

ASSEMBLY, No. 3868

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 9, 2022

Sponsored by:

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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 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.