

# ASSEMBLY, No. 2719

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblyman BRIAN BERGEN**

**District 26 (Morris and Passaic)**

**Assemblyman CLINTON CALABRESE**

**District 36 (Bergen and Passaic)**

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**District 40 (Bergen, Essex and Passaic)**

**Co-Sponsored by:**

**Assemblyman Scharfenberger**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



A2719 BERGEN, CALABRESE

2

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.

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

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

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

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

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

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

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

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

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

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

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

47 (3) Is intended to permit the transfer of cannabis items, with or  
48 without remuneration, to a person under 21 years of age or to allow

1 a person under 21 years of age to purchase, possess, use, transport,  
2 grow, or consume cannabis items, unless the person is under 21  
3 years of age, but at least 18 years of age, and an employee of a  
4 cannabis establishment, distributor, or delivery service acting in the  
5 person's employment capacity;

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

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

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

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

43

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

46 6. The commission is vested with the power, responsibility and  
47 duty:

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

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

1 provided at the Corrections Officers' Training Academy of the  
2 Department of Corrections. Courses for the county correctional  
3 police officers and juvenile detention officers shall also be centrally  
4 provided at the Corrections Officers' Training Academy unless an  
5 off-grounds training program is established by the county. A  
6 county may elect to establish and conduct a basic training program  
7 for correctional police officers and juvenile detention officers  
8 seeking permanent appointment in that county. The Corrections  
9 Officers' Training Academy shall develop the curriculum of the  
10 basic training program to be conducted by a county;

11 q. To administer and distribute the monies in the Law  
12 Enforcement Officers Training and Equipment Fund established by  
13 section 9 of P.L.1996, c.115 (C.2C:43-3.3) and make rules and  
14 regulations for the administration and distribution of the monies as  
15 may be necessary or appropriate to accomplish the purpose for  
16 which the fund was established.

17 (cf: P.L.2021, c.16, s.85)

18

19 3. This act shall take effect immediately.

20

21

22

#### STATEMENT

23

24 This bill in section 1 amends section 48 of P.L. 2021. c. 16  
25 concerning certain rights and obligations of employers and  
26 employees concerning the use of cannabis items.

27 The bill provides that a drug test for cannabis shall not be done  
28 as part of a pre-employment screening, except for the employees  
29 outlined in paragraph (1) of subsection b. of 48 of P.L. 2021, c. 16.  
30 The bill provides an employer may determine to employ or not to  
31 employ a Workplace Impairment Recognition Expert in the  
32 employer's discretion. Nothing in subsection a. of section 48 of  
33 P.L. 2021, c. 16 shall be interpreted to require that an employer use  
34 a Workplace Impairment Recognition Expert for either drug testing  
35 or determinations of suspicion of an employee's usage of a cannabis  
36 item while engaged in the performance of the employee's work  
37 responsibilities nor shall the use of the Workplace Impairment  
38 Recognition Expert be deemed the industry standard for testing or  
39 making such suspicion determinations. An employer shall remain  
40 free to use scientifically reliable testing services and to exercise its  
41 own judgment in making a good faith suspicion determination.

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

45 (1) Upon a determination by an employer that the nature of the  
46 work of an employee at a critical infrastructure facility or a  
47 construction site has an exceptionally high risk of potential harm to  
48 other employees or to public safety if the employee were to be



1 impaired through the use of cannabis. The approval to designate  
2 categories of such employees, or a specific employee of an  
3 employer, shall be made by the commission upon application of the  
4 employer. The commission shall approve such application upon  
5 finding that the standards in the bill have been met;

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

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

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

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

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