

**SENATE, No. 3162**

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**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

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INTRODUCED SEPTEMBER 24, 2015

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**SYNOPSIS**

Establishes protection from adverse employment action for authorized medical marijuana patients.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/6/2015)**

S3162 SCUTARI, VITALE

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1 AN ACT concerning medical marijuana and amending and  
2 supplementing P.L.2009, c.307.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. Section 16 of P.L.2009, c.307 (C.24:6I-14) is amended to  
8 read as follows:

9 16. Nothing in this act shall be construed to require a  
10 government medical assistance program or private health insurer to  
11 reimburse a person for costs associated with the medical use of  
12 marijuana, or, except as provided in section 2 of P.L. \_\_\_\_\_,  
13 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), an  
14 employer to accommodate the medical use of marijuana in any  
15 workplace.

16 (cf: P.L.2009, c.307, s.16)

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18 2. (New section) a. Unless an employer establishes by a  
19 preponderance of the evidence that the lawful use of medical  
20 marijuana has impaired the employee's ability to perform the  
21 employee's job responsibilities, it shall be unlawful to take any  
22 adverse employment action against an employee who is a qualified  
23 registered patient using medical marijuana consistent with the  
24 provisions of P.L.2009, c.307 (C.24:6I-1 et al.) based on either: (1)  
25 the employee's status as a registry identification cardholder; or (2)  
26 the employee's positive drug test for marijuana components or  
27 metabolites.

28 For the purposes of this section, an employer may consider an  
29 employee's ability to perform the employee's job responsibilities to  
30 be impaired when the employee manifests specific articulable  
31 symptoms while working that decrease or lessen the employee's  
32 performance of the duties or tasks of the employee's job position.

33 b. (1) If an employer has a drug testing policy and an  
34 employee or job applicant tests positive for marijuana, the employer  
35 shall offer the employee or job applicant an opportunity to present a  
36 legitimate medical explanation for the positive test result, and shall  
37 provide written notice of the right to explain to the employee or job  
38 applicant.

39 (2) Within three working days after receiving notice pursuant to  
40 paragraph (1) of this subsection, the employee or job applicant may  
41 submit information to the employer to explain the positive test  
42 result, or may request a confirmatory retest of the original sample at  
43 the employee's or job applicant's own expense. As part of an  
44 employee's or job applicant's explanation for the positive test  
45 result, the employee or job applicant may present a doctor's  
46 recommendation for medical marijuana, a registry identification

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 card, or both.

2 c. Nothing in this section shall restrict an employer's ability to  
3 prohibit or take adverse employment action for the possession or  
4 use of intoxicating substances during work hours, or require an  
5 employer to commit any act that would cause the employer to be in  
6 violation of federal law, or that would result in the loss of a federal  
7 contract or federal funding.

8 d. As used in this section, "adverse employment action" means  
9 refusing to hire or employ a qualified registered patient, barring or  
10 discharging a qualified registered patient from employment,  
11 requiring a qualified registered patient to retire from employment,  
12 or discriminating against a qualified registered patient in  
13 compensation or in terms, conditions, or privileges of employment.

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15 3. This act shall take effect immediately.

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#### STATEMENT

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20 This bill would establish protections from adverse employment  
21 actions for registered patients using medical marijuana pursuant to  
22 the "New Jersey Compassionate Use Medical Marijuana Act."

23 Specifically, an employer would be prohibited from taking any  
24 adverse employment action against an employee based on the  
25 employee's status as a registry identification cardholder or based on  
26 a positive test for marijuana, unless the employer establishes by a  
27 preponderance of the evidence that the lawful use of medical  
28 marijuana has impaired the employee's ability to perform the  
29 employee's job responsibilities. The bill provides that an employer  
30 may consider an employee's ability to perform the employee's job  
31 responsibilities to be impaired when the employee manifests  
32 specific articulable symptoms while working that decrease or lessen  
33 the employee's performance of the duties or tasks of the employee's  
34 job position.

35 If an employer has a drug testing policy and an employee or job  
36 applicant tests positive for marijuana, the employee or job applicant  
37 is to be offered an opportunity to present a legitimate medical  
38 explanation for the positive test result, and is to be provided written  
39 notice of the right to explain. Within three working days after  
40 receiving notice, the employee or job applicant would be permitted  
41 to submit information to the employer to explain the positive test  
42 result, or request a confirmatory retest of the original sample at the  
43 employee's or job applicant's own expense. An employee or job  
44 applicant would be permitted to present a doctor's recommendation  
45 for medical marijuana, a registry identification card, or both, as part  
46 of the employee's or job applicant's explanation for the positive  
47 test.

**S3162 SCUTARI, VITALE**

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1        Nothing in the bill would restrict an employer's ability to  
2 prohibit or take adverse employment action for the possession or  
3 use of intoxicating substances during work hours, or require an  
4 employer to commit any act that would cause the employer to be in  
5 violation of federal law, or that would result in the loss of a federal  
6 contract or federal funding.

7        The bill defines "adverse employment action" to mean refusing  
8 to hire or employ a qualified registered patient, barring or  
9 discharging a qualified registered patient from employment,  
10 requiring a qualified registered patient to retire from employment,  
11 or discriminating against a qualified registered patient in  
12 compensation or in terms, conditions, or privileges of employment.