

# Exhibit #2

September 15, 2017

Petitioner's Comments on Proposed Amendments to 641 Iowa Administrative Code 154.15 to 154.65 responding to the House Speaker's allegations on September 10, 2017, that Iowa Code Chapter 124E authorizes federal criminal activity.

**Comments on Proposed Amendments to**

**641 Iowa Administrative Code 154**

**Rules 641–154.15(124E) to 641–154.65(124E)**

September 15, 2017

The [Medical Cannabidiol Act](#), 2017 Iowa Acts 451, Chapter 162 (H.F. 524), was signed into law on May 12, 2017, by Governor Terry E. Branstad.

Section 9(1) of the Act, Iowa Code § 124E.5(1) (2017), authorizes the Iowa Department of Public Health to issue a license to a “manufacturer” which allows cultivation and harvesting of cannabis in Iowa.

Section 10(8) of the Act, Iowa Code § 124E.6(8) (2017), requires a “manufacturer owner shall not have been convicted of a disqualifying felony offense.” See, Section 5(4) of the Act, Iowa Code § 124E.2(4) (2017), referencing 21 U.S.C. § 802(6).

Section 11(1) of the Act, Iowa Code § 124E.7(1) (2017), authorizes the Iowa Department of Public Health to issue a license to a “dispensary” which allows distribution of cannabis products in Iowa.

Section 12(8) of the Act, Iowa Code § 124E.8(8) (2017), requires a “dispensary owner shall not have been convicted of a disqualifying felony offense.” See, Section 5(4) of the Act, Iowa Code § 124E.2(4) (2017), referencing 21 U.S.C. § 802(6).

As recently as September 10, 2017, Speaker of the Iowa House, Linda Upmeyer, is quoted in the Des Moines Register, stating that the manufacture and distribution of cannabidiol in Iowa is a federal felony offense. Des Moines Register, September 10, 2017, “AG tells agency to halt part of Iowa’s medical marijuana law.”<sup>1</sup> Speaker Upmeyer is quoted as stating:

*no matter what the Legislature has decided, the state still would have been in violation of federal law*

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<sup>1</sup> The article from the Des Moines Register is attached to this document.

So, as stated by Speaker Upmeyer, a disqualifying offense disqualifies someone from participating in a disqualifying offense. According to Speaker Upmeyer, the Iowa Department of Public Health will be licensing individuals to engage in disqualifying offenses (continuing criminal enterprises) that carry up to life in federal prison and fines of up to \$50,000,000.<sup>2</sup>

## **Federal Regulations**

Although this author disagrees with Speaker Upmeyer's assertion that H.F. 524 violates federal law, this clearly demonstrates what we are about to step into. The Iowa Medical Cannabidiol Act of 2017 doesn't explain how the intrastate manufacture and distribution of cannabidiol products is consistent with existing federal law.

The Drug Enforcement Administration (DEA) has recently published a notice in the Federal Register clarifying that cannabidiol products are federal schedule 1 controlled substances.<sup>3</sup> The DEA has further clarified that cannabidiol products are federal schedule 1 controlled substances on its website.<sup>4</sup>

Without a statement of compliance with existing federal law, the rules the Iowa Department of Public Health is proposing will place manufacturers and distributors in extreme jeopardy, as well as the Iowa patients who will depend on them for their medicine. Speaker Upmeyer has clearly warned you of the consequences of leaving this matter unsettled. The fact that she would even put her name on a piece of legislation she thinks violates federal law is astounding.

The Iowa Department of Public Health can and must resolve this problem which has been clearly articulated by Speaker Upmeyer. The administrative rules implementing this legislation must address the concerns she has raised.

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<sup>2</sup> See 21 U.S.C. § 841(b)(1) and 21 U.S.C. § 848.

<sup>3</sup> Vol.81, No. 240, Wednesday, December 14, 2016, pp. 90194-90196.

<sup>4</sup>

[https://www.deadiversion.usdoj.gov/schedules/marijuana/m\\_extract\\_7350.html](https://www.deadiversion.usdoj.gov/schedules/marijuana/m_extract_7350.html)

Please see this author's previous comments from July 25, 2017, for a complete legal analysis explaining why state medical marijuana programs are consistent with existing federal law and exempt from schedule 1.<sup>5</sup>

## **Conclusion**

The regulations implementing H.F. 524 must include an explanation of compliance with existing state and federal law. This can't be left to the imagination. The Iowa Department of Public Health has the authority to take corrective action by administrative rule. Each manufacturer and dispensary license must include a statement that the license immunizes the manufacturer or dispensary from federal prosecution that would result from the false assumption that intrastate medical use of marijuana is included in schedule 1 of the state and federal controlled substances acts. H.F. 524 satisfies both state and federal requirements because it provides a complete exemption from state and federal schedule 1.

Thank you for your prompt attention to this matter.

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<http://idph.iowa.gov/Portals/1/userfiles/85/Administrative%20Rules%20Public%20Comment.pdf>



## AG tells agency to halt part of Iowa's medical marijuana law

Barbara Rodriguez, Associated Press Published 10:52 a.m. CT Sept. 10, 2017



Iowans overwhelmingly support legalizing marijuana for medical purposes, but they don't support allowing recreational uses, a new Iowa Poll shows. Wochit



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(Photo: Mark Marturello/Register illustration)

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An unusual attempt by Iowa to work with another state to transport medical marijuana oil across state lines is on hold amid legal concerns it could invite scrutiny from the federal government.

The Iowa Attorney General's office advised the Iowa Department of Public Health this month that it should

not implement a small section in Iowa's new medical marijuana law that requires the state, before the end of the year, to license up to two "out-of-state" dispensaries from a bordering state. Those entities would have been expected to bring cannabis oil into Iowa in order to sell it.

That's considered illegal under federal law, which categorizes marijuana as a type of controlled substance that is prohibited from being moved across state lines. But during the final hours of the legislative session in April, some Republicans in the GOP-controlled Legislature suggested adding the language to open the door for a

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partnership with a neighboring state like Minnesota.

The development is not expected to impact other provisions in the law that call for establishing an in-state production system for cannabis oil by the end of 2018. Still, some GOP lawmakers expressed frustration with the news because the provision was also aimed at creating more immediate access to cannabis oil. Currently, Iowans have no way of getting the product within the state.

House Speaker Linda Upmeyer, R-Clear Lake, noted in a statement that no matter what the Legislature had decided, the state still would have been in violation of federal law.

"As I've said before, the federal government needs to act on this issue or let the states do their work," she said, adding, "The out-of-state distributors are the quickest way to supply sick Iowans with a product that doctors say could be beneficial. If that provision doesn't work out, then people will have to wait another year, and that's disappointing."

At least 29 states, the District of Columbia, Guam and Puerto Rico now allow for comprehensive public medical marijuana and cannabis programs, according to the National Conference of State Legislatures.

Possessing, manufacturing and selling marijuana remains illegal under federal law. In 2013, the Department of Justice issued a memorandum offering assurance that states could proceed with medical marijuana programs without fear of federal prosecution, in part by avoiding agreements that would move marijuana from one state to another.

Geoff Greenwood, a spokesman for the attorney general's office, said in an email that if a state program authorizes or encourages diversion from one state to another, "it is possible that state's program may come under increased scrutiny from the federal government." He said the halt on implementation should remain "until the federal government provides further guidance regarding state medical marijuana programs."

Justin Strekal, political director for the pro-marijuana group National Organization for the Reform of Marijuana Laws, known as NORML, said few states have attempted what Iowa tried to do, though data is limited.

"This is just another example of lawmakers overcomplicating something for the sake of overcomplicating it, rather than implementing a system that actually serves their constituents," he said.

It's unclear how President Donald Trump's administration will deal with medical marijuana. Attorney General Jeff Sessions has warned marijuana is a dangerous drug and said he'd reconsider existing marijuana policies.

Sally Gaer, of West Des Moines, has lobbied for years for Iowa to allow more access to medical marijuana. Gaer, whose adult daughter uses cannabis oil, said lawmakers could have put Iowa's medical marijuana program in jeopardy by adding the language.

"I'm so frustrated with this," she said.

The out-of-state dispensaries provision is tucked into the second-to-last page of a 20-page law, and is separate from requirements that Iowa license up to two cannabis oil



DREAMer: 'I know I have a lot to offer ... to this country that I call my home'  
0:45

manufacturers in Iowa and up to five dispensaries to sell it in-state. The oil would be supplied in Iowa by the end of 2018. Smoking marijuana remains prohibited.

If state attorneys had decided out-of-state dispensaries must be licensed, it could have worsened an already tight timeline for launching the overall program. A new medical marijuana board met last week to help with requirements that Iowa license its manufacturers by December. The dispensaries must be licensed by April.

Rep. Jarad Klein, who was floor manager for the medical marijuana legislation that became law, was surprised to learn the provision on the out-of-state dispensaries wasn't moving forward. He said he would seek guidance from Gov. Kim Reynolds, who was lieutenant governor when the law was passed.

Klein, a Keota Republican, emphasized Upmeyer's point that the setup was aimed at ensuring that while the in-state production system gets up and running, people could access cannabis oil.

"Between now and us having that, sick people need their medicine," he said.

A Reynolds spokesman referred all questions to the public health department.

