

ASSEMBLY, No. 5522

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 22, 2021

Sponsored by:

Assemblyman BRIAN BERGEN

District 25 (Morris and Somerset)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

Assemblyman CHRISTOPHER P. DEPHILLIPS

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblywoman Stanfield and Assemblyman Scharfenberger

SYNOPSIS

Provides employer and employee protections pursuant to the use of legalized cannabis items.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2021)

1 AN ACT concerning employment issues related to the use of
2 legalized cannabis items, and amending P.L.2021, c.16 and
3 P.L.1961, c.56.

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

7
8 1. Section 48 of P.L.2021, c.16 (C.24:6I-52) is amended to read
9 as follows:

10 48. Employers, Driving, Minors and Control of Property.

11 a. (1) No employer shall refuse to hire or employ any person
12 or shall discharge from employment or take any adverse action
13 against any employee with respect to compensation, terms,
14 conditions, or other privileges of employment because that person
15 does or does not smoke, vape, aerosolize or otherwise use cannabis
16 items, and an employee shall not be subject to any adverse action
17 by an employer solely due to the presence of cannabinoid
18 metabolites in the employee's bodily fluid from engaging in
19 conduct permitted under P.L. 2021, c. 16 (C.24:6I-31 et al.) except
20 as otherwise provided in this section. However, an employer may
21 require an employee to undergo a drug test upon reasonable
22 suspicion of an employee's usage of a cannabis item while engaged
23 in the performance of the employee's work responsibilities, or upon
24 finding any observable signs of intoxication related to usage of a
25 cannabis item, or following a work-related accident subject to
26 investigation by the employer. A drug test may also be done
27 randomly by the employer**【, or】** as part of a **【pre-employment**
28 **screening, or】** regular screening of current employees to determine
29 use during an employee's prescribed work hours. A drug test for
30 cannabis shall not be done as part of a pre-employment screening,
31 except for the employees outlined in paragraph (1) of subsection b.
32 of this section. The drug test shall include scientifically reliable
33 objective testing methods and procedures, such as testing of blood,
34 urine, or saliva, and may include a physical evaluation in order to
35 determine an employee's state of impairment. The physical
36 evaluation shall be conducted by an individual with the necessary
37 certification to opine on the employee's state of impairment, or lack
38 thereof, related to the usage of a cannabis item in accordance with
39 paragraph (2) of this subsection. The employer may use the results
40 of the drug test when determining the appropriate employment
41 action concerning the employee, including, but not limited to
42 dismissal, suspension, demotion, or other disciplinary action.

43 (2) (a) In order to better ensure the protections for prospective
44 employees and employees against refusals to hire or employ, or
45 against being discharged or having any other adverse action taken

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 by an employer, while simultaneously supporting the authority of
2 employers to require employees undergo drug tests under the
3 circumstances set forth in paragraph (1) of this subsection, as well
4 as employer efforts to maintain a drug- and alcohol-free workplace
5 or other drug- or alcohol workplace policy as described in
6 paragraph (1) of subsection b. of this section, the commission, in
7 consultation with the Police Training Commission established
8 pursuant to section 5 of P.L.1961, c.56 (C.52:17B-70), shall
9 prescribe standards in regulation for a Workplace Impairment
10 Recognition Expert certification, to be issued to full- or part-time
11 employees, or others contracted to perform services on behalf of an
12 employer, based on education and training in detecting and
13 identifying an employee's usage of, or impairment from, a cannabis
14 item or other intoxicating substance, and for assisting in the
15 investigation of workplace accidents. The commission's
16 regulations shall also prescribe minimum curriculum courses of
17 study for the certifications, as well as standards for the
18 commission's approval and continuation of approval of non-profit
19 and for-profit programs, organizations, or schools and their
20 instructors to offer courses of study, and may include the use of a
21 Police Training Commission approved school as that term is
22 defined in section 2 of P.L.1961, c.56 (C.52:17B-67) if consented to
23 by the Police Training Commission.

24 An employer may determine to employ or not to employ a
25 Workplace Impairment Recognition Expert in the employer's
26 discretion. Nothing in this subsection shall be interpreted to
27 require that an employer use a Workplace Impairment Recognition
28 Expert for either drug testing or determinations of suspicion of an
29 employee's usage of a cannabis item while engaged in the
30 performance of the employee's work responsibilities nor shall the
31 use of the Workplace Impairment Recognition Expert be deemed
32 the industry standard for testing or making such suspicion
33 determinations. An employer shall remain free to use scientifically
34 reliable testing services and to exercise its own judgment in making
35 a good faith suspicion determination.

36 (b) Any person who demonstrates to the commission's
37 satisfaction that the person has successfully completed a Drug
38 Recognition Expert program provided by **【a Police Training**
39 **Commission approved school】** the New Jersey State Police, or
40 another program or course conducted by any federal, State, or other
41 public or private agency, the requirements of which are
42 substantially equivalent to the requirements established by the
43 commission pursuant to subparagraph (a) of this paragraph for a
44 Workplace Impairment Recognition Expert certification, may, at the
45 discretion of the commission, be issued this certification, subject to
46 subsequent continuation of certification approval by the
47 commission.

1 b. Nothing in P.L. 2021, c.16 (C.24:6I-31 et al.):

2 (1) (a) Requires an employer to amend or repeal, or affect,
3 restrict or preempt the rights and obligations of employers to
4 maintain a drug- and alcohol-free workplace or require an
5 employer to permit or accommodate the use, consumption, being
6 under the influence, possession, transfer, display, transportation,
7 sale, or growth of cannabis or cannabis items in the workplace, or to
8 affect the ability of employers to have policies prohibiting use of
9 cannabis items or intoxication by employees during work hours;

10 No employer shall take any action which has the effect of
11 prohibiting an employee using cannabis items during non-work
12 hours except:

13 (i) upon a determination by an employer that the nature of the
14 work of an employee at a critical infrastructure facility or a
15 construction site has an exceptionally high risk of potential harm to
16 other employees or to public safety if the employee were to be
17 impaired through the use of cannabis. The approval to designate
18 categories of such employees, or a specific employee of an
19 employer, shall be made by the commission upon application of the
20 employer. The commission shall approve such application upon
21 finding that the standards set forth in this subsubparagraph have
22 been met.

23 As used in this subsubparagraph “critical infrastructure facility”
24 means: a facility identified in the United States Department of
25 Energy, 2015 Energy Sector-Specific (SSP) prepared in accordance
26 with section 1016 (e) of the USA Patriot Act of 2001 (42 U.S.C.
27 519c(e)) or any amendment, supplement or similar plan or
28 definition; or a facility operated by an air carrier certificated by the
29 Federal Aviation Administration;

30 (ii) when the nature of the work of an employee is operating,
31 maintaining, constructing or repairing a public utility that is subject
32 to the jurisdiction of the Board of Public Utilities;

33 (iii) when such actions are required under the federal Omnibus
34 Transportation Employee Testing Act of 1991, 49 U.S.C. s. 5331;

35 (iv) when the employer is subject to the Railway Labor Act, 45
36 U.S.C. § 151 et seq.; or

37 (v) when the employee is a law enforcement officer and the
38 duties of the employment require the possession of a firearm.

39 (b) If any of the provisions set forth in this paragraph or
40 subsection a. of this section result in a provable adverse impact on
41 an employer subject to the requirements of a federal contract, then
42 the employer may revise their employee prohibitions consistent
43 with federal law, rules, and regulations;

44 (2) Is intended to allow driving under the influence of cannabis
45 items or driving while impaired by cannabis items or to supersede
46 laws related to driving under the influence of marijuana or cannabis
47 items or driving while impaired by marijuana or cannabis items ;

1 (3) Is intended to permit the transfer of cannabis items, with or
2 without remuneration, to a person under 21 years of age or to allow
3 a person under 21 years of age to purchase, possess, use, transport,
4 grow, or consume cannabis items, unless the person is under 21
5 years of age, but at least 18 years of age, and an employee of a
6 cannabis establishment, distributor, or delivery service acting in the
7 person's employment capacity;

8 (4) Shall, consistent with subsection c. of section 46 of
9 P.L.2021 , c.16 (C.2C:35-10a), prohibit a person or entity that
10 owns or controls a property from prohibiting or otherwise
11 regulating the consumption, use, display, transfer, distribution, sale,
12 or transportation of cannabis items on or in that property, or portion
13 thereof, including a hotel property that is a casino hotel facility as
14 defined in section 19 of P.L.1977, c.110 (C.5:12-19), a casino as
15 defined in section 6 of P.L.1977, c.110 (C.5:12-6), or casino
16 simulcasting facility authorized pursuant to the "Casino
17 Simulcasting Act," P.L.1992, c.19 (C.5:12-191 et al.), provided that
18 a person or entity that owns or controls multifamily housing that is
19 a multiple dwelling as defined in section 3 of P.L.1967, c.76
20 (C.55:13A-3), the structure or specific units of the structure of a
21 cooperative as defined in section 3 of P.L.1987, c.381 (C.46:8D-3),
22 a unit of a condominium as defined in section 3 of P.L.1969, c.257
23 (C.46:8B-3), or a site in a mobile home park as defined in section 3
24 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the
25 owner of a manufactured home, as defined in that section, that is
26 installed thereon, may only prohibit or otherwise regulate the
27 smoking, vaping, or aerosolizing, but not other consumption, of
28 cannabis items, and further provided that municipalities may not
29 prohibit delivery, possession, or consumption of cannabis items by
30 a person 21 years of age or older as permitted by section 46 of
31 P.L. 2021 , c. 16 (C.2C:35-10a) ;

32 (5) Is intended to permit any person to possess, consume, use,
33 display, transfer, distribute, sell, transport, or grow or manufacture
34 cannabis or cannabis items in a school, hospital, detention facility,
35 adult correctional facility, or youth correctional facility ;

36 (6) Is intended to permit the smoking, vaping, or aerosolizing of
37 cannabis items in any place that any other law prohibits the
38 smoking of tobacco, including N.J.S.2C:33-13 and the "New Jersey
39 Smoke-Free Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.). Except
40 as otherwise provided by P.L.2021, c. 16 (C. 24:6I-31 et al.), any
41 fines or civil penalties that may be assessed for the smoking of
42 tobacco in designated places shall be applicable to the smoking,
43 vaping, or aerosolizing of cannabis items.

44 (cf:P.L.2021, c.16, s.48)

45
46 2. Section 6 of P.L.1961, c.56 (C.52:17B-71) is amended to
47 read as follows:

- 1 6. The commission is vested with the power, responsibility and
2 duty:
- 3 a. To prescribe standards for the approval and continuation of
4 approval of schools at which police training courses authorized by
5 this act and in-service police training courses shall be conducted,
6 including but not limited to currently existing regional, county,
7 municipal, and police chief association police training schools or at
8 which basic training courses and in-service training courses shall be
9 conducted for State and county juvenile and adult correctional
10 police officers and juvenile detention officers;
- 11 b. To approve and issue certificates of approval to these
12 schools, to inspect the schools from time to time, and to revoke any
13 approval or certificate issued to the schools;
- 14 c. To prescribe the curriculum, the minimum courses of study,
15 attendance requirements, equipment and facilities, and standards of
16 operation for these schools. Courses of study in crime prevention
17 may be recommended to the Police Training Commission by the
18 Crime Prevention Advisory Committee, established by section 2 of
19 P.L.1985, c.1 (C.52:17B-77.1). The Police Training Commission
20 may prescribe psychological and psychiatric examinations for
21 police recruits while in the schools;
- 22 d. To prescribe minimum qualifications for instructors at these
23 schools and to certify, as qualified, instructors for approved police
24 training schools and to issue appropriate certificates to the
25 instructors;
- 26 e. To certify police officers, correctional police officers,
27 juvenile correctional police officers, and juvenile detention officers
28 who have satisfactorily completed training programs and to issue
29 appropriate certificates to the police officers, correctional police
30 officers, juvenile correctional police officers, and juvenile detention
31 officers;
- 32 f. To advise and consent in the appointment of an
33 administrator of police services by the Attorney General pursuant to
34 section 8 of P.L.1961, c.56 (C.52:17B-73);
- 35 g. (Deleted by amendment, P.L.1985, c.491)
- 36 h. To make rules and regulations as may be reasonably
37 necessary or appropriate to accomplish the purposes and objectives
38 of this act;
- 39 i. To make a continuous study of police training methods and
40 training methods for correctional police officers, juvenile
41 correctional police officers, and juvenile detention officers and to
42 consult and accept the cooperation of any recognized federal or
43 State law enforcement agency or educational institution;
- 44 j. To consult and cooperate with universities, colleges, and
45 institutes in the State for the development of specialized courses of
46 study for police officers in police science and police administration;

- 1 k. To consult and cooperate with other departments and
2 agencies of the State concerned with police training or the training
3 of correctional police officers, juvenile correctional police officers,
4 and juvenile detention officers;
- 5 l. To participate in unified programs and projects relating to
6 police training and the training of correctional police officers,
7 juvenile correctional police officers, and juvenile detention officers
8 sponsored by any federal, State, or other public or private agency;
- 9 m. To perform other acts as may be necessary or appropriate to
10 carry out its functions and duties as set forth in this act;
- 11 n. To extend the time limit for satisfactory completion of police
12 training programs or programs for the training of correctional police
13 officers, juvenile correctional police officers, and juvenile detention
14 officers upon a finding that health, extraordinary workload, or other
15 factors have, singly or in combination, effected a delay in the
16 satisfactory completion of the training program;
- 17 o. (1) To furnish approved schools, for inclusion in their
18 regular police training courses and curriculum, with information
19 concerning the advisability of high speed chases, the risk caused by
20 them, and the benefits resulting from them;
- 21 (2) To **review and approve new standards and course curricula**
22 **for** consult with the New Jersey State Police with respect to its
23 administration of police training courses or programs **to be offered**
24 **by approved schools** for the training of police officers to be
25 certified as a Drug Recognition Expert for detecting, identifying,
26 and apprehending drug-impaired motor vehicle operators. **The**
27 **commission shall** , and to consult with the Cannabis Regulatory
28 Commission established by 31 of P.L.2019, c.153 (C.24:6I-24) with
29 respect to **any aspects of the course curricula that focus on**
30 **impairment from the use of cannabis items as defined by section 3**
31 **of P.L. , c. (C.) (pending before the Legislature as this bill)**
32 **or marijuana** developing standards and course curricula for
33 certification as a Workplace Impairment Recognition Expert in
34 detecting and identifying an employee's usage of, or impairment
35 from, a cannabis item or other intoxicating substance, and for
36 assisting in the investigation of workplace accidents. **Any police**
37 **officer certified and recognized by the commission as a Drug**
38 **Recognition Expert prior to the effective date of this section, as**
39 **amended by the "New Jersey Cannabis Regulatory, Enforcement**
40 **Assistance, and Marketplace Modernization Act," P.L. 2021,**
41 **c. 16 (C.) (pending before the Legislature as this bill), shall**
42 **continue to be recognized as certified until that certification has**
43 **expired or is no longer considered valid as determined by the**
44 **commission, or the certification is replaced by the police officer**
45 **with a new certification in accordance with the new standards and**
46 **course curricula for certification described in this paragraph.**

1 The bill provides that no employer shall take any action which
2 has the effect of prohibiting an employee using cannabis products
3 during non-work hours except under the following circumstances:

4 (1) Upon a determination by an employer that the nature of the
5 work of an employee at a critical infrastructure facility or a
6 construction site has an exceptionally high risk of potential harm to
7 other employees or to public safety if the employee were to be
8 impaired through the use of cannabis. The approval to designate
9 categories of such employees, or a specific employee of an
10 employer, shall be made by the commission upon application of the
11 employer. The commission shall approve such application upon
12 finding that the standards in the bill have been met;

13 (2) when the nature of the work of an employee is operating,
14 maintaining, constructing or repairing a public utility that is subject
15 to the jurisdiction of the Board of Public Utilities;

16 (3) when such actions are required under the federal Omnibus
17 Transportation Employee Testing Act of 1991, 49 U.S.C. s. 5331;
18 or

19 (4) when the employer is subject to the Railway Labor Act, 45
20 U.S.C. § 151 et seq.

21 (5) when the employee is a law enforcement officer and the
22 duties of the employment require the possession of a firearm.

23 Section 2 of the bill amends N.J.S.A. 52: 17B-71 to provide that
24 the Police Training Commission shall consult with the New Jersey
25 State Police with respect to its administration of police training
26 courses or programs for the training of police officers to be certified
27 as a Drug Recognition Expert for detecting, identifying, and
28 apprehending drug-impaired motor vehicle operators, and to consult
29 with the Cannabis Regulatory Commission established by 31 of
30 P.L.2019, c.153 (C.24:6I-24) with respect to developing standards
31 and course curricula for certification as a Workplace Impairment
32 Recognition Expert in detecting and identifying an employee's
33 usage of, or impairment from, a cannabis item or other intoxicating
34 substance, and for assisting in the investigation of workplace
35 accidents.