) and 124.204(4)(u) (2017), and places them in schedule 2 (substances with currently accepted medical use), Iowa Code §§ 124.206(7)(a) (2017) and 124.206(7)(b) (2017). The conditions for schedule 1 and Iowa schedule 2 are:

Iowa Code § 124.203(1)(b) (2017):

Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

Iowa Code § 124.205(1)(b) (2017):

The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions.

While the Iowa Senate should be applauded for this carefully drafted legislation, there is an omission I believe should be corrected. S.F. 506 lacks a statement about compliance with federal law. This omission could have severe negative consequences for Iowans seeking to obtain relief under this legislation, S.F. 506.

Current federal law can be found at 21 U.S.C. §§ 801 et seq., Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236 (“Controlled Substances Act”).

Unlike our law here in Iowa, the federal schedules are ordinary administrative regulations, not statutes. Federal administrative interpretation of the term “currently accepted medical use” must recognize accepted intrastate medical use of a controlled substance. Federal case law supports this assertion:

Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991) (“*neither the statute nor its legislative history precisely defines the term ‘currently accepted medical use’; therefore, we are obliged to defer to the Administrator's interpretation of that phrase if reasonable.*”)

Gonzales v. Oregon, 546 U.S. 243, 258 (2006) (“*The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.*”)

Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987) (“*Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.*”)

Because S.F. 506 accepts the medical use of marijuana and tetrahydrocannabinols in our state, the federal regulation is obsolete and must be updated. The condition that Congress placed on schedule 1 now precludes the placement of marijuana and tetrahydrocannabinols in schedule 1 of the federal Controlled Substances Act. Compliance with federal law requires our state to include a notice that Iowa is “accepting the medical use” of these substances as the term “currently accepted medical use” is found in the federal Controlled Substances Act.

Please amend S.F. 506 to include a statement that accepted medical use of marijuana and tetrahydrocannabinols in our state complies with exiting federal law and requires that these substances must either be removed from federal schedule 1 or that the federal government must issue an interpretive rule that schedule 1 does not apply to the intrastate medical use of these controlled substances.

Omitting this clarification may have a serious negative impact on any businesses considering the production and distribution of these products in Iowa.

Thank you very much!

Sincerely,

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[1] The Iowa legislature placed tetrahydrocannabinol products in schedule 3 in 2008. Iowa Code § 124.208(9)(b) (2017). 2008 Acts, chapter 1010, § 4, H.F. 2167, March 5, 2008. See the conditions for Iowa schedule 3: **Iowa Code § 124.207(1)(b) (2017)** (“*The substance has currently accepted medical use in treatment in the United States*”).