

# ASSEMBLY, No. 3868

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 9, 2022

**Sponsored by:**

**Assemblywoman GABRIELA M. MOSQUERA**

**District 4 (Camden and Gloucester)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Prohibits paid first responders from engaging in recreational use of cannabis items.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 5/26/2022)

1 AN ACT concerning paid first responders and supplementing  
2 P.L.2021, c.16

3

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

6

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

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

40 (2) (a) In order to better ensure the protections for prospective  
41 employees and employees against refusals to hire or employ, or  
42 against being discharged or having any other adverse action taken  
43 by an employer, while simultaneously supporting the authority of  
44 employers to require employees undergo drug tests under the  
45 circumstances set forth in paragraph (1) of this subsection, as well  
46 as employer efforts to maintain a drug- and alcohol-free workplace

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

20 (b) Any person who demonstrates to the commission's  
21 satisfaction that the person has successfully completed a Drug  
22 Recognition Expert program provided by a Police Training  
23 Commission approved school, or another program or course  
24 conducted by any federal, State, or other public or private agency,  
25 the requirements of which are substantially equivalent to the  
26 requirements established by the commission pursuant to  
27 subparagraph (a) of this paragraph for a Workplace Impairment  
28 Recognition Expert certification, may, at the discretion of the  
29 commission, be issued this certification, subject to subsequent  
30 continuation of certification approval by the commission.

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

32 (1) (a) Requires an employer to amend or repeal, or affect,  
33 restrict or preempt the rights and obligations of employers to  
34 maintain a drug- and alcohol-free workplace or require an employer  
35 to permit or accommodate the use, consumption, being under the  
36 influence, possession, transfer, display, transportation, sale, or  
37 growth of cannabis or cannabis items in the workplace, or to affect  
38 the ability of employers to have policies prohibiting use of cannabis  
39 items or intoxication by employees during work hours;

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

45 (2) Is intended to allow driving under the influence of cannabis  
46 items or driving while impaired by cannabis items or to supersede  
47 laws related to driving under the influence of marijuana or cannabis  
48 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 owns  
10 or controls a property from prohibiting or otherwise regulating the  
11 consumption, use, display, transfer, distribution, sale, or  
12 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-  
22 3), a unit of a condominium as defined in section 3 of P.L.1969,  
23 c.257 (C.46:8B-3), or a site in a mobile home park as defined in  
24 section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to  
25 the 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. (New section) a. A first responder shall not engage in the  
47 use of a cannabis item, as permitted under P.L.2021, c.16 (C.24:6I-  
48 31 et al.), while on or off-duty.

1       b. An employer may discharge from employment or take any  
2 adverse action against an employee who is a first responder with  
3 respect to compensation, terms, conditions, or other privileges of  
4 employment if that person uses cannabis items, as permitted under  
5 P.L.2021, c.16 (C.24:6I-31 et al.), while employed by the employer.  
6 An employee who is a first responder may be subject to adverse  
7 action by an employer solely due to the presence of cannabinoid  
8 metabolites in the employee's bodily fluid from engaging in conduct  
9 permitted under P.L.2021, c.16 (C.24:6I-31 et al.). An employer  
10 may conduct random drug tests of employees who are first  
11 responders. The drug test shall include scientifically reliable  
12 objective testing methods and procedures, such as testing of blood,  
13 urine, or saliva in order to determine whether an employee who is a  
14 first responder engaged in the use of cannabis items.

15       c. An employer may refuse to hire a prospective first responder  
16 due to use of cannabis items, as permitted under P.L.2021, c.16  
17 (C.24:6I-31 et al.), and may employ the use of drug testing in  
18 accordance with subsection b. of this section as part of pre-  
19 employment screening.

20       d. Nothing in this section shall be construed to apply to  
21 employees who do not meet the definition of “first responder” as set  
22 forth in this section, or to limit any of the provisions set forth in  
23 subsection b. of section 48 of P.L.2021, c.16 (C.24:6I-52).

24       e. For the purposes of this section:

25       “Employer” means an entity that employs paid first responders.

26       “First responder” means a law enforcement officer; paid  
27 firefighter; paid member of a duly incorporated first aid,  
28 emergency, ambulance, or rescue squad association; paid  
29 emergency medical technician; paid paramedic; or paid 9-1-1 first  
30 responder dispatcher.

31       “Law enforcement officer” means a person employed as a  
32 permanent full-time member of any State, county or municipal law  
33 enforcement agency, department, or division of those governments  
34 who is statutorily empowered to act for the detection, investigation,  
35 arrest, conviction, detention, or rehabilitation of persons violating  
36 the criminal laws of this State or of the United States and statutorily  
37 required to successfully complete a training course approved by the  
38 Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-  
39 66 et seq.), or certified by the commission as being substantially  
40 equivalent to an approved course.

41

42       3. This act shall take effect immediately.

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#### STATEMENT

46

47       This bill prohibits paid first responders from using cannabis  
48 items under the recreational use statute.

1 Under current law, employers are prohibited from refusing to  
2 hire a prospective employee or taking adverse action against a  
3 current employee, including discharge from employment, because  
4 the person does or does not use cannabis items. Employers are  
5 permitted to drug test employees based on a reasonable suspicion of  
6 an employee's use of a cannabis item while engaged in the  
7 performance of the employee's work responsibilities or upon  
8 finding observable signs of intoxication, but may not require an  
9 employee to abstain from recreational usage while off-duty.

10 Under the bill, paid first responders are prohibited from using  
11 cannabis items on or off-duty. The bill provides that an employer of  
12 first responders may discharge from employment or take any  
13 adverse action against an employee who is a first responder with  
14 respect to compensation, terms, conditions, or other privileges of  
15 employment if that person uses cannabis items pursuant to the  
16 recreational use statute. Additionally, the bill provides that a first  
17 responder may be subject to adverse action by an employer solely  
18 due to the presence of cannabinoid metabolites in the employee's  
19 bodily fluid from engaging in conduct permitted under the  
20 recreational use statute.

21 Additionally, the bill permits employers to conduct random drug  
22 tests of first responder employees. The drug test is required to  
23 include scientifically reliable objective testing methods and  
24 procedures, such as testing of blood, urine, or saliva in order to  
25 determine whether the employee has engaged in the use of cannabis  
26 items.

27 The bill also permits an employer to refuse to hire a prospective  
28 first responder due to use of cannabis items, as permitted under the  
29 recreational use statute and employ the use of drug testing as part of  
30 pre-employment screening.

31 The bill defines first responder to mean a law enforcement  
32 officer; paid firefighter; paid member of a duly incorporated first  
33 aid, emergency, ambulance, or rescue squad association; paid  
34 emergency medical technician; paid paramedic; or paid 9-1-1 first  
35 responder dispatcher.