

ASSEMBLY, No. 3870

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 9, 2022

Sponsored by:

Assemblyman EDWARD H. THOMSON

District 30 (Monmouth and Ocean)

Assemblywoman BETH SAWYER

District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

Assemblymen Umba and S.Kean

SYNOPSIS

Permits employer to prohibit use of cannabis by certain employees.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/2/2022)

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1 AN ACT concerning recreational cannabis use and amending
2 P.L.2021, c.16.

3

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

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

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

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

41 (2) (a) In order to better ensure the protections for prospective
42 employees and employees against refusals to hire or employ, or
43 against being discharged or having any other adverse action taken
44 by an employer, while simultaneously supporting the authority of
45 employers to require employees undergo drug tests under the

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

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

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

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

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

47 (2) Is intended to allow driving under the influence of cannabis
48 items or driving while impaired by cannabis items or to supersede

1 laws related to driving under the influence of marijuana or cannabis
2 items or driving while impaired by marijuana or cannabis items;

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

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

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

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

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

1 2. (New section) a. An employer shall prohibit the
2 personal recreational use of cannabis for the following employees:

- 3 (1) any person who operates heavy machinery;
4 (2) any person who operates weapons;
5 (3) any person whose use would put the public at serious risk;
6 and
7 (4) law enforcement officers.

8 b. All employees prohibited from recreational cannabis use
9 pursuant to this section shall be subject to employer policies that
10 relate to employee drug testing pursuant to subsection a. of section
11 48 of P.L.2021, c.16 (C.24:6I-52).

12 c. As used in this section:

13 “Heavy machinery” means heavy-duty vehicles designed for
14 executing construction, industrial, or forestry tasks. “Heavy
15 machinery” may include, but is not limited to, backhoes, tractors,
16 dump trucks, front-end loaders, excavators, cranes, and bulldozes.

17 “Law enforcement officer” means a person whose public duties
18 include the power to act as an officer for the detention, arrest, and
19 conviction of offenders against the laws of this State.

20 “Weapons” means anything readily capable of lethal use or of
21 inflicting serious bodily injury. The term includes, but is not
22 limited to, firearms, tasers, and knives.

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24 3. This act shall take effect immediately.

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STATEMENT

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29 This bill amends the Cannabis Regulatory Enforcement
30 Assistance, and Marketplace Modernization Act, P.L.2021, c.16
31 (C.24:6I-31 et seq.) to prohibit certain categories of employees
32 from the personal use of recreational cannabis. Specifically, this
33 bill permits an employer to prohibit any use of cannabis if the
34 person operates heavy machinery or weapons, or whose use of
35 cannabis would put the public at risk. Further, this bill permits
36 employers of law enforcement officers to prohibit use of cannabis.

37 This bill defines “heavy machinery” as heavy-duty vehicles,
38 designed for executing construction, industrial, or forestry tasks.
39 “Heavy machinery” may include backhoes, tractors, dump trucks,
40 front-end loaders, excavators, cranes, and bulldozes. This bill also
41 defines “weapons” as anything readily capable of lethal use or of
42 inflicting serious bodily injury and includes, but is not limited to,
43 firearms, tasers, and knives. Finally, the bill defines a “law
44 enforcement officer” as a person whose public duties include the
45 power to act as an officer for the detention, arrest, and conviction of
46 offenders against the laws of this State.

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- 1 All employees prohibited from recreational cannabis use
- 2 pursuant to the bill's provisions are subject to employer policies as
- 3 it relates to employee drug testing.