

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 21

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 15, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 21 (1R), with committee amendments.

This bill, as amended, titled the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” primarily concerns the development, regulation, and enforcement of activities associated with the personal use of products that contain useable cannabis or cannabis resin (the terms provided to distinguish the legalized products from unlawful marijuana or hashish) by persons 21 years of age or older. This would be accomplished through the expansion of the scope and duties of the Cannabis Regulatory Commission, created by P.L.2019, c.153 (C.24:6I-5.1 et al.) to oversee the State’s medical cannabis program, which is primarily set forth in the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

It also provides for criminal justice reforms with respect to several offenses associated with manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, smaller amounts of marijuana or hashish (hereafter shortened to just distributing, which includes possessing or having under control), as well as possession of smaller amounts of marijuana or hashish, through such means as decriminalizing such offenses, requiring dismissal of pending charges, vacating current entries of guilt or placement in diversionary programs, and vacating current convictions for such offenses, as well as expunging past charges, arrests, and convictions for such offenses and providing for administrative action to expunge records associated with any such matters.

### Cannabis Regulatory Commission

With respect to the personal use of cannabis, the general duties, functions, and powers of the commission would include:

(1) regulating the purchase, sale, cultivation, manufacturing, packaging, transportation, and delivery of cannabis items – a broadly defined term which incorporates usable cannabis (dried leaves and

flowers), cannabis products, cannabis extracts, and any other form of cannabis resin;

(2) granting, refusing, suspending, revoking, cancelling, or otherwise limiting licenses or conditional licenses for the cultivation, manufacturing, warehousing, transportation, sale, and delivery of cannabis items. As further detailed below with respect to licensing activities, a “conditional license” is a type of license that would be issued by the commission pursuant to an abbreviated application process, after which the conditional license holder has a limited period of time in which to become fully licensed by satisfying all of the remaining conditions for full licensure which were not required for the issuance of the conditional license;

(3) investigating and aiding in the prosecution of violations of law relating to cannabis and cannabis items;

(4) taking regulatory actions to prohibit advertising of cannabis items in a manner that is appealing to minors, that promotes excessive use, or that promotes illegal activity; and

(5) regulating the use of cannabis and cannabis items for scientific, pharmaceutical, manufacturing, mechanical, industrial, and other purposes.

The commission’s Office of Minority, Disabled Veterans, and Women Medical Cannabis Business Development would be re-titled by removing the reference to “medical,” and this office would establish and administer, under the direction of the commission, unified practices and procedures for promoting participation in the lawful operation of personal use cannabis businesses by persons from socially and economically disadvantaged communities, including by prospective and existing minority owned and women’s owned businesses, as these terms are defined in section 2 of P.L.1986, c.195 (C.52:27H-21.18), and disabled veterans’ businesses as defined in section 2 of P.L.2015, c.116 (C.52:32-31.2), which could be licensed as personal use cannabis cultivators, manufacturers, wholesalers, distributors, retailers, delivery services, or testing facilities under the bill. These unified practices and procedures would include a business’ certification and subsequent recertification at regular intervals as a minority owned or women’s owned business, or a disabled veterans’ business, in accordance with eligibility criteria and a certification application process established by the commission in consultation with the office.

The effectiveness of the office’s methods would be measured by whether the office’s actions resulted in not less than 30 percent of the total number of cannabis licenses issued by the commission being issued to businesses certified by the office; their effectiveness would be further assessed by considering whether the actions resulted in not less than 15 percent of licenses being issued to certified minority owned businesses, and not less than 15 percent of licenses being issued to certified women’s owned and disabled veterans’ businesses. The

office, in support of these efforts, would conduct advertising and promotional campaigns, as well as sponsor seminars and informational programs, directed toward those persons and prospective and existing certified businesses, which would address personal use cannabis business management, marketing, and other practical business matters.

Ethical and Conflicts-of-Interest Considerations for the Commission, its Employees, and Other Parties

The members of the five-person commission and all commission employees would be subject to ethical and conflicts-of-interest restrictions concerning the regulation of personal use cannabis, addressing activities engaged in prior to, during, and following service with the commission. For instance, a person generally could not be an appointed member or employee of the commission if, during the period commencing three years prior to appointment or employment, the person held any direct or indirect interest in, or any employment by, a holder of or applicant for a personal use cannabis license, unless the person's prior interest would not, in the opinion of the commission, interfere with the person's obligations of appointment or employment; and generally, for a period of two years commencing from the date that a member's or employee's service terminates, that former member or employee would not be permitted to hold any direct or indirect interest in, or any employment by, a holder of or applicant for a cannabis license (this two-year post-service restriction would not apply to secretarial or clerical employees).

The bill also expands the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.), as well as the scope of the Code of Ethics promulgated by the commission, which applies to all commission members and employees with respect to medical cannabis licensing and other activities, and incorporates similar provisions to address personal use cannabis licensing and other activities. Per the existing law, all members and employees would be prohibited from using any official authority to interfere with or affect the result of an election or nomination for office, coerce or advise any person to contribute anything of value to another person or organization for political purposes, or take active part in any political campaign. For the commission members, the executive director of the commission, and any other employee holding a supervisory or policy-making management position, the law also provides a prohibition on making any political contributions to candidates or campaigns, as that term is defined in "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.).

The "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.), is also amended to establish restrictions on various State officers or employees, the Governor and full-time professionals employed in the Governor's Office, full-time members of the Judiciary, and various municipal officers in which licensed personal use cannabis entities are located. These restrictions concern

not only their own activities, but the activities of their associated partnerships, firms, or corporations, and their family members in connection with either employment or another interest in, or representation of, current license holders or applicants. The restrictions are similar to the restrictions on these people and businesses under the current law concerning casino and medical cannabis licensees and applicants, and casino-related and medical cannabis activities, and include a general prohibition on employment, representation, appearance for, or negotiation on behalf of, any license holder or applicant in connection with any cause, application, or matter, and these restrictions can carry over into the post-employment or post-service period following the departure of a person from State or local employment or office.

As per existing law, the ethical and conflicts-of-interest restrictions would be enforced by the State Ethics Commission, and any person found to have committed a violation would be subject to a civil penalty of not less than \$500 or more than \$10,000. Additionally, any willful violation of the restrictions similar to the restrictions concerning casino and medical cannabis licensees and applicants that are applicable to the above State or municipal elected, appointed, or employed persons, their associated partnerships, firms, or corporations, and their family members, would be considered a disorderly persons offense, punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

If a license holder or applicant for a license commits a violation involving a commission member or employee with respect to the above described pre-service activities, activities during service, or post-service activities, that license holder or applicant could have their license revoked or suspended, or application denied by the commission.

Licensing of Cannabis Businesses; Updating the Permit Process for Certain Medical Cannabis Alternative Treatment Centers and Their Permitted Operations

The bill would establish six “marketplace” classes of licensed businesses: a Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis; a Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items; a Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees; a Class 4 Cannabis Distributor license, for businesses involved in transporting cannabis plants in bulk from one licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another; a Class 5 Cannabis Retailer license, for locations at which cannabis items and related supplies are sold to consumers; and a Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled

by a licensed cannabis retailer in order to make deliveries of the purchased items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to that consumer. Except with respect to an initial period in which the number of cannabis cultivator licenses would be capped, as further explained below, the commission would determine the maximum number of licenses for each class based upon market demands, and would be authorized to accept new license applications as it deemed necessary to meet those demands.

The commission would be responsible for reviewing each application for a full, annual license, or application for a conditional license, intended to be issued and then subsequently replaced with a full license. Applications would be scored and reviewed based upon a point scale with the commission determining the amount of points, the point categories, and system of point distribution by regulation, subject to some required criteria for consideration in the point scale, such as an analysis of an applicant's: operating plan; environmental plan; and safety and security plans. This point system could be adjusted, or a separate point system used for any application for which a conditional license is sought, or a microbusiness license is sought, the latter being a form of smaller business operation further discussed below. Further, in ranking applications, in addition to the awarding of points, the commission would prioritize applications for licensure using several other factors.

One prioritizing factor would be based on "impact zones," which are municipalities negatively impacted by past marijuana enterprises that contributed to higher concentrations of law enforcement activity, unemployment, and poverty, or any combination thereof, and are identified under the bill as any municipality that:

(1) has a population of 120,000 or more according to the most recently compiled federal decennial census as of the bill taking effect;

(2) based on data compiled for calendar year 2019, ranks in the top 40 percent of municipalities in the State for small amount marijuana or hashish possession arrests; has a crime index total of 825 or higher in the annual Uniform Crime Report by the Division of State Police; and has an annual average unemployment rate that ranks in the top 15 percent of all municipalities in the State;

(3) is a municipality located in a county of the third class, based upon the county's population according to the most recently compiled federal decennial census, that meets all of the criteria set forth in paragraph (2) above, other than having a crime index total of 825 or higher; or

(4) is a municipality located in a county of the second class, based upon the county's population according to the most recently compiled federal decennial census:

- with a population of less than 60,000 according to the most recently compiled federal decennial census, that for calendar year 2019 ranks in the top 40 percent of municipalities in the State for small amount marijuana or hashish possession arrests; has a crime index total of 1,000 or higher based upon the indexes listed in the 2019 annual Uniform Crime Report by the Division of State Police; but for calendar year 2019 does not have a local average annual unemployment rate that ranks in the top 15 percent of all municipalities, based upon average annual unemployment rates estimated for calendar year 2019 by the Office of Research and Information in the Department of Labor and Workforce Development; or

- with a population of not less than 60,000 or more than 80,000 according to the most recently compiled federal decennial census; has a crime index total of 650 or higher based upon the indexes listed in the 2019 annual Uniform Crime Report; and for calendar year 2019 has a local average annual unemployment rate of 3.0 percent or higher using the same estimated annual unemployment rates.

Concerning applications involving impact zones, the commission would not only prioritize applications for at least two licensed businesses in such zones, but would also prioritize applications: that included a person who is a current resident of an impact zone and had resided therein for three or more consecutive years at the time of making the application (to the extent possible the commission would grant at least 25 percent of the total licenses issued, regardless of license class and location of the business, to such applicants); or that included a plan to employ at least 25 percent of employees who reside in an impact zone.

Other prioritizing factors would be based on applications for licensure which included an in-State resident of at least five years who was a “significantly involved person,” being someone who holds at least a five percent investment interest or is a member of a group who holds at least a 20 percent investment interest and would have authority to make controlling decisions about the cannabis business, or an applicant that met one of the following conditions for its labor environment:

(1) being a party to a collective bargaining agreement with a bona fide labor organization that currently represents, or is actively seeking to represent, cannabis workers in New Jersey;

(2) being a party to a collective bargaining agreement with a bona fide labor organization that currently represents cannabis workers in another state;

(3) submitting a signed project labor agreement with a bona fide building trades labor organization, which is a form of pre-hire collective bargaining agreement covering terms and conditions, including labor issues and worker grievances, associated with a

project for the construction or retrofit of facilities for the applicant's proposed operations; or

(4) submitting a signed project labor agreement with a bona fide labor organization for any other applicable project associated with the applicant's proposed operations.

The above described prioritizations based on in-State residency and labor environment factors would also be implemented with respect to future applications for any medical cannabis permit issued pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act."

When processing applications, the commission would also incorporate the licensing efforts, discussed above, that are developed by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development designed to promote the formulation and participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities.

In accordance with the bill, at least 35 percent of the total licenses issued for each class would be conditional licenses. Either a full license or conditional license would only be issued for applications which presented an ownership structure that included an in-State resident of at least two years who was a "significantly involved person." Another requirement, applicable only to a conditional license, would be that the significantly involved person and any other person with a financial interest who also has decision making authority for a proposed cannabis business could only have, for the immediately preceding taxable year, an adjusted gross income of no more than \$200,000 or no more than \$400,000 if filing jointly with another. For purposes of calculating the 35 percent figure for conditional licenses, the figure would include any conditional license issued to an applicant that was subsequently replaced with a full, annual license (which process is further detailed below).

Additionally, at least 10 percent of the total licenses issued for each license class, and at least 25 percent of the overall total number of licenses issued would be designated for and only issued to "microbusinesses." A microbusiness is described in the bill as employing no more than 10 employees, and: possessing no more than 1,000 cannabis plants each month, except that a cannabis distributor's possession of cannabis plants for transportation would not be subject to this limit; operating an establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis cultivator, growing on an area no more than 2,500 square feet measured on a horizontal plane and growing above that plane not higher than 24 feet; in the case of a cannabis manufacturer, acquiring no more than 1,000 pounds of usable cannabis each month; in the case of a cannabis wholesaler, acquiring for resale no more than 1,000 pounds of usable cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof, each

month; and in the case of a cannabis retailer, acquiring for retail sale no more than 1,000 pounds of usable cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof, each month. For this microbusiness subset of the six classes of cannabis businesses, 100 percent of the ownership would have to involve New Jersey residents who have resided in the State for at least two years.

The minimum 10 percent per class, and 25 percent overall, of microbusiness-designated licenses issued would include the number of conditional licenses issued for each class, as these two categories are not considered mutually exclusive of one another.

Additionally, the commission would establish a process and criteria which would allow a microbusiness the ability, while still issued a valid microbusiness-designated license, to apply to convert and continue operations as a licensed business that is not subject to the aforementioned operational limitations. Upon review of an application to confirm that the commission's criteria have been met, the commission would issue a new annual license of the appropriate business type, and the previously issued microbusiness-designated license would be deemed expired on the date the new license is issued. Any such new annual license would be counted towards the above mentioned percentages of licensed designed for and only issued to microbusinesses, notwithstanding the microbusiness' converted operations.

The commission would require that an applicant for licensure, other than an applicant seeking to operate a microbusiness of any class or seeking a conditional license, submit an attestation signed by a bona fide labor organization stating that the applicant entered into a labor peace agreement with such bona fide organization. The maintenance of an agreement would be an ongoing material condition of a full, annual license, unless the business was a microbusiness. Submission of proof of an agreement from an applicant originally issued a conditional license would be a requirement for final approval granting full licensure. As an additional labor requirement, failure to enter, or to make a good faith effort to enter, into a collective bargaining agreement within 200 days of the opening of a cannabis business based on a full annual or conditional license would result in the suspension or revocation of a license, other than one designated for microbusinesses.

Any applicant for a license or conditional license would have to provide proof for each person with any investment interest as being 21 years of age or older, and each of the following persons associated with the cannabis business for which licensure is sought would be subject to a criminal history record background check: any owner, other than an owner who holds less than a five percent investment interest or who is a member of a group that holds less than a 20 percent investment interest, and who has no authority for making



controlling business decisions; any director; any officer; and any employee. With respect to qualification or disqualification for licensure based on the background check, the commission would be prohibited from considering any convictions for an offense that occurred prior to the bill's effective date involving the distribution of less than five pounds of marijuana or less than one pound of hashish, or simple possession of any amount of marijuana or hashish, whether convicted under the laws of this or another state, or under federal law, or any other prior conviction, unless less than five years have passed since convicted, or since completing probation, parole, or a term of imprisonment, and the conviction involved fraud, deceit, embezzlement, employing a minor in a drug distribution scheme, or some other conviction "substantially related to the qualifications, functions, or duties for which the license is required," as determined by the commission. Such a conviction would not be an automatic disqualifier, as the commission would still have the authority to issue a license or conditional license to an applicant which included a person with a "substantially related" conviction, after examining the nature of the offense associated with the conviction, the circumstances at the time of committing the offense, and evidence of rehabilitation since conviction.

With respect to the application for a full license, the commission would complete its review for license approval or denial within 90 days of the submission of the application, unless the commission determined that more time is required. If approved, a license would be issued by the commission not later than 30 days after it gave notice of the approval, unless the applicant was subsequently found to not be in compliance with relevant regulations or local regulating ordinances applicable to the applicant's business operations. An issued license would expire after one year, but could be renewed following submission of a new application, in which the applicant would detail aspects of the cannabis licensee's operations and on-going compliance measures as part of the renewal process.

With respect to the application for a conditional license, the commission would complete an expedited review for approval or denial within 30 days, unless the commission determined that more time is required. If approved, a conditional license would be issued by the commission not later than 30 days after it gave notice of the approval, unless the applicant was subsequently found to not be in compliance with relevant regulations or local regulating ordinances applicable to conditionally licensed operations. The applicant would not need to be in compliance with every aspect of the regulatory requirements expected for full licensure in order to obtain a conditional license, but would need to provide sufficient plans for actions to be taken to eventually achieve compliance for full licensure. During a 120-day period following issuance of the conditional license, which period could be extended for an additional period of up to 45

days at the discretion of the commission, if it determined that the conditional licensee was in compliance with all plans and other measures necessary to achieve full licensure, it would replace the conditional license with a full, annual license, dated to expire one year from its date of issuance and which could be subsequently renewed; if the conditional licensee was not in compliance as needed for full licensure, the conditional license would automatically expire at the end of the 120-day (or extended) review period.

Additionally, the bill would create a license for cannabis testing facilities, which could test samples of both personal use cannabis and medical cannabis products for compliance with health, safety, and potency standards. The above described licensing efforts developed by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development designed to promote the formulation and participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities would apply to the licensing of testing facilities. The bill would also permit laboratories licensed after the bill's enactment to test medical cannabis products pursuant to section 25 of P.L.2019, c.153 (C.24:6I-18) to also test personal use cannabis products. Any existing laboratory licensed before the bill took effect that could only test batches of medical cannabis products would be authorized to test personal use cannabis products under an existing license, if the laboratory certifies to the commission that its facility, and the condition and calibration of any equipment used for testing, meet the commission's new accreditation requirements for licensure as a personal use cannabis testing facility.

Finally, with respect to further medical cannabis business operations:

(1) the bill would increase the number of available clinical registrant permits, from four to five, that could be applied for, subject to the review and approval by the commission; and

(2) any alternative treatment center that was issued a permit prior to the effective date of the 2019 medical cannabis reform and expansion by P.L.2019, c.153 (C.24:6I-5.1 et al.), or issued a permit after the effective date of that enactment pursuant to an application submitted based on a request for applications published in the New Jersey Register prior to that effective date, or issued a permit after that effective date pursuant to an application submitted prior to that date, any such center would be permitted to cultivate from up to two physical locations, provided that the alternative treatment center's combined mature cannabis plant grow canopy between both locations not exceed 150,000 square feet of bloom space or the square footage of canopy permitted under the largest tier in the tiered system for grow canopies adopted by the commission pursuant to the bill.

### Certification of Cannabis Handlers

In addition to the above described licensing requirements, any individual who performed work for or on behalf of any class of licensee (or conditional licensee) would need to have a valid certification issued by the commission, in order to participate in: the possession, securing, or selling of cannabis items at the licensed premises; the recording of the possession, securing, or selling of cannabis items at that premises; or the transportation of cannabis items to and from licensed establishments, or residential delivery of cannabis items and related supplies to a retail consumer. The commission could require that anyone applying for a handler certification successfully complete a one-time course which provides training on checking identification, detecting intoxication, the proper handling of cannabis items, and statutory and regulatory provisions relating to cannabis. A person seeking a certification would also be subject to a criminal history record background check, and subject to the same potential disqualifying standards as applicable to applicants for licenses.

An individual with a valid certification as a personal use cannabis handler would be permitted to also simultaneously have a valid certification as a medical cannabis handler issued under section 27 of P.L.2019, c.153 (C.24:6I-20) so that the individual could additionally perform work for or on behalf of entities issued medical cannabis permits or licenses.

### Transition to Full Legal Market for Cannabis Items

Within 180 days after the bill is signed into law, or within 45 days of all five members of the commission being duly appointed in accordance with the appointment process set forth in paragraph (2) of subsection b. of section 31 of P.L.2019, c.153 (C.24:6I-24), whichever date is later (at present the initial appoint process is not complete), and after consultation with the Attorney General, State Treasurer, Commissioner of Health, and Commissioner of Banking and Insurance, the commission would, upon filing proper notice with the Office of Administrative Law, and notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), immediately adopt rules and regulations it prepared that are necessary and proper to enable it to carry out the commission’s duties, functions, and powers with respect to activities associated with the personal use of cannabis. These initial rules and regulations, which would include details with respect to the license application process, would be in effect for a period not to exceed one year after the date of filing, and thereafter be adopted, amended, or readopted, and any subsequent rules and regulations adopted, amended, or readopted, in accordance with the “Administrative Procedure Act.”

With respect to the developed application process and the issuance of licenses, during an initial 24-month period following the bill’s enactment, there would be a limitation on the number and classes of licenses any one licensee could hold. During this time, the bill would

not permit a licensed cultivator, manufacturer, wholesaler, distributor, or delivery service to also be a licensed retailer, and vice versa, plus a cultivator or manufacturer could only concurrently hold two licenses (either another cultivator or manufacturer license), and a wholesaler could hold one other distributor license; these restrictions would not apply to a medical alternative treatment center deemed to concurrently possess one of each type of cannabis license class as further described below.

Additionally, throughout this 24-month period, the commission would not allow more than 37 cannabis cultivators to be simultaneously licensed and engaging in personal use cannabis activities, which number would include any alternative treatment centers deemed to be licensed as cannabis cultivators who are issued licenses by the commission; however, this limit would not apply to cultivator licenses issued to microbusinesses.

Following the 24-month period, a license holder could hold:

(1) a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 5 Cannabis Retailer license, and a Class 6 Delivery license concurrently, provided that no license holder would be authorized to concurrently hold more than one license of each class, except for an alternative treatment center that was deemed, during the 24-month period, to have an additional Class 5 Cannabis Retailer license for each satellite dispensary as described below; or

(2) a Class 3 Cannabis Wholesaler license and a Class 4 Cannabis Distributor license; in no case could a holder of a Class 3 Cannabis Wholesaler license concurrently hold a license of any other class, other than a license as a cannabis distributor.

The commission would begin accepting and processing applications for licenses and conditional licenses within 30 days after the commission's initial rules and regulations have been adopted. Also, at the time of initial adoption, provisions of the bill concerning the lawful operations of licensed cannabis cultivators, manufacturers, wholesalers, distributors, retailers, and delivery services would become operative to permit those cannabis businesses issued licenses by the commission to commence work in growing, cultivating, manufacturing, packaging, and transporting cannabis and cannabis items for future retail sales, which would not yet be authorized by licensed cannabis retailers.

Also becoming operative with the initial rules and regulations would be provisions which would deem the following medical cannabis alternative treatment centers to either concurrently hold a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 5 Cannabis Retailer license (and any of their satellite dispensaries would also be deemed to hold a Class 5 retailer license), and a Class 6 Cannabis Delivery license, or alternatively to hold a

Class 3 Cannabis Wholesaler license, and optionally hold a Class 4 Cannabis Distributor license:

(1) any alternative treatment center that was issued a permit prior to the effective date of the 2019 medical cannabis reform and expansion by P.L.2019, c.153 (C.24:6I-5.1 et al.), or any alternative treatment center that was issued a permit subsequent to that act's effective date pursuant to an application submitted prior to that effective date;

(2) the one alternative treatment center, out of four, issued a permit pursuant to an application submitted after the effective date of P.L.2019, c.153 (C.24:6I-5.1 et al.) based on a request for applications published in the New Jersey Register prior to that effective date, that is expressly exempt, pursuant to subsection a. of section 11 of P.L.2019, c.153 (C.24:6I-7.1), from statutory provisions prohibiting the holding of concurrent medical cannabis permits, and this alternative treatment center was deemed pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7) to concurrently hold more than one such permit; and

(3) the one other alternative treatment center, out of three, issued a permit pursuant to an application submitted on or after the effective date of P.L.2019, c.153 (C.24:6I-5.1 et al.), that is expressly exempt, pursuant to subsection a. of section 11 of P.L.2019, c.153 (C.24:6I-7.1), from statutory provisions prohibiting the holding of concurrent medical cannabis permits, and this other alternative treatment center was deemed pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7) to concurrently hold more than one such permit.

However, any such alternative treatment center deemed to have cannabis licenses, directly or through a satellite dispensary, could not engage in any preparatory work to incorporate personal use cannabis items into its operations, and thus simultaneously function as personal use cannabis businesses, until it submitted written approval to the commission to operate as one or more classes of a cannabis business, received from the municipality in which the business is to be located based on a determination that it's proposed operations comply with the municipality's restrictions on the number of allowable business, as well as their location, manner, and times of operation, as established in accordance with the bill and further discussed below. Additionally, the commission would only issue actual licenses of the appropriate class so that new personal use activities could begin following a review of the alternative treatment center's operations to confirm that the alternative treatment center has sufficient quantities of medical cannabis and, if applicable, medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients.

Notwithstanding the date determined by the commission to be the first date on which cannabis retailers issued licenses and conditional licenses begin retail sales of personal use cannabis items, discussed

below, an alternate treatment center with a locally approved Class 5 Retailer license that is determined by the commission to have sufficient quantities of medical cannabis products to meet patient needs could begin to engage in the retail sale of cannabis items on any date after the date that the commission adopts its initial rules and regulations, and these could be legally consumed by persons 21 years of age or older.

Prior to and during this transitional phase leading up to eventual retail sales of cannabis items, every municipality would have the option to authorize and regulate, in a manner consistent with the bill's regulation of cannabis businesses, the number of licensed businesses, as well as their location, manner, and times of operation within its jurisdiction; however, the time of operation of delivery services would be subject only to regulation by the commission. Alternatively, but only during a 180-day period following the bill's enactment, a municipality could enact an ordinance to prohibit such operations by any one or more classes of business, but not the delivery of cannabis items and related supplies to consumers by delivery services. Only an ordinance to prohibit operations by one or more license classes enacted pursuant to the specific authority to do so by the bill would be valid and enforceable; any ordinance enacted prior to the bill's effective date addressing the issue of prohibition within the jurisdiction of a municipality would be null and void, and that municipality could only prohibit the operation of one or more classes of cannabis business by enactment of a new ordinance in accordance with the bill's provisions.

The failure of a municipality to timely enact an ordinance prohibiting such operations would result in any class of cannabis business that is not prohibited from operating within the local jurisdiction as being permitted to operate therein for a period of five years as follows: the growing, cultivating, manufacturing, and selling and reselling of cannabis and cannabis items, and operations for transporting and delivery services by a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, or cannabis delivery service would be permitted uses in all industrial zones of the municipality; and the selling of cannabis items to consumers from a retail store by a cannabis retailer would be a conditional use in all commercial zones or retail zones, subject to meeting the conditions set forth in any applicable zoning ordinance or receiving a variance from one or more of those conditions in accordance with the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). At the end of any five-year period following a failure to enact a local ordinance, the municipality could revisit the issue of prohibition during a new 180-period, but any ordinance would be prospective only and not apply to any cannabis business already operating within the local jurisdiction subject to the ordinance.

If a municipality allowed the operation of cannabis businesses, a copy of each license application submitted to the commission for a

business to be located within that local jurisdiction would be provided to the municipality, which in turn would inform the commission whether the application complies with its local regulatory scheme, and the local review could be the basis for a denial of an application if it is not in compliance.

Lastly, during the transition phrase, when applications are being processed, and licensed cannabis businesses are starting operations or medical alternative treatment centers starting preparatory work, or actually incorporating personal use cannabis items into their operations, the commission would determine the first date on which cannabis retailers issued licenses and conditional licenses may begin retail sales of personal use cannabis items. This date would be no more than 180 days after the adoption of the commission's initial rules and regulations, and the commission would provide at least 30 days' notice of the date to every licensed cannabis business and alternative treatment center deemed to be a licensed cannabis business, even if that center was already engaging in retail sales. On that date and thereafter, legal retail sales and consumption of personal use cannabis items sold by all licensed cannabis retailers would begin.

Concerning the above described alternative treatment centers deemed from the onset to hold cannabis licenses and actually issued licenses based upon local approval, after a period no greater than one year from the date that retail sales by licensed cannabis retailers have begun, all such centers, in order to continue their operations concerning personal use cannabis, would be required to submit to the commission a certification, prior to the date that a cannabis license was set to expire, as to the continued material accuracy of their previously approved medical permit application in accordance with the "Jake Honig Compassionate Use Medical Cannabis Act," and their compliance with the provisions of this bill as required by the commission. The certification would also need to be supported by a new written approval from the municipality in which it operates in order for the commission to renew a license for continued personal use business activities.

#### Cannabis Consumption Areas

A licensed cannabis retailer, medical cannabis dispensary, including an alternative treatment center that has a permit to dispense medical cannabis pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," or clinical registrant may apply to the commission seeking an endorsement to operate a cannabis consumption area at which the on-premises consumption of personal use or medical cannabis could occur. Along with the commission's endorsement, the municipality in which the consumption area would operate would also review the application and have to provide a local endorsement.

An endorsed cannabis retailer could only allow the consumption of personal use cannabis at its consumption area. Any endorsed party

involved in the medical cannabis marketplace could only allow the consumption of medical cannabis at its consumption area, unless it was also deemed during the transition period to the legal cannabis market (see above) to have one or more Class 5 Cannabis Retailer licenses and was actually issued such a license or licenses, or had otherwise been issued such a license by the commission, in which case both personal use and medical cannabis could be consumed.

An on-premises consumption area could either be indoors or outdoors. An indoor consumption area would be a structurally enclosed area within a cannabis retailer, medical cannabis dispensary, or clinical registrant facility that is separated by solid walls or windows from the area in which retail sales of cannabis items, or retail sales along with the dispensing of medical cannabis occurs, would only be accessible through an interior door after first entering the facility, and, in the case of a personal use consumption area, would need to comply with all ventilation requirements applicable to cigar lounges under the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.); the smoking of medical cannabis would not be permitted in an indoor consumption area. An outdoor consumption area would be an exterior structure on the same premises as the cannabis retailer, medical cannabis dispensary, or clinical registrant facility, that is either separate from or connected to the facility and that is not required to be completely enclosed, but would need to have enough walls, fences, or other barriers to prevent any view of persons consuming personal use cannabis items or medical cannabis from any sidewalk or other pedestrian or non-motorist right-of-way; and with respect to any consumption by smoking, vaping, or aerosolizing at an outdoor area, the facility would need to ensure that any such activity does not result in migration, seepage, or recirculation of smoke or other exhaled material to any indoor public place or workplace.

#### Business Treatment of Cannabis Licensees

Concerning the business treatment of any licensee:

A financial institution, as defined by section 2 of P.L.1983, c.466 (C.17:16K-2), would not be permitted to engage in any discriminatory activities with respect to the banking activities of a cannabis business, or the banking activities of a person associated with a cannabis business. Any such activities could result in the suspension or revocation of a financial institution’s charter or other available enforcement action by the Commissioner of Banking and Insurance. Additionally,

(1) a cannabis cultivator would be prohibited from operating or being located on any land that is valued, assessed, or taxed as an agricultural or horticultural use pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.);

(2) a person or entity issued any class of license to operate a cannabis business would not be eligible for a State or local economic



incentive during the period of time that the economic incentive is in effect;

(3) the issuance of a license to operate as any class of cannabis business to a person or entity that has been awarded a State or local economic incentive would invalidate the right of the person or entity to benefit from the economic incentive as of the date of issuance of the license;

(4) a property owner, developer, or operator of a project to be used, in whole or in part, by or to benefit a cannabis business would not be eligible for a State or local economic incentive during the period of time that the economic incentive is in effect; and

(5) the issuance of a license to operate as any class of cannabis business at a location that is the subject of a State or local economic incentive would invalidate the right of a property owner, developer, or operator to benefit from the economic incentive as of the date of issuance of the license.

New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund

All license fees and penalties collectable by the commission would be deposited into a new fund, referred to as the “Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Fund.” This fund would also receive deposits from the tax revenues collected on medical cannabis transactions pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.), as well as tax revenues on retail sales of personal use cannabis items, which tax is mandated by paragraph 13 of Section VII of Article IV of the New Jersey Constitution legalizing and permitting the State’s regulation of cannabis. Monies in this fund would be appropriated by the Legislature annually as follows:

(1) at least 70 percent of the tax revenues on retail sales of cannabis items would be appropriated for investments, including through grants, loans, reimbursements of expenses, and other financial assistance, in municipalities described above that would be designated as an “impact zone,” as well as provide direct financial assistance to qualifying persons residing therein; and

(2) the remainder of the monies in the fund would be appropriated to include: paying for the operational costs of the commission; reimbursing expenses incurred by any county or municipality, or by the Division of State Police, for the training costs associated with the attendance and participation of a police officer or trooper in a Drug Recognition Expert program for detecting, identifying, and apprehending drug-impaired motor vehicle operators; and further investments in “impact zone” municipalities.

Any of the monies appropriated for “impact zone” municipalities that come from the initial dedication of at least 70 percent of monies in the fund from the sales tax on retail transactions would be offset by any revenue constitutionally dedicated to “impact zone”

municipalities, should such a constitutional amendment be passed by the public. See, e.g., Senate Concurrent Resolution No. 138, introduced December 7, 2020.

#### Optional Social Equity Excise Fee on Cultivation Activities

The bill would establish an optional Social Equity Excise Fee that could be imposed by the commission on personal use cultivation activities by licensed cannabis cultivators, including those alternative treatment centers deemed to be, and actually issued, cultivation licenses; medical cannabis cultivation activities would not be subject to the excise fee. If imposed, the fee would apply to cultivator sales or transfers of usable cannabis to other cannabis businesses, other than another cultivator, and would initially be 1/3 of 1 percent of the Statewide average retail price of an ounce of usable cannabis for consumer purchase. Beginning nine months following the first sale or transfer of usable cannabis subject to the excise fee by a cultivator that is not also an alternative treatment center, the fee could be adjusted by the commission annually, based on the previous year's retail price, as follows:

(1) up to \$10 per ounce, if the average retail price of an ounce of usable cannabis was \$350 or more;

(2) up to \$30 per ounce, if the average retail price of an ounce of usable cannabis was less than \$350 but at least \$250;

(3) up to \$40 per ounce, if the average retail price of an ounce of usable cannabis was less than \$250 but at least \$200; and

(4) up to \$60 per ounce, if the average retail price of an ounce of usable cannabis was less than \$200.

Any revenues generated by the excise fee would be deposited in the aforementioned "Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund," and specifically designated for annual appropriations by the Legislature, separately from the other monies appropriated as described above, following the commission's consultation with the Governor and Legislature. These appropriations would invest, through grants, loans, reimbursements of expenses, and other financial assistance in for-profit and non-profit organizations, public entities, as well as direct financial assistance to individuals, in order to create, expand, or promote educational and economic opportunities and activities, and the health and well-being of both communities and individuals. If the excise fee was not imposed or adjusted as previously described, then appropriations would be made from the General Fund for such purposes in an amount equal to the revenues that would have been collected had it been imposed or adjusted.

#### Optional Municipal-Level Taxation

The bill would also permit any municipality to adopt an ordinance that authorized a local transfer tax. This transfer tax could be imposed on sales that occur within the municipality: between a cannabis

business that holds a cultivator, manufacturer, wholesaler, or retail cannabis license and another such licensed cannabis business; between cannabis retailers and customers; or any combination thereof. This local tax could not be imposed on transfers involving distributors for purposes of the bulk transportation of cannabis items, or delivery services for purposes of delivering cannabis items to consumers. The municipality would have discretion to set the rate or rates of the transfer tax, but a rate could not exceed: two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer. This tax, if imposed, would be applied in the form of an equivalent user tax on non-sale transactions between cannabis businesses operated by the same license holder. The local transfer tax or user tax would be collected by cannabis businesses and forwarded to the chief financial officer of the municipality for use by that municipality.

Legalized and Prohibited Activities Concerning Personal Use Cannabis Items

Once the provisions for the lawful personal use of cannabis items become operative and retail sales of cannabis items have begun, the following acts would not be an offense under the “New Jersey Code of Criminal Justice,” Title 2C of the New Jersey Statutes, for a person 21 years of age or older:

(1) possessing, purchasing, or transporting: cannabis paraphernalia; one ounce or less of usable cannabis; the equivalent of one ounce or less of usable cannabis as a cannabis product in solid, liquid, or concentrate form, based upon an equivalency calculation for different product forms set by the commission in its regulations; or five grams or less of cannabis resin;

(2) transferring any cannabis item in any amount described above to another person 21 years of age or older, so long as the transfer is for non-promotional, non-business purposes; and

(3) taking delivery of or consuming any lawfully acquired cannabis item, provided that nothing in the bill is intended to permit a person to smoke, vape, or aerosolize a cannabis item in a public place, other than a designated consumption area as detailed above.

A person possessing, purchasing, transporting, or transferring to another at any one time any cannabis item in an amount greater than as permitted would generally be considered a violation of the “Comprehensive Drug Reform Act of 1987,” P.L.1987, c.106 (N.J.S.2C:35-1 et al.), and would subject the person to a prosecution as if the person possessed, purchased, transported, or transferred illegal marijuana or hashish in violation of that act, which as further discussed below, is being amended to regrading and decriminalizing several small amount marijuana and hashish distribution and possession offenses.

With respect to consumption, the smoking, vaping, or aerosolizing of a cannabis item would be prohibited in any place pursuant to law that prohibits the smoking of tobacco, including the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), as well as any “indoor public place” as defined in that act (even if such a place is otherwise permitted to allow the smoking of tobacco), except that smoking, vaping, or aerosolizing would be permitted in a designated consumption area or in up to 20 percent of the guest rooms of a hotel, motel, or other lodging establishment as permitted by the person or entity that owns or controls that establishment. The smoking, vaping, or aerosolizing of cannabis items could also be prohibited or otherwise regulated in private multifamily housing, as decided by the person or entity that owns or controls the housing, in the structure or specific units within the structure of a cooperative by the corporation of other legal entity that owns the structure, and in the units of a condominium, if approved by its association and a majority of all of the unit owners. Any fines or civil penalties that could be assessed for the smoking of tobacco where prohibited under the “New Jersey Smoke-Free Air Act” would be applicable to the smoking, vaping, or aerosolizing of cannabis where prohibited under this bill, other than smoking, vaping, or aerosolizing on elementary or secondary school property, which would be classified as a disorderly persons offense (punishable by imprisonment for up to six months, a fine of up to \$1,000, or both).

As to consumption other than by smoking, vaping, or aerosolizing: a person or entity that owns or controls a property, except for multifamily housing, the structure or specific units of the structure of a cooperative, a unit of a condominium, or a site in a mobile home park on which a manufactured home is located, could prohibit or otherwise regulate consumption on or in that property; and a municipality would be empowered to enact an ordinance making it unlawful for any person 21 years of age or older to consume any cannabis item in a public place, other than school property (which would be punishable as a disorderly persons offense), and the ordinance could provide for a civil penalty of up to \$200 per violation. The bill would also prohibit consumption in any area of any building of, on the grounds of, or in any facility owned, leased, or controlled by, any public or private institution of higher education or a related entity thereof, regardless of whether the area or facility is an indoor place or outdoors, and the penalty provisions of the “New Jersey Smoke-Free Air Act” would be applicable for a violation.

Mere possession of a cannabis item (in addition to consuming such item) on elementary or secondary school property by a person of legal age to purchase such item would be a disorderly persons offense, as is the case currently with respect to the unauthorized possession of alcohol on such property (punishable by imprisonment for up to six months, a fine of up to \$1,000, or both).

Regarding the possession or consumption of a cannabis item by a person under the legal age to purchase cannabis, the bill expands the current laws addressing underage possession or consumption of alcoholic beverages to include cannabis items, however consistent with P.L.2019, c.363 (C.52:17B-171.14 et al.), which broadly eliminated the imposition of fines against juvenile delinquents, and P.L.2020, c.50, which accelerated the implementation of this new policy, a fine associated with a violation would not apply to a delinquent offender (under 18 years of age):

(1) for possession in a public place, of an amount that may be lawfully possessed by a person of legal age to purchase cannabis items, the offense would be a petty disorderly persons offense, subject to a fine of not less than \$250; for possession in a public place, of an amount that exceeds what may be lawfully possessed, or who knowingly consumes any cannabis item in such place, the offense is a disorderly persons offense subject to a fine of not less than \$500; and

(2) for possession on private property, of an amount that may be lawfully possessed by a person of legal age to purchase cannabis items, a first offense would be a civil penalty of \$100, and a second offense would be a civil penalty of \$200; a third or subsequent offense would be a municipal fine of \$350, which is the same as a subsequent offense for possession of an alcoholic beverage on private property; for possession on private property, of an amount of cannabis items that exceeds what may be lawfully possessed, or consumption of any cannabis item on private property, a first offense would be a municipal fine of \$250, and a second or subsequent offense would be a municipal fine of \$350 (the same penalties as applicable to possession or consumption of an alcoholic beverage).

It would also be unlawful, generally punishable as a \$50 civil penalty, for an underage person to present a false identification in order to obtain cannabis items available for lawful consumption; this would differ than using a false identification with respect to alcoholic beverages, which is expressly noted in State law as not constituting an offense and therefore carries with it no statutory punishment.

Finally, similar to the statutory law's treatment of the possession of an "open container" of alcohol, or consumption of alcohol, while operating a motor vehicle, the bill would amend relevant laws in Title 39 of the Revised Statutes to make it a motor vehicle offense for the motor vehicle operator to possess an "open container" or "open package" of a cannabis item. A first offense would be subject to a fine of \$200, and a subsequent offense would be subject to a fine of \$250 or alternatively imposition of a period of community service, the same penalties applied to violations involving an alcoholic beverage. Passengers in motor vehicles would be permitted to possess and consume cannabis items, other than such items intended for smoking, vaping, or aerosolizing.

### Law Enforcement Drug Recognition Experts

The bill would also codify and expand elements of the existing law enforcement certification process for police officers and others to become a Drug Recognition Expert in order to detect, identify, and apprehend drug-impaired motor vehicle operators. The new standards and course curricula would be offered by schools approved by the Police Training Commission, and the training commission would consult with the Cannabis Regulatory Commission with respect to aspects of the course curricula that focus on impairment from the use of cannabis items or marijuana. Any police officer certified and recognized by the Police Training Commission as a Drug Recognition Expert prior to the effective date of the bill would continue to be recognized as certified until that certification has expired or was no longer considered valid as determined by that commission, or the certification was replaced with a new certification in accordance with the new standards and course curricula for certification set forth in the bill.

### Consumer and Employee Protections, and Employer Workplace Policies

Individuals (and licensed cannabis businesses) would not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil liability or disciplinary action by a business, occupational, or professional licensing board or bureau, solely for engaging in conduct with respect to personal use cannabis activities as permitted under the bill. Additionally, the presence of cannabinoid metabolites in the bodily fluids of a person engaged in such permitted conduct:

(1) with respect to a student, tenant, or employee, other than as discussed below concerning employer actions and policies, could not form the basis for refusal to enroll or employ or lease to or otherwise penalize that person, unless failing to do so would put the school, employer, or landlord in violation of a federal contract or cause it to lose federal funding;

(2) with respect to a patient, could not constitute the use of an illicit substance resulting in denial of medical care, including organ transplant, and a patient's use of cannabis items may only be considered with respect to evidence-based clinical criteria; and

(3) with respect to a parent or legal guardian of a child or newborn infant, or a pregnant woman, could not form the sole or primary basis for any action or proceeding by the Division of Child Protection and Permanency, or any successor agencies; provided, however, that nothing would preclude any action or proceeding by the division based on harm or risk of harm to a child or the use of information on the presence of cannabinoid metabolites in the bodily fluids of any person in any action or proceeding.

An employer would not be permitted to refuse to hire or employ a person, or discharge or take any adverse action against an employee

because that person or employee does or does not use cannabis items. However, an employer could require an employee to undergo a drug test upon reasonable suspicion of an employee's usage of a cannabis item while engaged in the performance of the employee's work responsibilities, or upon finding any observable signs of intoxication related to usage of a cannabis item, or following a work-related accident subject to investigation by the employer. An employer could also require random testing, or testing as part of a pre-employment screening, or regular screening of current employees to determine use during an employee's prescribed work hours. The employer could utilize the results of any such drug test when determining the appropriate employment action concerning the employee.

An employee drug test would be required to include scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva, plus a physical evaluation in order to determine an employee's state of impairment that was performed by a commission certified Workplace Impairment Recognition Expert. The certification program would be developed by the commission in consultation with the Police Training Commission, and would prescribe standards, minimum curriculum courses of study, and the approval of private programs, organizations, and schools and their instructors to offer courses of study, for full- or part-time employees, or other contracted persons working for or on behalf of employers. These certified persons would be trained to detect and identify an employee's use of cannabis items or other intoxicating substances, and assist in the investigation of workplace accidents.

Additionally, nothing in the bill would require an employer to amend, repeal, or otherwise affect an employer's policy and efforts to maintain a drug- and alcohol-free workplace, or require an employer to permit or accommodate any personal use cannabis activities in the workplace.

#### Decriminalization of Marijuana and Hashish, Regrading Certain Offenses, and Criminal Justice Relief

Under current law, distributing one ounce or more but less than five pounds of marijuana, or five grams or more but less than one pound of hashish, is punishable as a crime of the third degree; this crime can result in a term of imprisonment of three to five years, an enhanced fine of up to \$25,000, or both. Distribution of any smaller amounts, that is, less than one ounce of marijuana or less than five grams of hashish, is punishable as a crime of the fourth degree; this crime can result in a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. See N.J.S.2C:35-5, subsection b., paragraphs (11) and (12).

The bill would retain as a crime of the third degree the distribution of less than five pounds of marijuana, but slightly raise the minimum amount that falls under this degree to be *more than one ounce* instead of *one ounce or more*, and distribution of less

than one pound of hashish would also remain a third degree crime, but the minimum amount for this violation would be *more than five grams* instead of *five grams or more*; it would regrade the distribution of lesser amounts of marijuana and hashish as follows:

(1) one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an act subject to a written warning, which also indicates that any subsequent violation is a crime punishable by a term of imprisonment, a fine, or both; and

(2) a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and be subject to the same penalties, including an enhanced fine, as described above.

The bill would also change the applicable amounts that constitute the unlawful possession of marijuana or hashish, which is currently a crime of the fourth degree (up to 18 months imprisonment; up to \$25,000 fine; or both) when the act involves more than 50 grams of marijuana or more than five grams of hashish, and, when the act involves lesser amounts, a disorderly persons offense (up to six months imprisonment; up to \$1,000 fine; or both). See N.J.S.2C:35-10, subsection a., paragraphs (3) and (4).

Under the bill, unlawful possession would be any amount of marijuana over six ounces, and for hashish, over 17 grams, punishable as a crime of the fourth degree (with the same penalties as the current law). Possession of up to six ounces of marijuana, or up to 17 grams of hashish would be completely decriminalized and have no associated criminal or civil penalties.

Regarding the above described small amount unlawful distribution and unlawful possession with associated criminal penalties, the odor of marijuana or hashish, or burnt marijuana or hashish, would not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of law. Additionally, a person would not be subject to arrest, being detained, or otherwise being taken into custody unless the person had committed another violation of the law. Also, a person who committed such a violation could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing that act, nor would committing one or more such acts modify any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law.

All local and county law enforcement authorities would, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number of distribution or possession violations committed within



their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations investigated and associated information collected by the State Police for the same period would be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports would be made available at no cost to the public on the State Police's Internet website.

Using or being under the influence of marijuana or hashish, or failing to voluntarily deliver such to a law enforcement officer, both currently disorderly persons offenses (up to six months imprisonment; up to \$1,000 fine; or both), would no longer be illegal acts, and thus there would be no legal consequences flowing from using, being under the influence of, or failing to deliver to law enforcement, marijuana or hashish. Using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body would also no longer be considered an illegal act; under current law, it is graded as a disorderly persons offense.

Notwithstanding that using or being under the influence of marijuana or hashish, or using or possessing drug paraphernalia to use with marijuana or hashish, would no longer be illegal acts, the smoking, vaping, or aerosolizing of marijuana or hashish, and the use of drug paraphernalia to ingest or otherwise introduce these substances into the human body, could be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

As to individuals facing existing consequences associated with their past distribution, possession, or drug paraphernalia offenses involving marijuana or hashish, the bill provides multiple opportunities for criminal justice relief.

No prosecutor shall pursue any charge, including a charge of delinquency, pending with a court on the first day of the fifth month next following enactment of the bill, which takes effect immediately, and for which the delay provides time for Statewide administrative preparation, based on any of the following crimes or offenses:

(1) unlawful distribution of less than one ounce of marijuana, or less than five grams of hashish, in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5;

(2) obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10;

(3) a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2;

(4) a violation involving any of the aforementioned offenses and possession of that marijuana or hashish while operating a motor vehicle in violation of section 1 of P.L.1964, c.289 (C.39:4-49.1); and

(5) any disorderly persons offense or petty disorderly persons offense involving a controlled dangerous substance (which only applies to small amount marijuana or hashish offenses) or drug paraphernalia that is subject to conditional discharge pursuant to N.J.S.2C:36A-1.

The non-prosecutable charges and cases for the above violations would be expeditiously dismissed, which could be accomplished by appropriate action by the prosecutor based upon guidelines issued by the Attorney General, or the court's own motion based upon administrative directives issued by the Administrative Director of the Court.

Any guilty verdict, plea, placement in a diversionary program, or other entry of guilt on any matter involving the aforementioned marijuana and hashish crimes and offenses that was entered prior to the effective date of the bill, but the judgment of conviction or final disposition on the matter was not entered prior to that date, would be vacated by operation of law. The vacating of all such matters would occur on the same delayed date applicable to ceasing to pursue and dismiss pending charges to permit Statewide administrative preparation to execute these provisions of the bill. The Administrative Director of the Courts, in consultation with the Attorney General would be expressly authorized to take anticipatory administrative action necessary to vacate the guilty verdicts, pleas, placements in a diversionary program, or other entry of guilt.

Any conviction, remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment of any person who, on the bill's effective date, is or will be serving a sentence of incarceration, probation, parole, or other form of community supervision due to a conviction or adjudication of delinquency solely for one or more of the aforementioned marijuana and hashish crimes would have those matters vacated by operation of law, to be effective on the same delayed date previously stated, again providing time for Statewide administrative preparation to properly and completely vacate all matters.

For any case from prior to the effective date of the bill concerning the aforementioned marijuana and hashish crimes and offenses, those cases, upon the same delayed date previously stated for the other criminal justice relief actions, would be expunged as a matter of law. The Administrative Director of the Courts, in consultation with the Attorney General, would be expressly authorized to take anticipatory administrative action necessary to expeditiously effectuate the expungements of records carried out by operation of law.

No Forfeiture or Postponement of Driving Privileges for Certain Marijuana and Hashish Offenses

As part of a court sentence or adjudication of delinquency imposed after the bill's effective date, a person would not be subject to a forfeiture or postponement of the person's driving privileges based on a conviction or finding of delinquency for any of the following offenses:

(1) unlawful distribution of, or possessing or having under control with intent to distribute, less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

(2) obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of any amount of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., subsection b., or subsection c. of N.J.S.2C:35-10; or

(3) a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

De-scheduling Marijuana as a Schedule I Controlled Dangerous Substance

On and after the effective date of the bill, marijuana would no longer be included as a Schedule I controlled dangerous substance, which are substances considered to have a high potential for abuse and no accepted medical use, as described in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et al.). The bill also expressly states that marijuana may not be designated or rescheduled and included in any other schedule by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to the director's designation and rescheduling authority set forth in section 3 of P.L.1970, c.226 (C.24:21-3).

Reporting Requirements by the Commission

Lastly, the commission would annually report to the Governor and Legislature regarding the commission’s regulation and enforcement activities associated with the personal use of cannabis pursuant to the bill (and the medical use of cannabis pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act”). The annual report would include information on: the number of criminal arrests or charges for smaller amount marijuana or hashish distribution or possession (amounts that exceed the new decriminalized amounts described above), cataloged by the jurisdictions in which the acts resulting in the citations, arrests, or charges occurred, and the race, ethnicity, gender, and age of the persons cited, arrested, or charged; the number of motor vehicle stops by law enforcement for driving under the influence of personal use cannabis or marijuana, cataloged in the same manner; the total number of personal use cannabis licenses issued since the distribution of the previous report to the Governor and Legislature, as well as the number for each class of license issued; the total number and type of applicants that submitted applications for licenses and whether they were approved, reapproved, or denied, plus data compiled by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development about participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities, as well as minority owned, disabled veterans’ owned, and women’s owned business development in the personal use cannabis marketplace.

This bill, as amended and reported, is identical to the Second Reprint of Senate Bill No. 21, as reported by the Senate Judiciary Committee with amendments on December 14, 2020.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- revise the definition of “impact zones,” as described in the statement above, to broaden the criteria of eligible municipalities associated with past criminal enterprises contributing to higher concentrations of law enforcement activity, unemployment, and poverty, or any combination thereof;

- define “bona fide labor organization,” which may include characteristics such as being a party to an executed collective bargaining agreement with medical or personal use cannabis employers or being affiliated with any regional or national association of unions, for purposes of determining an applicant’s involvement with such an organization with respect to the prioritization of applications for licensure as described in the statement above;

- increase the number of available clinical registrant permits, from four to five, that could be applied for, subject to review and approval by the commission;

- prohibit a cannabis retailer's premises from being located in or upon any premises in which operates a grocery store, delicatessen, indoor food market, or other store engaging in retail sales of food, or in or upon any premises in which operates a store that engages in licensed retail sales of alcoholic beverages;

- establish that the commission would create a process to allow a microbusiness, while still issued a valid microbusiness-designated license, to apply to convert and continue operations as a licensed business that is not subject to the operational limitations for microbusinesses, as described in the statement above;

- clarify that an independent third party, through a technology platform such as the Internet, may be used by a licensed cannabis retailer to assist with that retailer's receipt, processing, and fulfilling of orders by consumers, and this third party need not be licensed as any form of cannabis business, so long as all physical acts in connection with fulfilling the order and delivery are done through certified cannabis handlers on behalf of the retailer;

- shift the timeframe of the initial 24-month marketplace transition, as described in the statement above, so that it begins on the bill's effective date, which is immediately upon enactment;

- allow the holder of a Class 3 Cannabis Wholesaler license to also hold one other Class 4 Cannabis Distributor license during and after the 24-month transition period;

- adjust the formula for appropriating monies in the "Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund," other than monies based on the Social Equity Excise Fee (appropriated through a different process), so that at least 70 percent of just the tax revenues on retail sales of cannabis items, and no other revenue sources in the fund such as fees and penalties, would be appropriated for investments in "impact zone" municipalities, leaving more monies available for funding cannabis regulatory operations and paying training costs for law enforcement Drug Recognition Experts;

- require that an employee drug test include a physical examination conducted by a commission-certified Workplace Impairment Recognition Expert, as such a certification, developed by the commission as described in the statement above, is necessary in order to opine on an employee's state of impairment;

- add criminal justice reforms with respect to several offenses associated with distribution or possession of smaller amounts of marijuana or hashish, through such means as decriminalizing such offenses, requiring dismissal of pending charges, vacating current entries of guilt or placement in diversionary programs, and vacating current convictions for such offenses, as well as expunging past charges, arrests, convictions, and adjudications of delinquency for such offenses and providing for administrative action to expunge records associated with any such matters, as described in the statement above;

- make edits to fix drafting errors, provide for more proper usage of defined terms, and create better language consistency throughout the entire bill; and

- update the bill's synopsis to reflect changes to the bill resulting from the amendments.

FISCAL IMPACT:

The Office of Legislative Services anticipates that the bill will both raise and lower the annual revenues and expenditures of the State as well as municipal and county governments by indeterminate amounts. The following analysis does not consider the fiscal effects of the constitutional amendment that voters approved in November 2020 that legalized personal use cannabis generally and addressed the taxation thereof.

State Government Revenue Effects: Annual State revenues will grow on account of: 1) application, license, certification and criminal background check fees to be paid by persons seeking to participate in the regulated personal use cannabis marketplace; and 2) penalties and fines to be paid for violations of the numerous regulatory and other provisions of the bill. If the Cannabis Regulatory Commission were to impose the optional Social Equity Excise Fee, the State would receive additional revenue each year.

The annual revenue gain will be somewhat counterbalanced by an annual State revenue loss arising from the decriminalization and downgrading of certain marijuana- and hashish-related offenses, as collections from court filing fees and penalties will decline.

State Government Expenditure Effects: Annual State expenditures will rise as a result of the regulation and oversight of the personal use cannabis marketplace, the enforcement of the regulations, the reimbursement of municipal and county expenditures for police officers to participate in drug recognition training, and the granting of financial assistance to municipalities defined as an "impact zone" in the bill and their qualifying residents.

The bill will also lower annual State expenditures as fewer marijuana- and hashish-related acts will enter the criminal justice system and other marijuana- and hashish-related delinquencies will be downgraded to lower terms of incarceration.

Further, a one-time State expenditure decrease will arise from the dismissal of certain pending marijuana- and hashish-related charges and the vacating of certain current convictions for such offenses.

Local Government Revenue Effects: Annual revenues of municipal and county governments will increase from: 1) municipal application and license fees to be paid by persons seeking to operate regulated personal use cannabis establishments within the jurisdiction of a municipality that elects to regulate and license the establishments; 2) fines to be paid for violations of municipal license requirements and regulations; and 3) State reimbursements paid to municipal and county

governments for expenses they incur in providing drug recognition training to their police officers.

The revenue gain will be lessened by a loss of annual municipal fine and court filing fee revenue as fewer marijuana- and hashish-related disorderly persons and petty disorderly persons offenses will be tried in municipal courts and as the bill downgrades the underage possession and consumption of alcoholic beverages from a disorderly persons offense to a petty disorderly persons offense. Municipal courts try both offenses and the municipality in which a case is tried receives any penalty or fine that its municipal court imposes on a defendant.

Local Government Expenditure Effects: Annual municipal and county government expenditures will shrink as county and municipal prosecutor's offices will prosecute fewer marijuana- and hashish-related disorderly persons and petty disorderly persons offenses, municipal courts will try fewer such cases, and fewer defendants will be convicted to county jail terms.

Further, a one-time municipal and county expenditure decrease will accrue from the dismissal of certain pending marijuana- and hashish-related charges and the vacating of certain current convictions for such offenses.

Conversely, annual municipal and county government expenditures will grow related to the optional regulation and oversight of personal use cannabis businesses by municipalities, the enforcement of the municipal regulations and State law pertaining to personal use cannabis, and the provision of drug recognition training to police officers.