

ASSEMBLY, No. 3914

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 2, 2022

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

Co-Sponsored by:

Assemblywoman Mosquera

SYNOPSIS

Permits law enforcement agencies to prohibit recreational use of cannabis items by law enforcement officers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/9/2022)

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

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

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

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

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

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

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 an
41 employer subject to the requirements of a federal contract, then the
42 employer may revise their employee prohibitions consistent with
43 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 years
5 of age, but at least 18 years of age, and an employee of a cannabis
6 establishment, distributor, or delivery service acting in the person's
7 employment capacity;

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

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

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

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

44

45 2. (New section) a. A law enforcement agency or appointing
46 authority may discharge from employment or appointment or take
47 any adverse action against a law enforcement officer with respect to
48 compensation, terms, conditions, or other privileges of employment

1 or appointment if that person uses cannabis items, as permitted under
2 P.L.2021, c.16 (C.24:6I-31 et al.), while employed by a law
3 enforcement agency or serving a term of appointment. A law
4 enforcement officer may be subject to adverse action by an employer
5 or appointing authority solely due to the presence of cannabinoid
6 metabolites in the law enforcement officer's bodily fluid due to
7 conduct permitted under P.L.2021, c.16 (C.24:6I-31 et al.). A law
8 enforcement agency or appointing authority may conduct random
9 drug tests of law enforcement officers. The drug test shall include
10 testing methods and procedures as determined by the Attorney
11 General.

12 b. A law enforcement agency may refuse to hire and an
13 appointing authority may refuse to appoint a prospective law
14 enforcement officer due to the officer's use of cannabis items, as
15 permitted under P.L.2021, c.16 (C.24:6I-31 et al.), and may employ
16 the use of drug testing in accordance with subsection b. of this section
17 as part of pre-employment or pre-appointment screening.

18 c. Nothing in this section shall be construed to apply to
19 employees or appointees who are not law enforcement officers, as
20 defined in this section, or to limit any of the provisions set forth in
21 subsection b. of section 48 of P.L.2021, c.16 (C.24:6I-52).

22 d. For the purposes of this section:

23 "Appointing authority" means the governing board or body of a
24 municipality that appoints constables and humane law enforcement
25 officers to terms of service.

26 "Law enforcement agency" means a department, division, bureau,
27 commission, board, or other authority of the State or of any political
28 subdivision thereof which employs law enforcement officers.

29 "Law enforcement officer" means a person employed as a full or
30 part-time member of any law enforcement agency who is statutorily
31 empowered to act for the detection, investigation, arrest, conviction,
32 detention, or rehabilitation of persons violating the criminal laws of
33 this State. The term includes special law enforcement officers of all
34 classes, appointed pursuant to section 7 of P.L.1985, c.439
35 (C.40A:14-146.14); constables, appointed pursuant to N.J.S.40A:9-
36 120; auxiliary police, appointed pursuant to section 13 of P.L.1942,
37 c.251 (C.App.A:9-45); and humane law enforcement officers,
38 appointed pursuant to section 25 of P.L.2017, c.331 (C.4:22-14.1).

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40 3. This act shall take effect immediately.

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STATEMENT

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45 This bill permits law enforcement agencies to prohibit recreational
46 use of cannabis items by law enforcement officers.

47 Under current law, employers are prohibited from refusing to hire
48 a prospective employee or taking adverse action against a current

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

8 The bill provides that a law enforcement agency or an appointing
9 authority, in the case of constables and humane law enforcement
10 officers, may discharge from employment or appointment or take any
11 adverse action against a law enforcement officer with respect to
12 compensation, terms, conditions, or other privileges of employment
13 or appointment if that uses cannabis items pursuant to the
14 recreational use statute. Additionally, the bill provides that a law
15 enforcement officer may be subject to adverse action by an employer
16 or appointing authority solely due to the presence of cannabinoid
17 metabolites in the law enforcement officer's bodily fluid.

18 The bill further provides that a law enforcement agency or
19 appointing authority may conduct random drug tests of law
20 enforcement officers. The drug test is required to include testing
21 methods and procedures as determined by the Attorney General.

22 Under the bill, a law enforcement agency may refuse to hire and
23 an appointing authority may refuse to appoint a prospective law
24 enforcement officer due to use of cannabis items, as permitted under
25 the recreational use statute, and may employ the use of drug testing
26 as part of pre-employment screening.

27 The bill defines a "law enforcement officer" as a person employed
28 as a full or part-time member of a law enforcement agency who is
29 statutorily empowered to act for the detection, investigation, arrest,
30 conviction, detention, or rehabilitation of persons violating the
31 criminal laws of this State. The term additionally includes special law
32 enforcement officers of all classes, constables, auxiliary police, and
33 humane law enforcement officers. "Law enforcement agency" is
34 defined to mean a department, division, bureau, commission, board,
35 or other authority of the State or of any political subdivision thereof
36 which employs law enforcement officers.