

ASSEMBLY OVERSIGHT, REFORM AND FEDERAL
RELATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 21

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2020

The Assembly Oversight, Reform and Federal Relations Committee reports favorably Assembly Bill No. 21.

This bill, titled the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” primarily concerns the development, regulation, and enforcement of activities associated with the personal use, by persons 21 years of age or older, of legal cannabis or cannabis resin (the terms provided to distinguish the legalized products from unlawful marijuana or hashish). This would be accomplished through the expansion of the scope and duties of the Cannabis Regulatory Commission, created by P.L.2019, c.153 (C.24:6I-5.1 et al.) to oversee the State’s medical cannabis program, which is primarily set forth in the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

Cannabis Regulatory Commission

With respect to the personal use of cannabis, the general duties, functions, and powers of the commission would include:

(1) Regulating the purchase, sale, production, processing, packaging, transportation, and delivery of cannabis items – a broadly defined term which incorporates all cannabis, cannabis resin, cannabis products, and cannabis extracts;

(2) Granting, refusing, suspending, revoking, cancelling, or otherwise limiting licenses or conditional licenses for the production, processing, warehousing, transportation, sale, and delivery of cannabis items. As further detailed below with respect to licensing activities, a “conditional license” is a type of license that would be issued by the commission pursuant to an abbreviated application process, after which the conditional license holder has a limited period of time in which to become fully licensed by satisfying all of the remaining conditions for full licensure which were not required for the issuance of the conditional license;

(3) Investigating and aiding in the prosecution of violations of law relating to cannabis items;

(4) Taking regulatory actions to prohibit advertising of cannabis items in a manner that is appealing to minors, that promotes excessive use, or that promotes illegal activity; and

(5) Regulating the use of cannabis items for scientific, pharmaceutical, manufacturing, mechanical, industrial, and other purposes.

The commission's Office of Minority, Disabled Veterans, and Women Medical Cannabis Business Development would be re-titled by removing the reference to "medical," and this office would establish and administer, under the direction of the commission, unified practices and procedures for promoting participation in the lawful operation of personal use cannabis businesses by persons from socially and economically disadvantaged communities, including by prospective and existing minority owned and women's owned businesses, as these terms are defined in section 2 of P.L.1986, c.195 (C.52:27H-21.18), and disabled veterans' businesses as defined in section 2 of P.L.2015, c.116 (C.52:32-31.2), which could be licensed as personal use cannabis growers, processors, wholesalers, distributors, retailers, delivery services, or testing facilities under the bill. These unified practices and procedures would include a business' certification and subsequent recertification at regular intervals as a minority owned or women owned business, or a disabled veterans' business, in accordance with eligibility criteria and a certification application process established by the commission in consultation with the office.

The effectiveness of the office's methods would be measured by whether the office's actions resulted in not less than 30 percent of the total number of cannabis licenses issued by the commission being issued to businesses certified by the office; their effectiveness would be further assessed by considering whether the actions resulted in not less than 15 percent of licenses being issued to certified minority owned businesses, and not less than 15 percent of licenses being issued to certified women's owned and disabled veterans' businesses. The office, in support of these efforts, would conduct advertising and promotional campaigns, as well as sponsor seminars and informational programs, directed toward those persons and prospective and existing certified businesses, which would address personal use cannabis business management, marketing, and other practical business matters.

Ethical and Conflicts-of-Interest Considerations for the Commission, its Employees, and Other Parties

The members of the five-person commission and all commission employees would be subject to ethical and conflicts-of-interest restrictions concerning the regulation of personal use cannabis, addressing activities engaged in prior to, during, and following service with the commission. For instance, a person generally could not be an appointed member or employee of the commission if, during the period commencing three years prior to appointment or employment, the person held any direct or indirect interest in, or any employment by, a holder of or applicant for a personal use cannabis license, unless the person's prior interest would not, in the opinion of the commission,

interfere with the person's obligations of appointment or employment; and generally, for a period of two years commencing from the date that a member's or employee's service terminates, that former member or employee would not be permitted to hold any direct or indirect interest in, or any employment by, a holder of or applicant for a cannabis license (this two-year post-service restriction would not apply to secretarial or clerical employees).

The bill also expands the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.), as well as the scope of the Code of Ethics promulgated by the commission, which applies to all commission members and employees with respect to medical cannabis licensing and other activities, and incorporates similar provisions to address personal use cannabis licensing and other activities. Per the existing law, all members and employees would be prohibited from using any official authority to interfere with or affect the result of an election or nomination for office, coerce or advise any person to contribute anything of value to another person or organization for political purposes, or take active part in any political campaign. For the commission members, the executive director of the commission, and any other employee holding a supervisory or policy-making management position, the law also provides a prohibition on making any political contributions to candidates or campaigns, as that term is defined in "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.).

The "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.), is also amended to establish restrictions on various State officers or employees, the Governor and full-time professionals employed in the Governor's Office, full-time members of the Judiciary, and various municipal officers in which licensed or permitted personal use cannabis entities are located. These restrictions concern not only their own activities, but the activities of their associated partnerships, firms, or corporations, and their family members in connection with either employment or another interest in, or representation of, current license holders or applicants. The restrictions are similar to the restrictions on these people and businesses under the current law concerning casino and medical cannabis licensees and applicants, and casino-related and medical cannabis activities, and include a general prohibition on employment, representation, appearance for, or negotiation on behalf of, any license holder or applicant in connection with any cause, application, or matter, and these restrictions can carry over into the post-employment or post-service period following the departure of a person from State or local employment or office.

As per existing law, the ethical and conflicts-of-interest restrictions would be enforced by the State Ethics Commission, and any person found to have committed a violation would be subject to a civil penalty of not less than \$500 or more than \$10,000. Additionally, any willful

violation of the restrictions similar to the restrictions concerning casino and medical cannabis licensees and applicants that are applicable to the above State or municipal elected, appointed, or employed persons, their associated partnerships, firms, or corporations, and their family members, would be considered a disorderly persons offense, punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

If a license holder or applicant for a license commits a violation involving a commission member or employee with respect to the above described pre-service activities, activities during service, or post-service activities, that license holder or applicant could have their license revoked or suspended, or application denied by the commission.

Licensing of Cannabis Businesses; Updating Certain Medical Cannabis Alternative Treatment Centers' Permitted Operations

The bill would establish six “marketplace” classes of licensed businesses: a Class 1 Cannabis Grower license, for facilities involved in growing and cultivating cannabis; a Class 2 Cannabis Processor license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items; a Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees; a Class 4 Cannabis Distributor license, for businesses involved in transporting cannabis items in bulk intrastate, from one licensed cannabis establishment to another; a Class 5 Cannabis Retailer license, for locations at which cannabis items and paraphernalia are sold to consumers; and a Class 6 Cannabis Delivery license, for business providing courier services for a licensed cannabis retailer in order to make deliveries of cannabis items and related supplies to a consumer.

Except with respect to an initial period in which the number of cannabis grower licenses would be capped, as further explained below, the commission would determine the maximum number of licenses for each class based upon market demands, and would be authorized to make requests for new license applications as it deemed necessary to meet those demands.

The commission would be responsible for reviewing each application for a full, annual license, or application for a conditional license, intended to be issued and then subsequently replaced with a full license. Applications would be scored and reviewed based upon a point scale with the commission determining the amount of points, the point categories, and system of point distribution by regulation, subject to some required criteria for consideration in the point scale, such as an analysis of an applicant's: operating plan; environmental plan; and safety and security plans. This point system could be adjusted, or a separate point system used for any application for which a conditional license is sought. Further, in ranking applications, in addition to the

awarding of points, the commission would prioritize applications for licensure using two other factors.

One prioritizing factor would be based on “impact zones,” which are identified under the bill as any municipality that: (1) has a population of 120,000 or more according to the most recently compiled federal decennial census as of the bill taking effect; or (2) ranks in the top 40 percent of municipalities in the State for small amount marijuana possession arrests in the calendar year next preceding the bill taking effect; has a crime index total of 825 or higher based upon the indexes listed in the most recently issued annual Uniform Crime Report by the Division of State Police, as of the bill taking effect; and has an annual average unemployment rate that ranks in the top 15 percent of all municipalities in the State in the calendar year next preceding the bill taking effect. Concerning applications involving impact zones, the commission would not only prioritize applications for at least two licensed businesses in such zones, but would also prioritize applications: that included a person who is a current resident of an impact zone and had resided therein for three or more consecutive years at the time of making the application (to the extent possible the commission would grant at least 25 percent of the total licenses issued, regardless of license class and location of the business, to such applicants); or that included a plan to employ 25 percent of employees who reside in an impact zone.

The second prioritization would be based upon a point system used to rank applications, which gave higher rankings to an applicant which included an in-State resident of at least five years who was a “significantly involved person,” being someone who holds at least a five percent investment interest or is a member of a group who holds at least a 20 percent investment interest and would have authority to make controlling decisions about the cannabis business, or an applicant that met one of the following conditions for its labor environment: being a party to a collective bargaining agreement with a labor organization that currently represents, or is actively seeking to represent, cannabis workers in New Jersey; being a party to a collective bargaining agreement with a labor organization that currently represents cannabis workers in another state; submitting an attestation affirming that the applicant will use best efforts to utilize building trades labor organizations in the construction or retrofit of the facilities associated with the cannabis establishment or distributor; or submitting an attestation affirming that they have a project labor agreement, or will utilize a project labor agreement, which is a form of pre-hire collective bargaining agreement covering terms and conditions, including labor issues and worker grievances, associated with any applicable project.

When processing applications, the commission would also incorporate the licensing efforts developed by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development

designed to promote the formulation and participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities.

In accordance with the bill, at least 35 percent of the total licenses issued for each class would be conditional licenses. Either a full license or conditional license would only be issued for applications which presented an ownership structure that included an in-State resident of at least two years who was a “significantly involved person.” Another requirement, applicable only to a conditional license, would be that the significantly involved person and any other person with a financial interest who also has decision making authority for a proposed cannabis business could only have, for the immediately preceding taxable year, an adjusted gross income of no more than \$200,000 or no more than \$400,000 if filing jointly with another. For purposes of calculating the 35 percent figure for conditional licenses, the figure would include any conditional license issued to an applicant that was subsequently replaced with a full, annual license (which process is further detailed below).

Additionally, at least 10 percent of the total licenses issued for each license class, and at least 25 percent of the overall total number of licenses issued would be designated for and only issued to “microbusinesses.” A microbusiness is described in the bill as employing no more than 10 employees, and: possessing no more than 1,000 cannabis plants each month, except that a cannabis distributor’s possession of cannabis plants for transportation would not be subject to this limit; operating an establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis grower, growing on an area no more than 2,500 square feet measured on a horizontal plane and growing above that plane not higher than 24 feet; in the case of a cannabis processor, acquiring and processing no more than 1,000 pounds of cannabis in dried form each month; in the case of a cannabis wholesaler, acquiring for resale no more than 1,000 pounds of cannabis in dried form, or the equivalent amount in any other form, or any combination thereof, each month; and in the case of a cannabis retailer, acquiring for retail sale no more than 1,000 pounds of cannabis in dried form, or the equivalent amount in any other form, or any combination thereof, each month. For this subset of the five classes of cannabis businesses, 100 percent of the ownership would have to involve New Jersey residents who have resided in the State for at least two years.

The minimum 10 percent per class, and 25 percent overall, of microbusiness-designated licenses issued would include the number of conditional licenses issued for each class, as these two categories are not considered mutually exclusive of one another.

The commission would require that an applicant for licensure, other than an applicant seeking to operate a microbusiness of any class or seeking a conditional license, submit an attestation signed by a bona

bona fide labor organization stating that the applicant entered into a labor peace agreement with such bona fide organization. The maintenance of an agreement would be an ongoing material condition of a full, annual license, unless the business was a microbusiness. Submission of proof of an agreement from an applicant originally issued a conditional license would be a requirement for final approval granting full licensure. As an additional labor requirement, failure to enter, or to make a good faith effort to enter, into a collective bargaining agreement within 200 days of the opening of a cannabis business would result in the suspension or revocation of a license.

Any applicant for a license or conditional license would have to provide proof for each person with any investment interest as being 21 years of age or older, and each of the following persons associated with the cannabis business for which licensure is sought would be subject to a criminal history record background check: any owner, other than an owner who holds less than a five percent investment interest or who is a member of a group that holds less than a 20 percent investment interest, and who has no authority for making controlling business decisions; any director; any officer; and any employee. With respect to qualification or disqualification for licensure based on the background check, the commission would be prohibited from considering any convictions for an offense that occurred prior to the bill's effective date involving the manufacturing, distribution or possession with intent to distribute, less than five pounds of marijuana or less than one pound of hashish, or simple possession of any amount of marijuana or hashish, whether convicted under the laws of this or another state, or under federal law, or any other prior conviction, unless less than five years have passed since convicted, or since completing probation, parole, or a term of imprisonment, and the conviction involved fraud, deceit, embezzlement, employing a minor in a drug distribution scheme, or some other conviction "substantially related to the qualifications, functions, or duties for which the license is required," as determined by the commission. Such a conviction would not be an automatic disqualifier, as the commission would still have the authority to issue a license or conditional license to an applicant which included a person with a "substantially related" conviction, after examining the nature of the offense associated with the conviction, the circumstances at the time of committing the offense, and evidence of rehabilitation since conviction.

With respect to the application for a full license, the commission would complete its review for license approval or denial within 90 days of the submission of the application, unless the commission determined that more time is required. If approved, a license would be issued by the commission not later than 30 days after it gave notice of the approval, unless the applicant was subsequently found to not be in compliance with relevant regulations or local regulating ordinances

applicable to the applicant's business operations. An issued license would expire after one year, but could be renewed following submission of a new application, in which the applicant would detail aspects of the cannabis licensee's operations and on-going compliance measures as part of the renewal process.

With respect to the application for a conditional license, the commission would complete an expedited review for approval or denial within 30 days, unless the commission determined that more time is required. If approved, a conditional license would be issued by the commission not later than 30 days after it gave notice of the approval, unless the applicant was subsequently found to not be in compliance with relevant regulations or local regulating ordinances applicable to conditionally licensed operations. The applicant would not need to be in compliance with every aspect of the regulatory requirements expected for full licensure in order to obtain a conditional license, but would need to provide sufficient plans for actions to be taken to eventually achieve compliance for full licensure. During a 120-day period following issuance of the conditional license, which period could be extended for an additional period of up to 45 days at the discretion of the commission, if it determined that the conditional licensee was in compliance with all plans and other measures necessary to achieve full licensure, it would replace the conditional license with a full, annual license, dated to expire one year from its date of issuance and which could be subsequently renewed; if the conditional licensee was not in compliance as needed for full licensure, the conditional license would automatically expire at the end of the 120-day (or extended) review period.

Additionally, the bill would create a license for cannabis testing facilities, which could test samples of both personal use cannabis and medical cannabis products for compliance with health, safety, and potency standards. The above described licensing efforts developed by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development designed to promote the formulation and participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities would apply to the licensing of testing facilities. The bill would also permit laboratories newly licensed to test batches of medical cannabis products pursuant to section 25 of P.L.2019, c.153 (C.24:6I-18) to also test personal use cannabis products. Any existing laboratory licensed only to test batches of medical cannabis products would be authorized to test personal use cannabis products under an existing license, if the laboratory certifies to the commission that its facility, and the condition and calibration of any equipment used for testing meet the commission's new accreditation requirements for licensure as a personal use cannabis testing facility.

Finally, concerning any alternative treatment center that was issued a permit prior to the effective date of P.L.2019, c.153

(C.24:6I-5.1 et al.), any such center would be permitted to cultivate from up to two physical locations, provided that the alternative treatment center's combined mature cannabis plant grow canopy between both locations does not exceed 150,000 square feet of bloom space or the square footage of canopy permitted under the largest tier in the tiered system adopted by the commission pursuant to paragraph (2) of subsection b. of section 21 of P.L. , c. (C.) (pending before the Legislature as this bill).

Certification of Cannabis Handlers

In addition to the above described licensing requirements, any individual who performed work for or on behalf of any class of licensee (or conditional licensee) would need to have a valid certification issued by the commission, in order to participate in: the possession, securing, or selling of cannabis items at the licensed premises; the recording of the possession, securing, or selling of cannabis items at that premises; or the transportation of cannabis items to and from licensed establishments, or home delivery of cannabis items and related supplies to a retail consumer. The commission could require that anyone applying for a handler certification successfully complete a one-time course which provides training on checking identification, detecting intoxication, the proper handling of cannabis items, and statutory and regulatory provisions relating to cannabis. A person seeking a certification would also be subject to a criminal history record background check, and subject to the same potential disqualifying standards as applicable to applicants for licenses.

Transition to Full Legal Market for Cannabis Items

Within 180 days after the bill is signed into law, or within 45 days of all five members of the commission being duly appointed in accordance with the appointment process set forth in paragraph (2) of subsection b. of section 31 of P.L.2019, c.153 (C.24:6I-24), whichever date is later (at present the initial appoint process is not complete), and after consultation with the Attorney General, State Treasurer, Commissioner of Health, and Commissioner of Banking and Insurance, the commission would, upon filing proper notice with the Office of Administrative Law, and notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), immediately adopt rules and regulations it prepared that are necessary and proper to enable it to carry out the commission's duties, functions, and powers with respect to activities associated with the personal use of cannabis or cannabis resin. These initial rules and regulations would be in effect for a period not to exceed one year after the date of filing, and thereafter be adopted, amended, or readopted, and any subsequent rules and regulations adopted, amended, or readopted, in accordance with the "Administrative Procedure Act."

The commission would begin accepting and processing applications for licenses and conditional licenses within 30 days after the commission's initial rules and regulations have been adopted.

Also, at the time of initial adoption, provisions of the bill concerning the lawful operations of licensed cannabis growers, processors, wholesalers, distributors, retailers, and delivery services would become operative to permit those cannabis businesses issued licenses by the commission to commence work in growing, cultivating, processing, packaging, and transporting cannabis and cannabis items for future retail sales, which would not yet be authorized by licensed cannabis retailers.

Also becoming operative at this time would be provisions which would deem the following medical cannabis alternative treatment centers to either concurrently hold a Class 1 Cannabis Grower license, a Class 2 Cannabis Processor license, and a Class 5 Cannabis Retailer license (and any of their satellite dispensaries would also be deemed to hold a Class 5 retailer license), or alternatively to hold only a Class 3 Cannabis Wholesaler license:

- any alternative treatment center that was issued a permit prior to the effective date of the 2019 medical cannabis reform and expansion by P.L.2019, c.153 (C.24:6I-5.1 et al.), or any alternative treatment center that was issued a permit subsequent to that act's effective date pursuant to an application submitted prior to that effective date;

- the one alternative treatment center, out of four, issued a permit pursuant to an application submitted after the effective date of P.L.2019, c.153 (C.24:6I-5.1 et al.) based on a request for applications published in the New Jersey Register prior to that effective date, that is expressly exempt, pursuant to subsection a. of section 11 of P.L.2019, c.153 (C.24:6I-7.1), from statutory provisions prohibiting the holding of concurrent medical cannabis permits, and this alternative treatment center was deemed pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7) to concurrently hold more than one such permit; and

- the one other alternative treatment center, out of three, issued a permit pursuant to an application submitted on or after the effective date of P.L.2019, c.153 (C.24:6I-5.1 et al.), that is expressly exempt, pursuant to subsection a. of section 11 of P.L.2019, c.153 (C.24:6I-7.1), from statutory provisions prohibiting the holding of concurrent medical cannabis permits, and this other alternative treatment center was deemed pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7) to concurrently hold more than one such permit.

However, any such alternative treatment center deemed to have cannabis licenses, directly or through a satellite dispensary, could not engage in any preparatory work to incorporate personal use cannabis items into its operations, and thus simultaneously function as personal use cannabis businesses, until it submitted written approval to the commission to operate as one or more classes of a cannabis business,

received from the municipality in which the business is to be located, and the commission in turn issues an actual license or licenses.

Notwithstanding the date determined by the commission to be the first date on which cannabis retailers issued licenses and conditional licenses begin retail sales of personal use cannabis items, discussed below, an alternate treatment center with a locally approved Class 5 Retailer license could begin to engage in the retail sale of cannabis items on any date after the date that the commission adopts its initial rules and regulations, and could be legally consumed by persons 21 years of age or older, so long as it has certified to the commission, and to the municipality in which it is located and intends to engage in retail sales, that it has sufficient quantities of medical cannabis and medical cannabis products available to meet the reasonably anticipated need of registered qualifying patients.

Prior to and during this transition phase leading up to eventual retail sales of cannabis items, every municipality would have the option to authorize and regulate the times of operation, place, manner, and number of licensed cannabis businesses operating within its jurisdiction, in a manner consistent with the bill's regulation of such businesses. Alternatively, but only during a 180-day period following the bill's enactment, a municipality could enact an ordinance to prohibit such operations by any one or more classes of business, other than business operations by a cannabis delivery service making deliveries to consumers. Only an ordinance to prohibit operations by one or more license classes enacted pursuant to the specific authority to do so by the bill would be valid and enforceable; any ordinance enacted prior to the bill's effective date addressing the issue of prohibition within the jurisdiction of a municipality would be null and void, and that municipality could only prohibit the operation of one or more classes of cannabis business by enactment of a new ordinance in accordance with the bill's provisions.

The failure of a municipality to timely enact an ordinance prohibiting such operations would result in any class of cannabis business that is not prohibited from operating within the local jurisdiction as being permitted to operate therein for a period of five years as follows: the growing, cultivating, processing, and selling and reselling, and transporting of cannabis and cannabis items by a cannabis grower, cannabis processor, cannabis wholesaler, or cannabis distributor would be permitted uses in all industrial zones of the municipality; and the selling of cannabis items to consumers from a retail store by a cannabis retailer would be a conditional use in all commercial zones or retail zones, subject to meeting the conditions set forth in any applicable zoning ordinance or receiving a variance from one or more of those conditions in accordance with the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). At the end of any five-year period following a failure to enact a local ordinance, the municipality could revisit the issue of prohibition, but any ordinance

would be prospective only and not apply to any cannabis business already operating within the local jurisdiction subject to the ordinance.

If a municipality allowed the operation of cannabis businesses, a copy of each license application submitted to the commission for a business to be located within that local jurisdiction would be provided to the municipality, which in turn would inform the commission whether the application complies with its local regulatory scheme, and the local review could be the basis for a denial of an application if it is not in compliance.

Lastly, during the transition phase when applications are being processed and licensed cannabis businesses starting operations or medical alternative treatment centers starting preparatory work or actually incorporating personal use cannabis items into their operations, the commission would determine the first date on which cannabis retailers issued licenses and conditional licenses may begin retail sales of personal use cannabis items. This date would be no more than 180 days after the adoption of the commission's initial rules and regulations, and the commission would provide at least 30 days' notice of the date to every licensed cannabis establishment and alternative treatment center deemed to be a licensed cannabis establishment, even if that center was already engaging in retail sales. On that date and thereafter, legal retail sales and consumption of personal use cannabis items sold by licensed cannabis retailers would begin.

Once retail sales by licensed cannabis retailers have begun, there would be a limitation, for a period of 18 months, on the number and classes of licenses any one licensee could hold. During this time, the bill would not permit a licensed grower, processor, wholesaler, distributor, or delivery service to also be a licensed retailer, and vice versa, plus a grower or processor could only concurrently hold two licenses (either another grower or processor license), and a wholesaler would be limited to just the one wholesaler license; these restrictions would not apply to a medical alternative treatment center deemed to concurrently possess one of each type of cannabis license class as described above. Additionally, throughout this 18-month period, the commission would not allow more than 28 cannabis growers to be simultaneously licensed and engaging in personal use cannabis activities, which number would include any alternative treatment centers deemed to be licensed as cannabis growers who are issued licenses by the commission.

Following the 18-month period, a license holder could hold:

- a Class 1 Cannabis Grower license, a Class 2 Cannabis Processor license, and a Class 5 Cannabis Retailer license concurrently, provided that no license holder would be authorized to concurrently hold more than one license of each class, except for an alternative treatment center that was deemed, during the 18-

month period, to have an additional Class 5 Cannabis Retailer license for each satellite dispensary as described above; or

- a Class 3 Cannabis Wholesaler license; in no case could a holder of a Class 3 Cannabis Wholesaler license concurrently hold a license of any other class of listed above.

Concerning the above described alternative treatment centers deemed from the onset to hold cannabis licenses and actually issued licenses based upon local approval, after a period no greater than one year from the date that retail sales by licensed cannabis retailers have begun, all such centers, in order to continue their operations concerning personal use cannabis, would be required to submit a certification, prior to the date that a cannabis license was set to expire, as to the continued material accuracy of their previously approved medical permit application to either the Department of Health or the commission, and their compliance with the provisions of this bill as required by the commission. The certification would also need to be supported by a new written approval from the municipality in order for the commission to renew a license for continued personal use operations.

Cannabis Consumption Areas

A licensed cannabis retailer, medical cannabis dispensary or clinical registrant properly permitted, or an alternative treatment center that has a permit to dispense medical cannabis pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” may apply to the commission seeking an endorsement to operate a cannabis consumption area at which the on-premises consumption of personal use or medical cannabis could occur. Along with the commission’s endorsement, the municipality in which the consumption area would operate would also review the application and have to provide a local endorsement.

An endorsed cannabis retailer could only allow the consumption of personal use cannabis at its consumption area. Any other endorsed party involved in the medical cannabis marketplace could only allow the consumption of medical cannabis at its consumption area, unless it was also deemed during the transition period to the legal cannabis market (see above) to have one or more Class 5 Cannabis Retailer licenses and was actually issued such a license or licenses, or had otherwise been issued such a license by the commission, in which case both personal use and medical cannabis could be consumed.

An on-premises consumption area could either be indoors or outdoors. An indoor consumption area would be a structurally enclosed area within a cannabis retailer, medical cannabis dispensary, clinical registrant facility, or alternative treatment center that is separated by solid walls or windows from the area in which retail sales of cannabis, or retail sales along with the dispensing of medical cannabis occurs, would only be accessible through an interior door after first entering the facility, and, in the case of a personal use

consumption area, would need to comply with all ventilation requirements applicable to cigar lounges under the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.); the smoking of medical cannabis would not be permitted in an indoor consumption area. An outdoor consumption area would be an exterior structure on the same premises as the cannabis retailer, medical cannabis dispensary, clinical registrant facility, or alternative treatment center, that is either separate from or connected to the facility and that is not required to be completely enclosed, but would need to have enough walls, fences, or other barriers to prevent any view of persons consuming personal use cannabis items or medical cannabis from any sidewalk or other pedestrian or non-motorist right-of-way; and with respect to any consumption by smoking, vaping, or aerosolizing at an outdoor area, the facility would need to ensure that any such activity does not result in migration, seepage, or recirculation of smoke or other exhaled material to any indoor public place or workplace.

Business Treatment of Cannabis Licensees

Concerning the business treatment of any licensee:

A financial institution, as defined by section 2 of P.L.1983, c.466 (C.17:16K-2), would not be permitted to engage in any discriminatory activities with respect to the banking activities of a cannabis business, or the banking activities of a person associated with a cannabis business. Any such activities could result in the suspension or revocation of a financial institution’s charter or other available enforcement action by the Commissioner of Banking and Insurance. Additionally,

(1) A cannabis grower would be prohibited from operating or being located on any land that is valued, assessed, or taxed as an agricultural or horticultural use pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.);

(2) A person or entity issued any class of license to operate a cannabis business would not be eligible for a State or local economic incentive during the period of time that the economic incentive is in effect;

(3) The issuance of a license to operate as any class of cannabis business to a person or entity that has been awarded a State or local economic incentive would invalidate the right of the person or entity to benefit from the economic incentive as of the date of issuance of the license;

(4) A property owner, developer, or operator of a project to be used, in whole or in part, as a cannabis business would not be eligible for a State or local economic incentive during the period of time that the economic incentive is in effect; and

(5) The issuance of a license to operate as any class of cannabis business at a location that is the subject of a State or local economic incentive would invalidate the right of a property owner, developer, or

operator to benefit from the economic incentive as of the date of issuance of the license.

New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund

All license fees and licensee penalties would be deposited into a new fund, referred to as the “Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Fund.” This fund would also receive deposits from the tax revenues collected on medical cannabis transactions pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.), as well as tax revenues on personal use cannabis retail sales, which tax is mandated by paragraph 13 of Section VII of Article IV of the New Jersey Constitution legalizing and permitting the State’s regulation of cannabis. Monies in this fund would be used for several purposes, including: to pay for the operational costs of the commission; and reimburse expenses incurred by any county or municipality for the training costs associated with the attendance and participation of a police officer in a Drug Recognition Expert program for detecting, identifying, and apprehending drug-impaired motor vehicle operators.

Optional Municipal-Level Taxation

The bill would also permit any municipality to adopt an ordinance that authorized a local transfer tax. This transfer tax could be imposed on sales that occur within the municipality: between a cannabis business that holds a grower, processor, wholesaler, or retail cannabis license and another such licensed cannabis business; between cannabis retailers and customers; or any combination thereof. This local tax would not be imposed on transfers involving distributors for purposes of the bulk transportation of cannabis items, or delivery services for purposes of delivering cannabis items to consumers. The municipality would have discretion to set the rate or rates of the transfer tax, but a rate could not exceed: two percent of the receipts from each sale by a cannabis grower; two percent of the receipts from each sale by a cannabis processor; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer. This tax would be applied in the form of an equivalent user tax on non-sale transactions between cannabis businesses operated by the same license holder. The local transfer tax or user tax would be collected by cannabis businesses and forwarded to the chief financial officer of the municipality for use by that municipality.

Legalized and Prohibited Activities Concerning Personal Use Cannabis Items

Once the provisions for the lawful personal use of cannabis items become operative and retail sales of cannabis items have begun, the following acts would not be an offense under the “New Jersey Code of

Criminal Justice,” Title 2C of the New Jersey Statutes, for a person 21 years of age or older:

(1) Possessing, purchasing, or transporting: cannabis paraphernalia; one ounce or less of cannabis; the equivalent of one ounces or less of cannabis infused product in solid, liquid, or concentrate form, based upon an equivalency calculation for different product forms set by the commission in its regulations; or five grams or less of cannabis resin;

(2) Transferring any cannabis item in any amount described above to another person 21 years of age or older, so long as the transfer is for non-promotional, non-business purposes; and

(3) Taking delivery of or consuming any lawfully acquired cannabis item, provided that nothing in the bill is intended to permit a person to smoke, vape, aerosolize a cannabis item in a public place, other than a designated consumption area as detailed above.

A person possessing, purchasing, transporting, or transferring to another at any one time any cannabis or resin in an amount greater than as permitted, or an infused product in solid, liquid, or concentrate form with more than the equivalency permitted would generally be considered a violation of the “Comprehensive Drug Reform Act of 1987,” P.L.1987, c.106 (N.J.S.2C:35-1 et al.), and would subject the person to a civil penalty or prosecution as if the person possessed, purchased, transported, or transferred illegal marijuana or hashish in violation of that act.

With respect to consumption, the smoking, vaping, or aerosolizing of a cannabis item would be prohibited in any place pursuant to law that prohibits the smoking of tobacco, including the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), as well as any “indoor public place” as defined in that act (even if such a place is otherwise permitted to allow the smoking of tobacco), except that smoking, vaping, or aerosolizing would be permitted in a designated consumption area or in up to 20 percent of the guest rooms of a hotel, motel, or other lodging establishment as permitted by the person or entity that owns or controls that establishment. The smoking, vaping, or aerosolizing of cannabis items could also be prohibited in private multifamily housing, as decided by the person or entity that owns or controls the housing, and prohibited in the units of a condominium, if approved by its association and a majority of all of the unit owners. Any fines or civil penalties that could be assessed for the smoking of tobacco where prohibited under the “New Jersey Smoke-Free Air Act” would be applicable to the smoking, vaping, or aerosolizing of cannabis where prohibited under this bill, other than smoking, vaping, or aerosolizing on elementary or secondary school property, which would be classified as a disorderly persons offense (punishable by imprisonment for up to six months, a fine of up to \$1,000, or both).

As to consumption other than by smoking, vaping, or aerosolizing: a person or entity that owns or controls a property, except for

multifamily housing, a unit of a condominium, or a site in a mobile home park on which a manufactured home is located, could prohibit or otherwise regulate consumption on or in that property; and a municipality would be empowered to enact an ordinance making it unlawful for any person 21 years of age or older to consume any cannabis item in a public place, other than school property (which would be punishable as a disorderly persons offense), and the ordinance could provide for a civil penalty of up to \$200 per violation. The bill would also prohibit consumption in any area of any building of, on the grounds of, or in any facility owned, leased, or controlled by, any public or private institution of higher education or a related entity thereof, regardless of whether the area or facility is an indoor place or outdoors, and the penalty provisions of the “New Jersey Smoke-Free Air Act” would be applicable for a violation.

Mere possession of a cannabis item (in addition to consuming such item) on elementary or secondary school property by a person of legal age to purchase such item would be a disorderly persons offense, as is the case currently with respect to the unauthorized possession of alcohol on such property (punishable by imprisonment for up to six months, a fine of up to \$1,000, or both). Additionally, similar to the statutory law’s treatment of the possession of an “open container” of alcohol, or consumption of alcohol, while operating a motor vehicle, the bill would amend relevant laws in Title 39 of the Revised Statutes to make it a motor vehicle offense for the motor vehicle operator to possess an “open container” or “open package” of a cannabis item. A first offense would be subject to a fine of \$200, and a subsequent offense would be subject to a fine of \$250 or alternatively imposition of a period of community service, the same penalties applied to violations involving an alcoholic beverage. Passengers in motor vehicles would be permitted to possess and consume cannabis items, other than such items intended for smoking, vaping, or aerosolizing.

Regarding the possession or consumption of a cannabis item by a person under the legal age to purchase cannabis, the bill expands the current laws addressing underage possession or consumption of alcoholic beverages to include cannabis items:

-for possession, in a public place, of an amount that may be lawfully possessed by a person of legal age to purchase cannabis items, a first offense would be a petty disorderly persons offense, subject to a fine of not less than \$250;

-for possession, on private property, of an amount that may be lawfully possessed by a person of legal age to purchase cannabis items, a first offense would be a civil penalty of \$100, and a second offense would be a civil penalty of \$200; a third or subsequent offense would be a municipal fine of \$350, which is the same as a subsequent offense for possession of an alcoholic beverage on private property; for possession, on private property, of an amount of cannabis items that exceeds what may be lawfully possessed, or consumption on

private property, a first offense would be a municipal fine of \$250, and a second or subsequent offense would be a municipal fine of \$350 (the same penalties as applicable to possession or consumption of an alcoholic beverage).

Finally, it would also be unlawful, generally punishable as a \$50 civil penalty, for an underage person to present a false identification in order to enter a cannabis establishment or obtain cannabis items; this would differ than using a false identification with respect to alcoholic beverages, which is expressly noted in State law as not constituting an offense and therefore carries with it no statutory punishment.

De-scheduling Marijuana as a Schedule I Controlled Dangerous Substance

On and after the effective date of the bill, marijuana would no longer be included as a Schedule I controlled dangerous substance, which are substances considered to have a high potential for abuse and no accepted medical use, as described in the “New Jersey Controlled Dangerous Substances Act,” P.L.1970, c.226 (C.24:21-1 et al.). The bill also expressly states that marijuana may not be designated or rescheduled and included in any other schedule by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to the director’s designation and rescheduling authority set forth in section 3 of P.L.1970, c.226 (C.24:21-3).

Sentencing Relief for Certain Marijuana and Hashish Offenses

As part of a court sentence or adjudication of delinquency imposed after the bill’s effective date, a person would not be subject to a forfeiture or postponement of the person’s driving privileges based on a conviction or finding of delinquency for any of the following offenses:

- unlawful distribution of, or possessing or having under control with intent to distribute, less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

- obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of any amount of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., subsection b., or subsection c. of N.J.S.2C:35-10; or

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

Reporting Requirements by the Commission

Lastly, the commission would annually report to the Governor and Legislature regarding the commission's regulation and enforcement activities associated with the personal use of cannabis pursuant to the bill (and the medical use of cannabis pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act"). The annual report would include information on: the number of criminal arrests or charges for small amount marijuana or hashish possession or distribution, cataloged by the jurisdictions in which the acts resulting in the citations, arrests, or charges occurred, and the race, ethnicity, gender, and age of the persons cited, arrested, or charged; the number of motor vehicle stops by law enforcement, cataloged in the same manner; the total number of personal use cannabis licenses issued since the distribution of the previous report to the Governor and Legislature, as well as the number for each class of license issued; the total number and type of applicants that submitted applications for licenses and whether they were approved, reapproved, or denied, plus data compiled by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development about participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities, as well as minority owned, disabled veterans' owned, and women owned business development in the personal use cannabis marketplace.