

ASSEMBLY, No. 1838

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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District 6 (Burlington and Camden)

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SYNOPSIS

Establishes protection from adverse employment action for authorized medical marijuana patients.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning medical marijuana and amending and
2 supplementing P.L.2009, c.307.

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

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7 1. Section 16 of P.L.2009, c.307 (C.24:6I-14) is amended to
8 read as follows:

9 16. Nothing in this act shall be construed to require a
10 government medical assistance program or private health insurer to
11 reimburse a person for costs associated with the medical use of
12 marijuana, or, except as provided in section 2 of P.L. _____,
13 c. (C. _____) (pending before the Legislature as this bill), an
14 employer to accommodate the medical use of marijuana in any
15 workplace.

16 (cf: P.L.2009, c.307, s.16)

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18 2. (New section) a. Unless an employer establishes by a
19 preponderance of the evidence that the lawful use of medical
20 marijuana has impaired the employee's ability to perform the
21 employee's job responsibilities, it shall be unlawful to take any
22 adverse employment action against an employee who is a qualified
23 registered patient using medical marijuana consistent with the
24 provisions of P.L.2009, c.307 (C.24:6I-1 et al.) based on either: (1)
25 the employee's status as a registry identification cardholder; or (2)
26 the employee's positive drug test for marijuana components or
27 metabolites.

28 For the purposes of this section, an employer may consider an
29 employee's ability to perform the employee's job responsibilities to
30 be impaired when the employee manifests specific articulable
31 symptoms while working that decrease or lessen the employee's
32 performance of the duties or tasks of the employee's job position.

33 b. (1) If an employer has a drug testing policy and an
34 employee or job applicant tests positive for marijuana, the employer
35 shall offer the employee or job applicant an opportunity to present a
36 legitimate medical explanation for the positive test result, and shall
37 provide written notice of the right to explain to the employee or job
38 applicant.

39 (2) Within three working days after receiving notice pursuant to
40 paragraph (1) of this subsection, the employee or job applicant may
41 submit information to the employer to explain the positive test
42 result, or may request a confirmatory retest of the original sample at
43 the employee's or job applicant's own expense. As part of an
44 employee's or job applicant's explanation for the positive test
45 result, the employee or job applicant may present a doctor's

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 recommendation for medical marijuana, a registry identification
2 card, or both.

3 c. Nothing in this section shall restrict an employer's ability to
4 prohibit or take adverse employment action for the possession or
5 use of intoxicating substances during work hours, or require an
6 employer to commit any act that would cause the employer to be in
7 violation of federal law, or that would result in the loss of a federal
8 contract or federal funding.

9 d. As used in this section, "adverse employment action" means
10 refusing to hire or employ a qualified registered patient, barring or
11 discharging a qualified registered patient from employment,
12 requiring a qualified registered patient to retire from employment,
13 or discriminating against a qualified registered patient in
14 compensation or in terms, conditions, or privileges of employment.

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16 3. This act shall take effect immediately.

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STATEMENT

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21 This bill would establish protections from adverse employment
22 actions for registered patients using medical marijuana pursuant to
23 the "New Jersey Compassionate Use Medical Marijuana Act."

24 Specifically, an employer would be prohibited from taking any
25 adverse employment action against an employee based on the
26 employee's status as a registry identification cardholder or based on
27 a positive test for marijuana, unless the employer establishes by a
28 preponderance of the evidence that the lawful use of medical
29 marijuana has impaired the employee's ability to perform the
30 employee's job responsibilities. The bill provides that an employer
31 may consider an employee's ability to perform the employee's job
32 responsibilities to be impaired when the employee manifests
33 specific articulable symptoms while working that decrease or lessen
34 the employee's performance of the duties or tasks of the employee's
35 job position.

36 If an employer has a drug testing policy and an employee or job
37 applicant tests positive for marijuana, the employee or job applicant
38 is to be offered an opportunity to present a legitimate medical
39 explanation for the positive test result, and is to be provided written
40 notice of the right to explain. Within three working days after
41 receiving notice, the employee or job applicant would be permitted
42 to submit information to the employer to explain the positive test
43 result, or request a confirmatory retest of the original sample at the
44 employee's or job applicant's own expense. An employee or job
45 applicant would be permitted to present a doctor's recommendation
46 for medical marijuana, a registry identification card, or both, as part
47 of the employee's or job applicant's explanation for the positive
48 test.

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1 Nothing in the bill would restrict an employer’s ability to
2 prohibit or take adverse employment action for the possession or
3 use of intoxicating substances during work hours, or require an
4 employer to commit any act that would cause the employer to be in
5 violation of federal law, or that would result in the loss of a federal
6 contract or federal funding.

7 The bill defines “adverse employment action” to mean refusing
8 to hire or employ a qualified registered patient, barring or
9 discharging a qualified registered patient from employment,
10 requiring a qualified registered patient to retire from employment,
11 or discriminating against a qualified registered patient in
12 compensation or in terms, conditions, or privileges of employment.