

ASSEMBLY, No. 2068

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

SYNOPSIS

Legalizes possession and personal use of small amounts of marijuana for persons age 21 and over.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning marijuana, amending and supplementing
2 various parts of the statutory law.

3

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

6

7 1. (New section) Definitions.

8 As used in P.L. , c. (C.) (pending before the Legislature
9 as this bill), unless the context otherwise requires:

10 "Consumer" means a person 21 years of age or older who
11 purchases marijuana or marijuana products for personal use by a
12 person 21 years of age or older, but not for resale to others.

13 "Division" means the Division of Alcoholic Beverage and
14 Marijuana Control in the Department of Law and Public Safety.

15 "Industrial hemp" means the plant of the genus cannabis and any
16 part of such plant, whether growing or not, with a delta-9
17 tetrahydrocannabinol concentration that does not exceed three-
18 tenths percent on a dry weight basis.

19 "Local governmental entity" means a municipality.

20 "Marijuana" means all parts of the plant Genus Cannabis L.,
21 whether growing or not; the seeds thereof, and every compound,
22 manufacture, salt, derivative, mixture, or preparation of the plant or
23 its seeds, except those containing resin extracted from the plant; but
24 shall not include industrial hemp, the mature stalks of the plant,
25 fiber produced from the stalks, oil, or cake made from the seeds of
26 the plant, any other compound, manufacture, salt, derivative,
27 mixture, or preparation of mature stalks, fiber, oil, or cake, or the
28 sterilized seed of the plant which is incapable of germination, or the
29 weight of any other ingredient combined with marijuana to prepare
30 topical or oral administrations, food, drink, or other product.

31 "Marijuana accessories" means any equipment, products, or
32 materials of any kind which are used, intended for use, or designed
33 for use in planting, propagating, cultivating, growing, harvesting,
34 composting, manufacturing, compounding, converting, producing,
35 processing, preparing, testing, analyzing, packaging, repackaging,
36 storing, vaporizing, or containing marijuana, or for ingesting,
37 inhaling, or otherwise introducing marijuana into the human body.

38 "Marijuana cultivation facility" means an entity licensed to
39 cultivate, prepare, and package marijuana and sell marijuana to
40 retail marijuana stores, to marijuana product manufacturing
41 facilities, and to other marijuana cultivation facilities, but not to
42 consumers.

43 "Marijuana establishment" means a marijuana cultivation
44 facility, a marijuana testing facility, a marijuana product
45 manufacturing facility, or a retail marijuana store.

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 “Marijuana product manufacturing facility” means an entity
2 licensed to purchase marijuana; manufacture, prepare, and package
3 marijuana products; and sell marijuana and marijuana products to
4 other marijuana product manufacturing facilities and to retail
5 marijuana stores, but not to consumers.

6 “Marijuana products” means concentrated marijuana products
7 and marijuana products that are comprised of marijuana and other
8 ingredients and are intended for use or consumption, such as, but
9 not limited to, edible products, ointments, and tinctures.

10 “Marijuana testing facility” means an entity licensed to analyze
11 and certify the safety and potency of marijuana.

12 “Marijuana wholesaler” means any person or entity who sells
13 marijuana, marijuana accessories, or marijuana products for the
14 purpose of resale either to a licensed marijuana wholesaler or to a
15 licensed marijuana retail store.

16 “Medical marijuana center” means an entity authorized by a
17 State agency to sell marijuana and marijuana products pursuant to
18 the "New Jersey Compassionate Use Medical Marijuana Act"
19 P.L.2009, c.307 (C.24:6I-1 et seq.).

20 “Retail marijuana store” means an entity licensed to purchase
21 marijuana from marijuana cultivation facilities and marijuana and
22 marijuana products from marijuana product manufacturing facilities
23 and to sell marijuana and marijuana products to consumers.

24 “Unreasonably impracticable” means that the measures necessary
25 to comply with the regulations require such a high investment of
26 risk, money, time, or any other resource or asset that the operation
27 of a marijuana establishment is not worthy of being carried out in
28 practice by a reasonably prudent businessperson.

29

30 2. (New section) Personal use of marijuana.

31 Notwithstanding any other provision of law, the following acts
32 are not unlawful and shall not be an offense or a basis for seizure or
33 forfeiture of assets under N.J.S.2C:64-1 et seq. or other applicable
34 law for persons 21 years of age or older:

35 a. Possessing, using, displaying, purchasing, or transporting
36 marijuana accessories or one ounce or less of marijuana.

37 b. Possessing, growing, processing, or transporting no more
38 than six marijuana plants, with three or fewer being mature,
39 flowering plants, and possession of the marijuana produced by the
40 plants on the premises where the plants were grown, provided that
41 the growing takes place in an enclosed, locked space, is not
42 conducted openly or publicly, and is not made available for sale.

43 c. Transfer of one ounce or less of marijuana without
44 remuneration to a person who is 21 years of age or older.

45 d. Consumption of marijuana, provided that nothing in this
46 section shall permit consumption that is conducted openly and
47 publicly or in a manner that endangers others.

1 e. Assisting another person who is 21 years of age or older in
2 any of the acts described in subsections a. through d. of this section.

3

4 3. (New section) Lawful operation of marijuana-related
5 facilities.

6 Notwithstanding any other provision of law, the following acts
7 are not unlawful and shall not be an offense or a basis for seizure or
8 forfeiture of assets under N.J.S.2C:64-1 et seq. or other applicable
9 law for persons 21 years of age or older:

10 a. manufacture, possession, or purchase of marijuana
11 accessories or the sale of marijuana accessories to a person who is
12 21 years of age or older.

13 b. possessing, displaying, or transporting marijuana or
14 marijuana products; purchase of marijuana from a marijuana
15 cultivation facility; purchase of marijuana or marijuana products
16 from a marijuana product manufacturing facility; or sale of
17 marijuana or marijuana products to consumers, if the person
18 conducting the activities described in this subsection has obtained a
19 current, valid license to operate a retail marijuana store or is acting
20 in his or her capacity as an owner, employee or agent of a licensed
21 retail marijuana store.

22 c. cultivating, harvesting, processing, packaging, transporting,
23 displaying, or possessing marijuana; delivery or transfer of
24 marijuana to a marijuana testing facility; selling marijuana to a
25 marijuana cultivation facility, a marijuana product manufacturing
26 facility, or a retail marijuana store; or the purchase of marijuana
27 from a marijuana cultivation facility, if the person conducting the
28 activities described in this subsection has obtained a current, valid
29 license to operate a marijuana cultivation facility or is acting in his
30 or her capacity as an owner, employee, or agent of a licensed
31 marijuana cultivation facility.

32 d. packaging, processing, transporting, manufacturing,
33 displaying, or possessing marijuana or marijuana products; delivery
34 or transfer of marijuana or marijuana products to a marijuana
35 testing facility; selling marijuana or marijuana products to a retail
36 marijuana store or a marijuana product manufacturing facility; the
37 purchase of marijuana from a marijuana cultivation facility; or the
38 purchase of marijuana or marijuana products from a marijuana
39 product manufacturing facility, if the person conducting the
40 activities described in this subsection has obtained a current, valid
41 license to operate a marijuana product manufacturing facility or is
42 acting in his or her capacity as an owner, employee, or agent of a
43 licensed marijuana product manufacturing facility.

44 e. possessing, cultivating, processing, repackaging, storing,
45 transporting, displaying, transferring or delivering marijuana or
46 marijuana products if the person has obtained a current, valid
47 license to operate a marijuana testing facility or is acting in his or

1 her capacity as an owner, employee, or agent of a licensed
2 marijuana testing facility.

3 f. leasing or otherwise allowing the use of property owned,
4 occupied or controlled by any person, corporation or other entity for
5 any of the activities conducted lawfully in accordance with
6 subsections a. through e. of this section.

7

8 4. (New section) Regulation of marijuana.

9 a. Not later than six months following the effective date of
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 the Division shall adopt regulations necessary for implementation
12 of this section. Such regulations shall not prohibit the operation of
13 marijuana establishments, either expressly or through regulations
14 that make their operation unreasonably impracticable. Such
15 regulations shall include:

16 (1) Procedures for the issuance, renewal, suspension, and
17 revocation of a license to operate a marijuana establishment, with
18 such procedures subject to all requirements of the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

20 (2) A schedule of application, licensing and renewal fees,
21 provided, application fees shall not exceed \$5,000, with this upper
22 limit adjusted annually for inflation, unless the Division determines
23 a greater fee is necessary to carry out its responsibilities under this
24 section, and provided further, an entity that is authorized pursuant
25 to the "New Jersey Compassionate Use Medical Marijuana Act,"
26 P.L.2009, c.307 (C.24:6I-1 et seq.) to cultivate or sell marijuana or
27 to manufacture marijuana products at the time this section takes
28 effect and that chooses to apply for a separate marijuana
29 establishment license shall not be required to pay an application fee
30 greater than \$500 to apply for a license to operate a marijuana
31 establishment in accordance with the provisions of this section;

32 (3) Qualifications for licensure that are directly and
33 demonstrably related to the operation of a marijuana establishment;

34 (4) Security requirements for marijuana establishments;

35 (5) Requirements to prevent the sale or diversion of marijuana
36 and marijuana products to persons under the age of 21;

37 (6) Labeling requirements for marijuana and marijuana products
38 sold or distributed by a marijuana establishment;

39 (7) Health and safety regulations and standards for the
40 manufacture of marijuana products and the cultivation of marijuana;

41 (8) Restrictions on the advertising and display of marijuana and
42 marijuana products;

43 (9) A requirement that only marijuana, marijuana-based
44 products and marijuana paraphernalia are available for sale at a
45 marijuana establishment; and

46 (10) Civil penalties for the failure to comply with regulations
47 made pursuant to this section.

1 b. In order to ensure the most secure, reliable, and accountable
2 system for the production and distribution of marijuana and
3 marijuana products in accordance with this section, in any
4 competitive application process the Division shall have as a primary
5 consideration whether an applicant:

6 (1) has prior experience producing or distributing marijuana or
7 marijuana products pursuant to the "New Jersey Compassionate Use
8 Medical Marijuana Act," P.L.2009, c.307 (C.24:6I-1 et seq.). in the
9 local governmental entity in which the applicant seeks to operate a
10 marijuana establishment; and

11 (2) has, during the experience described in paragraph (1),
12 complied consistently with the "New Jersey Compassionate Use
13 Medical Marijuana Act," P.L.2009, c.307 (C.24:6I-1 et seq.). and
14 conforming regulations.

15 c. In order to ensure that individual privacy is protected, the
16 Division shall not require a consumer to provide a retail marijuana
17 store with personal information other than government-issued
18 identification to determine the consumer's age, and a retail
19 marijuana store shall not be required to acquire and record personal
20 information about consumers other than information typically
21 acquired in a financial transaction conducted by the holder of a
22 Class C retail license concerning alcoholic beverages as set forth in
23 R.S.33:1-12.

24
25 5. (New section) Tax.

26 a. There shall be a tax levied upon marijuana sold or otherwise
27 transferred by a marijuana cultivation facility to a marijuana
28 product manufacturing facility or to a retail marijuana store at a rate
29 equivalent to the rate established under the "Sales and Use Tax
30 Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The Department of the
31 Treasury shall establish procedures for the collection of all taxes
32 levied.

33 b. 70 percent of all monies collected shall be deposited in the
34 "Transportation Trust Fund Account" created by section 20 of
35 P.L.1984, c.73 (C.27:1B-20). This money shall not be used for the
36 repayment of debt service, but shall be used for the construction of
37 transportation projects in the fiscal year in which the funds are
38 received.

39 c. 20 percent of all monies collected shall be deposited in the
40 "Drug Enforcement and Demand Reduction Fund" established
41 pursuant to N.J.S.2C:35-15.

42 d. 10 percent of all monies collected shall be dedicated to
43 programs addressing women's health, family planning, postpartum
44 depression awareness, smoking cessation, and HIV-awareness.

45 No tax established by this section shall be levied upon marijuana
46 intended for sale at medical marijuana centers pursuant to the "New
47 Jersey Compassionate Use Medical Marijuana Act," P.L.2009,
48 c.307 (C.24:6I-1 et seq.).

1 6. (New section) a. Local governmental entity regulation or
2 ordinance.

3 Not later than six months following the effective date of P.L. ,
4 c. (C.) (pending before the Legislature as this bill), each
5 local governmental entity shall enact an ordinance or regulation
6 specifying the entity within the local governmental entity that is
7 responsible for processing applications submitted for a license to
8 operate a marijuana establishment within the boundaries of the local
9 governmental entity and for the issuance of such licenses should the
10 issuance by the local governmental entity become necessary
11 because of a failure by the Division to adopt regulations or because
12 of a failure by the Division to process and issue licenses.

13 b. A local governmental entity may enact ordinances or
14 regulations, not in conflict with the provisions of P.L. , c. (C.)
15 (pending before the Legislature as this bill):

16 governing the time, place, manner and number of marijuana
17 establishment operations;

18 establishing procedures for the issuance, suspension, and
19 revocation of a license issued by the local governmental entity;

20 establishing a schedule of annual operating, licensing, and
21 application fees for marijuana establishments, provided, the
22 application fee shall only be due if an application is submitted to a
23 local governmental entity in accordance with the provisions of
24 P.L. , c. (C.) (pending before the Legislature as this bill)
25 and a licensing fee shall only be due if a license is issued by a local
26 governmental entity; and

27 establishing civil penalties for violation of an ordinance or
28 regulation governing the time, place, and manner of a marijuana
29 establishment that may operate in such local governmental entity.

30 c. A local governmental entity may prohibit the operation of
31 marijuana cultivation facilities, marijuana product manufacturing
32 facilities, marijuana testing facilities, or retail marijuana stores
33 through the enactment of an ordinance.

34

35 7. (New section) Application.

36 a. Each application for an annual license to operate a marijuana
37 establishment shall be submitted to the Division. The Division
38 shall:

39 (1) begin accepting and processing applications six months
40 following the effective date of P.L. , c. (C.) (pending
41 before the Legislature as this bill);

42 (2) immediately forward a copy of each application and half of
43 the license application fee to the local governmental entity in which
44 the applicant desires to operate the marijuana establishment;

45 (3) issue an annual license to the applicant between 45 and 90
46 days after receipt of an application unless the Division finds the
47 applicant is not in compliance with regulations enacted pursuant to
48 the provisions of section 6 of P.L. , c. (C.) (pending before

1 the Legislature as this bill) or the Division is notified by the
2 relevant local governmental entity that the applicant is not in
3 compliance with ordinances and regulations made pursuant to the
4 provisions of section 6 of P.L. , c. (C.) (pending before the
5 Legislature as this bill) and in effect at the time of application,
6 provided, where a local governmental entity has enacted a
7 numerical limit on the number of marijuana establishments and a
8 greater number of applicants seek licenses, the Division shall solicit
9 and consider input from the local governmental entity as to the local
10 governmental entity's preference or preferences for licensure; and

11 (4) upon denial of an application, notify the applicant in writing
12 of the specific reason for its denial.

13 b. If the Division does not issue a license to an applicant within
14 90 days of receipt of the application filed pursuant to subsection a.
15 of this section, and does not notify the applicant of the specific
16 reason for its denial, in writing and within such time period; or, if
17 the Division has adopted regulations pursuant to subsection a. of
18 section 4 of P.L. , c. , (C.) (pending before the Legislature
19 as this bill) and has accepted applications pursuant to subsection a.
20 of this section but has not issued any licenses by six months
21 following the effective date of P.L. , c. (C.) (pending
22 before the Legislature as this bill), the applicant may resubmit its
23 application directly to the local governmental entity, and the local
24 governmental entity may issue an annual license to the applicant. A
25 local governmental entity issuing a license to an applicant shall do
26 so within 90 days of receipt of the resubmitted application unless
27 the local governmental entity finds and notifies the applicant that
28 the applicant is not in compliance with ordinances and regulations
29 in effect at the time the application is resubmitted. The local
30 governmental entity shall notify the Division if an annual license
31 has been issued to the applicant. If an application is submitted to a
32 local governmental entity under this subsection, the Division shall
33 forward to the local governmental entity the application fee paid by
34 the applicant to the Division upon request by the local
35 governmental entity. A license issued by a local governmental
36 entity in accordance with this subsection shall have the same force
37 and effect as a license issued by the Division and the holder of such
38 license shall not be subject to regulation or enforcement by the
39 Division during the term of that license. A subsequent or renewed
40 license may be issued under this subsection on an annual basis only
41 upon resubmission to the local governmental entity of a new
42 application submitted to the Division.

43 c. If the Division does not adopt regulations required by
44 subsection a. of section 4 of P.L. , c. (C.) (pending before
45 the Legislature as this bill), an applicant may submit an application
46 directly to a local governmental entity six months following the
47 effective date of P.L. , c. (C.) (pending before the
48 Legislature as this bill), and the local governmental entity may issue

1 an annual license to the applicant. A local governmental entity
2 issuing a license to an applicant shall do so within 90 days of
3 receipt of the application unless it finds and notifies the applicant
4 that the applicant is not in compliance with ordinances and
5 regulations in effect at the time of application and shall notify the
6 Division if an annual license has been issued to the applicant. A
7 license issued by a local governmental entity in accordance with
8 this subsection shall have the same force and effect as a license
9 issued by the Division and the holder of such license shall not be
10 subject to regulation or enforcement by the Division during the term
11 of that license. A subsequent or renewed license may be issued
12 under this subsection on an annual basis if the Division has not
13 adopted regulations required by section 4 of P.L. , c. , (C.)
14 (pending before the Legislature as this bill) at least 90 days prior to
15 the date upon which such subsequent or renewed license would be
16 effective

17

18 8. (New section) Employers, driving, minors and control of
19 property.

20 a. Nothing in P.L. , c. (C.) (pending before the
21 Legislature as this bill) is intended to require an employer to permit
22 or accommodate the use, consumption, possession, transfer, display,
23 transportation, sale or growing of marijuana in the workplace or to
24 affect the ability of employers to have policies restricting the use of
25 marijuana by employees.

26 b. Nothing in P.L. , c. (C.) (pending before the
27 Legislature as this bill) is intended to allow driving under the
28 influence of marijuana or driving while impaired by marijuana or to
29 supersede laws related to driving under the influence of marijuana
30 or driving while impaired by marijuana, nor shall P.L. , c. C.)
31 (pending before the Legislature as this bill).

32 c. Nothing in P.L. , c. (C.) (pending before the
33 Legislature as this bill) is intended to permit the transfer of
34 marijuana, with or without remuneration, to a person under the age
35 of 21 or to allow a person under the age of 21 to purchase, possess,
36 use, transport, grow, or consume marijuana.

37 d. Nothing in P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall prohibit a person, employer, school,
39 hospital, detention facility, corporation or any other entity that
40 occupies, owns or controls a property from prohibiting or otherwise
41 regulating the possession, consumption, use, display, transfer,
42 distribution, sale, transportation, or growing of marijuana on or in
43 that property.

44

45 9. (New section) Medical marijuana provisions unaffected.

46 Nothing in P.L. , c. (C.) (pending before the Legislature
47 as this bill) shall be construed:

- 1 a. to limit any privileges or rights of a medical marijuana
2 patient, primary caregiver, or licensed entity as provided in the
3 “New Jersey Compassionate Use Medical Marijuana Act,”
4 P.L.2009, c.307 (C.24:6I-1 et seq.);
5 b. to permit a medical marijuana center to distribute marijuana
6 to a person who is not a medical marijuana patient;
7 c. to permit a medical marijuana center to purchase marijuana
8 or marijuana products in a manner or from a source not authorized
9 under P.L.2009, c.307 (C.24:6I-1 et seq.);
10 d. to permit any medical marijuana center licensed pursuant to
11 P.L.2009, c.307 (C.24:6I-1 et seq.) to operate on the same premises
12 as a retail marijuana store; or
13 e. to discharge the Department of Health from its duties to
14 regulate medical marijuana pursuant to P.L.2009, c.307 (C.24:6I-1
15 et seq.).

16

17 10. N.J.S.2C:35-4 is amended to read as follows:

18 2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-1 et
19 seq.), or P.L. , c. (C.) (pending before the Legislature as
20 this bill), any person who knowingly maintains or operates any
21 premises, place or facility used for the manufacture of
22 methamphetamine, lysergic acid diethylamide, phencyclidine,
23 gamma hydroxybutyrate, flunitrazepam, marijuana in an amount
24 greater than five pounds or ten plants or any substance listed in
25 Schedule I or II, or the analog of any such substance, or any person
26 who knowingly aids, promotes, finances or otherwise participates in
27 the maintenance or operations of such premises, place or facility, is
28 guilty of a crime of the first degree and shall, except as provided in
29 N.J.S.2C:35-12, be sentenced to a term of imprisonment which shall
30 include the imposition of a minimum term which shall be fixed at,
31 or between, one-third and one-half of the sentence imposed, during
32 which the defendant shall be ineligible for parole. Notwithstanding
33 the provisions of subsection a. of N.J.S.2C:43-3, the court may also
34 impose a fine not to exceed \$750,000.00 or five times the street
35 value of all controlled dangerous substances, controlled substance
36 analogs, gamma hydroxybutyrate or flunitrazepam at any time
37 manufactured or stored at such premises, place or facility,
38 whichever is greater.

39 (cf: P.L.1999, c.133, s.2)

40

41 11. N.J.S.2C:35-5 is amended to read as follows:

42 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
43 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), or P.L. ,
44 c. (C.) (pending before the Legislature as this bill), it shall be
45 unlawful for any person knowingly or purposely:

46 (1) To manufacture, distribute or dispense, or to possess or have
47 under his control with intent to manufacture, distribute or dispense,
48 a controlled dangerous substance or controlled substance analog; or

- 1 (2) To create, distribute, or possess or have under his control
2 with intent to distribute, a counterfeit controlled dangerous
3 substance.
- 4 b. Any person who violates subsection a. with respect to:
- 5 (1) Heroin, or its analog, or coca leaves and any salt, compound,
6 derivative, or preparation of coca leaves, and any salt, compound,
7 derivative, or preparation thereof which is chemically equivalent or
8 identical with any of these substances, or analogs, except that the
9 substances shall not include decocainized coca leaves or extractions
10 which do not contain cocaine or ecogine, or 3,4-
11 methylenedioxyamphetamine or 3,4-
12 methylenedioxyamphetamine, in a quantity of five ounces or more
13 including any adulterants or dilutants is guilty of a crime of the first
14 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
15 be sentenced to a term of imprisonment by the court. The term of
16 imprisonment shall include the imposition of a minimum term
17 which shall be fixed at, or between, one-third and one-half of the
18 sentence imposed, during which the defendant shall be ineligible for
19 parole. Notwithstanding the provisions of subsection a. of
20 N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;
- 21 (2) A substance referred to in paragraph (1) of this subsection,
22 in a quantity of one-half ounce or more but less than five ounces,
23 including any adulterants or dilutants is guilty of a crime of the
24 second degree;
- 25 (3) A substance referred to paragraph (1) of this subsection in a
26 quantity less than one-half ounce including any adulterants or
27 dilutants is guilty of a crime of the third degree except that,
28 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
29 fine of up to \$75,000.00 may be imposed;
- 30 (4) A substance classified as a narcotic drug in Schedule I or II
31 other than those specifically covered in this section, or the analog of
32 any such substance, in a quantity of one ounce or more including
33 any adulterants or dilutants is guilty of a crime of the second
34 degree;
- 35 (5) A substance classified as a narcotic drug in Schedule I or II
36 other than those specifically covered in this section, or the analog of
37 any such substance, in a quantity of less than one ounce including
38 any adulterants or dilutants is guilty of a crime of the third degree
39 except that, notwithstanding the provisions of subsection b. of
40 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;
- 41 (6) Lysergic acid diethylamide, or its analog, in a quantity of
42 100 milligrams or more including any adulterants or dilutants, or
43 phencyclidine, or its analog, in a quantity of 10 grams or more
44 including any adulterants or dilutants, is guilty of a crime of the
45 first degree. Except as provided in N.J.S.2C:35-12, the court shall
46 impose a term of imprisonment which shall include the imposition
47 of a minimum term, fixed at, or between, one-third and one-half of
48 the sentence imposed by the court, during which the defendant shall

- 1 be ineligible for parole. Notwithstanding the provisions of
2 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
3 imposed;
- 4 (7) Lysergic acid diethylamide, or its analog, in a quantity of
5 less than 100 milligrams including any adulterants or dilutants, or
6 where the amount is undetermined, or phencyclidine, or its analog,
7 in a quantity of less than 10 grams including any adulterants or
8 dilutants, or where the amount is undetermined, is guilty of a crime
9 of the second degree;
- 10 (8) Methamphetamine, or its analog, or phenyl-2-propanone
11 (P2P), in a quantity of five ounces or more including any
12 adulterants or dilutants is guilty of a crime of the first degree.
13 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
14 fine of up to \$300,000.00 may be imposed;
- 15 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
16 (P2P), in a quantity of one-half ounce or more but less than five
17 ounces including any adulterants or dilutants is guilty of a crime of
18 the second degree;
- 19 (b) Methamphetamine, or its analog, or phenyl-2-propanone
20 (P2P), in a quantity of less than one-half ounce including any
21 adulterants or dilutants is guilty of a crime of the third degree
22 except that notwithstanding the provisions of subsection b. of
23 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;
- 24 (10) (a) Marijuana in a quantity of 25 pounds or more including
25 any adulterants or dilutants, or 50 or more marijuana plants,
26 regardless of weight, or hashish in a quantity of five pounds or
27 more including any adulterants or dilutants, is guilty of a crime of
28 the first degree. Notwithstanding the provisions of subsection a. of
29 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;
- 30 (b) Marijuana in a quantity of five pounds or more but less than
31 25 pounds including any adulterants or dilutants, or 10 or more but
32 fewer than 50 marijuana plants, regardless of weight, or hashish in a
33 quantity of one pound or more but less than five pounds, including
34 any adulterants and dilutants, is guilty of a crime of the second
35 degree;
- 36 (11) Marijuana in a quantity of one ounce or more but less than
37 five pounds including any adulterants or dilutants, or hashish in a
38 quantity of five grams or more but less than one pound including
39 any adulterants or dilutants, is guilty of a crime of the third degree
40 except that, notwithstanding the provisions of subsection b. of
41 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;
- 42 (12) Marijuana in a quantity of less than one ounce including any
43 adulterants or dilutants, or hashish in a quantity of less than five
44 grams including any adulterants or dilutants, is guilty of a crime of
45 the fourth degree;
- 46 (13) Any other controlled dangerous substance classified in
47 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
48 third degree, except that, notwithstanding the provisions of

1 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
2 imposed; or

3 (14) Any Schedule V substance, or its analog, is guilty of a crime
4 of the fourth degree except that, notwithstanding the provisions of
5 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
6 imposed.

7 c. Where the degree of the offense for violation of this section
8 depends on the quantity of the substance, the quantity involved
9 shall be determined by the trier of fact. Where the indictment or
10 accusation so provides, the quantity involved in individual acts of
11 manufacturing, distribution, dispensing or possessing with intent to
12 distribute may be aggregated in determining the grade of the
13 offense, whether distribution or dispensing is to the same person or
14 several persons, provided that each individual act of manufacturing,
15 distribution, dispensing or possession with intent to distribute was
16 committed within the applicable statute of limitations.

17 (cf: P.L.2000, c.136)

18

19 12. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read
20 as follows:

21 1. Except as authorized by P.L. , c. (C.) (pending before
22 the Legislature as this bill):

23 a. Any person who violates subsection a. of N.J.S.2C:35-5 by
24 distributing, dispensing or possessing with intent to distribute a
25 controlled dangerous substance or controlled substance analog
26 while on any school property used for school purposes which is
27 owned by or leased to any elementary or secondary school or school
28 board, or within 1,000 feet of such school property or a school bus,
29 or while on any school bus, is guilty of a crime of the third degree
30 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
31 the court to a term of imprisonment. Where the violation involves
32 less than one ounce of marijuana, the term of imprisonment shall
33 include the imposition of a minimum term which shall be fixed at,
34 or between, one-third and one-half of the sentence imposed, or one
35 year, whichever is greater, during which the defendant shall be
36 ineligible for parole. In all other cases, the term of imprisonment
37 shall include the imposition of a minimum term which shall be
38 fixed at, or between, one-third and one-half of the sentence
39 imposed, or three years, whichever is greater, during which the
40 defendant shall be ineligible for parole. Notwithstanding the
41 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
42 \$150,000 may also be imposed upon any conviction for a violation
43 of this section.

44 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
45 subsection a. of this section, the court may waive or reduce the
46 minimum term of parole ineligibility required under subsection a. of
47 this section or place the defendant on probation pursuant to

1 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
2 determination, the court shall consider:

3 (a) the extent of the defendant's prior criminal record and the
4 seriousness of the offenses for which the defendant has been
5 convicted;

6 (b) the specific location of the present offense in relation to the
7 school property, including distance from the school and the
8 reasonable likelihood of exposing children to drug-related activities
9 at that location;

10 (c) whether school was in session at the time of the offense; and

11 (d) whether children were present at or in the immediate vicinity
12 of the location when the offense took place.

13 (2) The court shall not waive or reduce the minimum term of
14 parole ineligibility or sentence the defendant to probation if it finds
15 that:

16 (a) the offense took place while on any school property used for
17 school purposes which is owned by or leased to any elementary or
18 secondary school or school board, or while on any school bus; or

19 (b) the defendant in the course of committing the offense used
20 or threatened violence or was in possession of a firearm.

21 If the court at sentencing elects not to impose a minimum term of
22 imprisonment and parole ineligibility pursuant to this subsection,
23 imposes a term of parole ineligibility less than the minimum term
24 prescribed in subsection a. of this section, or places the defendant
25 on probation for a violation of subsection a. of this section, the
26 sentence shall not become final for 10 days in order to permit the
27 prosecution to appeal the court's finding and the sentence imposed.
28 The Attorney General shall develop guidelines to ensure the
29 uniform exercise of discretion in making determinations regarding
30 whether to appeal a decision to waive or reduce the minimum term
31 of parole ineligibility or place the defendant on probation.

32 Nothing in this subsection shall be construed to establish a basis
33 for overcoming a presumption of imprisonment authorized or
34 required by subsection d. of N.J.S.2C:44-1, or a basis for not
35 imposing a term of imprisonment or term of parole ineligibility
36 authorized or required to be imposed pursuant to subsection f. of
37 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
38 set forth in this subsection.

39 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
40 provisions of law, a conviction arising under this section shall not
41 merge with a conviction for a violation of subsection a. of
42 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
43 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

44 d. It shall be no defense to a prosecution for a violation of this
45 section that the actor was unaware that the prohibited conduct took
46 place while on or within 1,000 feet of any school property. Nor
47 shall it be a defense to a prosecution under this section, or under
48 any other provision of this title, that no juveniles were present on

1 the school property at the time of the offense or that the school was
2 not in session.

3 e. It is an affirmative defense to prosecution for a violation of
4 this section that the prohibited conduct took place entirely within a
5 private residence, that no person 17 years of age or younger was
6 present in such private residence at any time during the commission
7 of the offense, and that the prohibited conduct did not involve
8 distributing, dispensing or possessing with the intent to distribute or
9 dispense any controlled dangerous substance or controlled
10 substance analog for profit. The affirmative defense established in
11 this section shall be proved by the defendant by a preponderance of
12 the evidence. Nothing herein shall be construed to establish an
13 affirmative defense with respect to a prosecution for an offense
14 defined in any other section of this chapter.

15 f. In a prosecution under this section, a map produced or
16 reproduced by any municipal or county engineer for the purpose of
17 depicting the location and boundaries of the area on or within 1,000
18 feet of any property used for school purposes which is owned by or
19 leased to any elementary or secondary school or school board, or a
20 true copy of such a map, shall, upon proper authentication, be
21 admissible and shall constitute prima facie evidence of the location
22 and boundaries of those areas, provided that the governing body of
23 the municipality or county has adopted a resolution or ordinance
24 approving the map as official finding and record of the location and
25 boundaries of the area or areas on or within 1,000 feet of the school
26 property. Any map approved pursuant to this section may be
27 changed from time to time by the governing body of the
28 municipality or county. The original of every map approved or
29 revised pursuant to this section, or a true copy thereof, shall be filed
30 with the clerk of the municipality or county, and shall be
31 maintained as an official record of the municipality or county.
32 Nothing in this section shall be construed to preclude the
33 prosecution from introducing or relying upon any other evidence or
34 testimony to establish any element of this offense; nor shall this
35 section be construed to preclude the use or admissibility of any map
36 or diagram other than one which has been approved by the
37 governing body of a municipality or county, provided that the map
38 or diagram is otherwise admissible pursuant to the Rules of
39 Evidence.

40 (cf: P.L.2009, c.192, s.1)

41

42 13. Section 1 of P.L.1997, c.327 (C.2C:35-7.1) is amended to
43 read as follows:

44 1. Except as authorized by P.L. _____, c. _____ (C. _____) (pending
45 before the Legislature as this bill):

46 a. Any person who violates subsection a. of N.J.S.2C:35-5 by
47 distributing, dispensing or possessing with intent to distribute a
48 controlled dangerous substance or controlled substance analog

1 while in, on or within 500 feet of the real property comprising a
2 public housing facility, a public park, or a public building is guilty
3 of a crime of the second degree, except that it is a crime of the third
4 degree if the violation involved less than one ounce of marijuana.

5 b. It shall be no defense to a prosecution for violation of this
6 section that the actor was unaware that the prohibited conduct took
7 place while on or within 500 feet of a public housing facility, a
8 public park, or a public building.

9 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
10 provisions of law, a conviction arising under this section shall not
11 merge with a conviction for a violation of subsection a. of
12 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
13 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).
14 Nothing in this section shall be construed to preclude or limit a
15 prosecution or conviction for a violation of N.J.S.2C:35-7 or any
16 other offense defined in this chapter.

17 d. It is an affirmative defense to prosecution for a violation of
18 this section that the prohibited conduct did not involve distributing,
19 dispensing or possessing with the intent to distribute or dispense
20 any controlled dangerous substance or controlled substance analog
21 for profit, and that the prohibited conduct did not involve
22 distribution to a person 17 years of age or younger. The affirmative
23 defense established in this section shall be proved by the defendant
24 by a preponderance of the evidence. Nothing herein shall be
25 construed to establish an affirmative defense with respect to a
26 prosecution for an offense defined in any other section of this
27 chapter.

28 e. In a prosecution under this section, a map produced or
29 reproduced by any municipal or county engineer for the purpose of
30 depicting the location and boundaries of the area on or within 500
31 feet of a public housing facility which is owned by or leased to a
32 housing authority according to the "Local Redevelopment and
33 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), the area in or
34 within 500 feet of a public park, or the area in or within 500 feet of
35 a public building, or a true copy of such a map, shall, upon proper
36 authentication, be admissible and shall constitute prima facie
37 evidence of the location and boundaries of those areas, provided
38 that the governing body of the municipality or county has adopted a
39 resolution or ordinance approving the map as official finding and
40 record of the location and boundaries of the area or areas on or
41 within 500 feet of a public housing facility, a public park, or a
42 public building. Any map approved pursuant to this section may be
43 changed from time to time by the governing body of the
44 municipality or county. The original of every map approved or
45 revised pursuant to this section, or a true copy thereof, shall be filed
46 with the clerk of the municipality or county, and shall be
47 maintained as an official record of the municipality or county.
48 Nothing in this section shall be construed to preclude the

1 prosecution from introducing or relying upon any other evidence or
2 testimony to establish any element of this offense; nor shall this
3 section be construed to preclude the use or admissibility of any map
4 or diagram other than one which has been approved by the
5 governing body of a municipality or county, provided that the map
6 or diagram is otherwise admissible pursuant to the Rules of
7 Evidence.

8 f. As used in this act:

9 "Public housing facility" means any dwelling, complex of
10 dwellings, accommodation, building, structure or facility and real
11 property of any nature appurtenant thereto and used in connection
12 therewith, which is owned by or leased to a local housing authority
13 in accordance with the "Local Redevelopment and Housing Law,"
14 P.L.1992, c.79 (C.40A:12A-1 et seq.) for the purpose of providing
15 living accommodations to persons of low income.

16 "Public park" means a park, recreation facility or area or
17 playground owned or controlled by a State, county or local
18 government unit.

19 "Public building" means any publicly owned or leased library or
20 museum.

21 (cf: P.L.1997, c.327, s.1)

22

23 14. N.J.S.2C:35-10 is amended to read as follows:

24 2C:35-10. Possession, Use or Being Under the Influence, or
25 Failure to Make Lawful Disposition.

26 a. It is unlawful for any person, knowingly or purposely, to
27 obtain, or to possess, actually or constructively, a controlled
28 dangerous substance or controlled substance analog, unless the
29 substance was obtained directly, or pursuant to a valid prescription
30 or order form from a practitioner, while acting in the course of his
31 professional practice, or except as otherwise authorized by
32 P.L.1970, c.226 (C.24:21-1 et seq.), or except as authorized by
33 P.L. , c. (C.) (pending before the Legislature as this bill).

34 Any person who violates this section with respect to:

35 (1) A controlled dangerous substance, or its analog, classified in
36 Schedule I, II, III or IV other than those specifically covered in this
37 section, is guilty of a crime of the third degree except that,
38 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
39 fine of up to \$35,000.00 may be imposed;

40 (2) Any controlled dangerous substance, or its analog, classified
41 in Schedule V, is guilty of a crime of the fourth degree except that,
42 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
43 fine of up to \$15,000.00 may be imposed;

44 (3) Possession of more than 50 grams of marijuana, including
45 any adulterants or dilutants, or more than five grams of hashish is
46 guilty of a crime of the fourth degree, except that, notwithstanding
47 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
48 \$25,000.00 may be imposed; or

1 (4) Possession of 50 grams or less of marijuana, including any
2 adulterants or dilutants, or five grams or less of hashish is a
3 disorderly person.

4 Any person who commits any offense defined in this section
5 while on any property used for school purposes which is owned by
6 or leased to any elementary or secondary school or school board, or
7 within 1,000 feet of any such school property or a school bus, or
8 while on any school bus, and who is not sentenced to a term of
9 imprisonment, shall, in addition to any other sentence which the
10 court may impose, be required to perform not less than 100 hours of
11 community service.

12 b. Any person who uses or who is under the influence of any
13 controlled dangerous substance, or its analog, for a purpose other
14 than the treatment of sickness or injury as lawfully prescribed or
15 administered by a physician is a disorderly person.

16 In a prosecution under this subsection, it shall not be necessary
17 for the State to prove that the accused did use or was under the
18 influence of any specific drug, but it shall be sufficient for a
19 conviction under this subsection for the State to prove that the
20 accused did use or was under the influence of some controlled
21 dangerous substance, counterfeit controlled dangerous substance, or
22 controlled substance analog, by proving that the accused did
23 manifest physical and physiological symptoms or reactions caused
24 by the use of any controlled dangerous substance or controlled
25 substance analog.

26 c. Any person who knowingly obtains or possesses a controlled
27 dangerous substance or controlled substance analog in violation of
28 subsection a. of this section and who fails to voluntarily deliver the
29 substance to the nearest law enforcement officer is guilty of a
30 disorderly persons offense. Nothing in this subsection shall be
31 construed to preclude a prosecution or conviction for any other
32 offense defined in this title or any other statute.

33 (cf: P.L.1997, c.181, s.6)

34

35 15. Section 3 of P.L.1948, c.439 (C.52:17B-3) is amended to
36 read as follows:

37 3. There is hereby established in the Department of Law and
38 Public Safety a Division of Law, a Division of State Police, a
39 Division of Alcoholic Beverage and Marijuana Control, a Division
40 of Motor Vehicles, a Division of Weights and Measures and a
41 Division of Professional Boards.

42 The Attorney General shall have the authority to organize and
43 maintain in his offices an Administrative Division and to assign to
44 employment therein such secretarial, clerical and other assistants in
45 the department as his office and the internal operations of the
46 department shall require.

47 (cf: P.L.1948, c.439, s.3)

1 16. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill would legalize the possession and personal use of small
7 amounts of marijuana for persons age 21 and over.

8 The bill specifies that the following acts are not unlawful and

9 would not be an offense or a basis for seizure or forfeiture of assets
10 under N.J.S.2C:64-1 et seq. or other applicable law for persons 21

11 years of age or older:

12 a. Possessing, using, displaying, purchasing, or transporting
13 marijuana accessories or one ounce or less of marijuana;

14 b. Possessing, growing, processing, or transporting no more
15 than six marijuana plants, with three or fewer being mature,
16 flowering plants, and possession of the marijuana produced by the
17 plants on the premises where the plants were grown, provided that
18 the growing takes place in an enclosed, locked space, is not
19 conducted openly or publicly, and is not made available for sale;

20 c. Transfer of one ounce or less of marijuana without
21 remuneration to a person who is 21 years of age or older;

22 d. Consumption of marijuana, provided that nothing in the bill
23 would permit consumption that is conducted openly and publicly or
24 in a manner that endangers others; or

25 e. Assisting another person who is 21 years of age or older in
26 any of the acts described above.

27 Under the bill, the following acts would also not be unlawful or a
28 basis for seizure or forfeiture of assets for persons 21 years of age
29 or older:

30 a. manufacture, possession, or purchase of marijuana
31 accessories or the sale of marijuana accessories to a person who is
32 21 years of age or older;

33 b. possessing, displaying, or transporting marijuana or
34 marijuana products; purchase of marijuana from a marijuana
35 cultivation facility; purchase of marijuana or marijuana products
36 from a marijuana product manufacturing facility; or sale of
37 marijuana or marijuana products to consumers, if the person
38 conducting the activities described in this subsection has obtained a
39 current, valid license to operate a retail marijuana store or is acting
40 in his or her capacity as an owner, employee or agent of a licensed
41 retail marijuana store;

42 c. cultivating, harvesting, processing, packaging, transporting,
43 displaying, or possessing marijuana; delivery or transfer of
44 marijuana to a marijuana testing facility; selling marijuana to a
45 marijuana cultivation facility, a marijuana product manufacturing
46 facility, or a retail marijuana store; or the purchase of marijuana
47 from a marijuana cultivation facility, if the person conducting the
48 activities described in this subsection has obtained a current, valid

1 license to operate a marijuana cultivation facility or is acting in his
2 or her capacity as an owner, employee, or agent of a licensed
3 marijuana cultivation facility;

4 d. packaging, processing, transporting, manufacturing,
5 displaying, or possessing marijuana or marijuana products; delivery
6 or transfer of marijuana or marijuana products to a marijuana
7 testing facility; selling marijuana or marijuana products to a retail
8 marijuana store or a marijuana product manufacturing facility; the
9 purchase of marijuana from a marijuana cultivation facility; or the
10 purchase of marijuana or marijuana products from a marijuana
11 product manufacturing facility, if the person conducting the
12 activities has obtained a current, valid license to operate a
13 marijuana product manufacturing facility or is acting in his or her
14 capacity as an owner, employee, or agent of a licensed marijuana
15 product manufacturing facility;

16 e. possessing, cultivating, processing, repackaging, storing,
17 transporting, displaying, transferring or delivering marijuana or
18 marijuana products if the person has obtained a current, valid
19 license to operate a marijuana testing facility or is acting in his or
20 her capacity as an owner, employee, or agent of a licensed
21 marijuana testing facility;

22 f. leasing or otherwise allowing the use of property owned,
23 occupied or controlled by any person, corporation or other entity for
24 any of the activities conducted lawfully in accordance with
25 subsections a. through e.

26 The bill requires the Division of Alcoholic and Beverage
27 Control, renamed in the bill to the Division of Alcoholic Beverage
28 and Marijuana Control, to adopt regulations necessary for
29 implementation of the bill. The regulations could not prohibit the
30 operation of marijuana establishments, either expressly or through
31 regulations that make their operation unreasonably impracticable.
32 One regulation would require that only marijuana, marijuana based
33 products and paraphernalia be available for sale at a marijuana
34 establishment.

35 The bill also provides for local governmental entity regulations
36 or ordinances. The bill provides that each local governmental entity
37 shall enact an ordinance or regulation specifying the entity within
38 the local governmental entity that is responsible for processing
39 applications submitted for a license to operate a marijuana
40 establishment within the boundaries of the local governmental
41 entity and for the issuance of such licenses, should the issuance by
42 the local governmental entity become necessary because of a failure
43 by the Division to adopt regulations or to process and issue licenses.

44 The local governmental entity may enact ordinances or
45 regulations, not in conflict with the provisions of the bill:

46 -- governing the time, place, manner and number of marijuana
47 establishment operations;

1 -- establishing procedures for the issuance, suspension, and
2 revocation of a license issued by the local governmental entity;
3 -- establishing a schedule of annual operating, licensing, and
4 application fees for marijuana establishments, provided, the
5 application fee shall only be due if an application is submitted to a
6 local governmental entity in accordance with the provisions of the
7 bill and a licensing fee shall only be due if a license is issued by a
8 local governmental entity; and
9 -- establishing civil penalties for violation of an ordinance or
10 regulation governing the time, place, and manner of a marijuana
11 establishment that may operate in such local governmental entity.
12 The bill provides that a local governmental entity may prohibit
13 the operation of marijuana cultivation facilities, marijuana product
14 manufacturing facilities, marijuana testing facilities, or retail
15 marijuana stores through the enactment of an ordinance.
16 Under the bill, each application for an annual license to operate a
17 marijuana establishment would be submitted to the Division.
18 The bill establishes a tax levied upon marijuana sold or
19 otherwise transferred by a marijuana cultivation facility to a
20 marijuana product manufacturing facility or to a retail marijuana
21 store at a rate equivalent to the rate established under the "Sales and
22 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The
23 Department of the Treasury would establish procedures for the
24 collection of all taxes levied. Monies would be deposited in the
25 Transportation Trust Fund, the Drug Enforcement Demand
26 Reduction Fund and programs supporting the following public
27 health initiatives: women's health, family planning, postpartum
28 depression awareness, smoking cessation, and HIV-awareness.
29 The bill specifies that no tax would be levied upon marijuana
30 intended for sale at medical marijuana centers pursuant to the "New
31 Jersey Compassionate Use Medical Marijuana Act," P.L.2009,
32 c.307 (C.24:6I-1 et seq.).