

[Third Reprint]

ASSEMBLY, No. 1708

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 3 (Cumberland, Gloucester and Salem)

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District 7 (Burlington)

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SYNOPSIS

Requires workers' compensation, PIP, and health insurance coverage for the medical use of cannabis under certain circumstances.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 21, 2021.



(Sponsorship Updated As Of: 2/13/2020)

1 AN ACT concerning ¹the¹ medical ¹**["marijuana"]** use of cannabis¹
 2 and insurance coverage, amending P.L.2009, c.307, and
 3 supplementing various parts of the statutory law.

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

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

10 16. a. Nothing in this act shall be construed to require a
 11 government medical assistance program or private health insurer to
 12 reimburse a person for costs associated with the medical use of
 13 marijuana, or an employer to accommodate the medical use of
 14 marijuana in any workplace.

15 b. Notwithstanding the provisions of subsection a. of this
 16 section, an employer or workers' compensation insurance carrier or
 17 private passenger automobile insurance carrier shall provide
 18 coverage for costs associated with the medical use of marijuana
 19 pursuant to P.L. , c. (C.) (pending before the Legislature as
 20 this bill).

21 (cf: P.L.2009, c.307, s.16)¹

22
 23 ¹1. Section 16 of P.L.2009, c.307 (C.24:6I-14) is amended to
 24 read as follows:

25 16. a. Nothing in P.L.2009, c.307 (C.24:6I-1 et al.) or P.L.2015,
 26 c.158 (C.18A:40-12.22 et al.) shall be construed to require a
 27 government medical assistance program ³**["or private health**
 28 **insurer"]³** to reimburse a person for costs associated with the
 29 medical use of cannabis, or to restrict or otherwise affect the
 30 distribution, sale, prescribing, and dispensing of any product that
 31 has been approved for marketing as a prescription drug or device by
 32 the federal Food and Drug Administration.

33 b. Notwithstanding the provisions of subsection a. of this
 34 section, an employer or workers' compensation insurance carrier
 35 ³**["or"]**, ³private passenger automobile insurance carrier ³, or health
 36 insurance carrier³ shall provide coverage for costs associated with
 37 the medical use of cannabis pursuant to P.L. , c. (C.)
 38 (pending before the Legislature as this bill) except that an employer
 39 or carrier shall not be required to provide coverage for costs
 40 associated with the medical use of cannabis upon intervention by
 41 the federal government to enforce the "Controlled Substances Act"
 42 (21 U.S.C. s.802 et seq.).¹

43 (cf: P.L.2019, c.153, s.22)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted February 13, 2020.

²Assembly AAP committee amendments adopted October 26, 2020.

³Assembly floor amendments adopted June 21, 2021.

1 ³[2. (New section) The Legislature finds and declares that
2 scientific data indicate that medical ¹‘[marijuana] cannabis’ has
3 significant medical value when used in the treatment of certain
4 injuries and diseases, including pain relief, control of nausea and
5 vomiting, and appetite stimulation. ¹‘[Marijuana] Cannabis’ also
6 has potential therapeutic value from effects such as anxiety
7 reduction, sedation, and euphoria. Scientific studies have found
8 that ¹‘[marijuana] cannabis’ is effective in relieving some of the
9 symptoms of HIV/AIDS, cancer, glaucoma, and multiple sclerosis.
10 Other studies have suggested that medical ¹‘[marijuana] cannabis’
11 legalization may lead to decreased prescription opioid abuse.

12 Although medical ¹‘[marijuana] cannabis’ has many useful
13 therapeutic benefits, its use is limited because its costs are not
14 covered by insurance. By requiring coverage for medical
15 ¹‘[marijuana] cannabis’ under workers’ compensation and private
16 passenger automobile insurance, access to these benefits will be
17 expanded. Additionally, medical ¹‘[marijuana] cannabis’ may
18 lower costs for insurers by providing a more economical alternative
19 to more expensive and risky drugs such as opioids.]³
20

21 ³2. (New section) The Legislature finds and declares that:

22 a. Modern medical research has discovered a beneficial use for
23 cannabis in treating or alleviating the pain or other symptoms
24 associated with certain medical conditions, as found by the National
25 Academy of Sciences' Institute of Medicine in March 1999. In
26 addition, a rigorous review by the National Academies of Sciences,
27 Engineering, and Medicine in 2017 of more than 10,000 scientific
28 abstracts published since 1999 concerning the health impacts of
29 cannabis reveals that there is conclusive or substantial evidence that
30 cannabis is effective in the treatment of chronic conditions such as
31 glaucoma, chronic pain, multiple sclerosis, and chemotherapy-
32 induced nausea and vomiting.

33 b. As the opioid crisis continues across the country and in New
34 Jersey, access to medical cannabis may help save lives by
35 presenting a safe alternative to riskier opioids.

36 c. According to the U.S. Sentencing Commission and the
37 Federal Bureau of Investigation, 99 out of every 100 cannabis
38 arrests in the country are made under state law, rather than under
39 federal law. Consequently, changing state law will have the
40 practical effect of protecting from arrest the vast majority of
41 seriously ill people who have a medical need to use cannabis.

42 d. Cannabis is currently classified as a Schedule I controlled
43 substance under the federal “Controlled Substances Act” (21 U.S.C.
44 s.801 et seq.) and therefore the manufacture, distribution, and
45 possession of cannabis is a criminal offense under federal law.

46 e. Although federal law currently prohibits the use of cannabis,
47 the laws of Alabama, Alaska, Arizona, Arkansas, California,
48 Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois,

1 Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota,
2 Missouri, Montana, Nevada, New Hampshire, New Mexico, New
3 York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania,
4 Rhode Island, Utah, Vermont, Virginia, Washington, West Virginia,
5 and the District of Columbia permit the use of cannabis for medical
6 purposes. New Jersey joins this effort for the health and welfare of
7 its citizens.

8 f. States are not required to enforce federal law or prosecute
9 people for engaging in activities prohibited by federal law;
10 therefore, compliance with P.L. c. (C.)(pending before the
11 Legislature as this bill) does not put the State of New Jersey in
12 violation of federal law.

13 g. In Hager v. M&K Construction 246 N.J. 1 (2021) the New
14 Jersey Supreme Court recently contemplated the interaction of
15 federal and State law as it relates to the regulation of cannabis. In
16 its holding, the court concluded that:

17 (1) Congress expressed its intent, in the language of section 903
18 of the “Controlled Substances Act,” (21 U.S.C. s.903) that the act
19 preempts only a state law that requires the performance of an action
20 specifically forbidden by federal statute;

21 (2) under the “Controlled Substances Act” it is unlawful to
22 knowingly or intentionally possess with intent to manufacture,
23 distribute, or dispense cannabis;

24 (3) an employer's reimbursement to a qualified patient for costs
25 associated with the medical use of cannabis does not require the
26 employer to commit those offenses and is therefore not preempted
27 by federal law; and

28 (4) reimbursement by an employer to an employee for costs
29 associated with the medical use of cannabis would not be aiding and
30 abetting in the commission of a crime.

31 h. Compassion dictates that a distinction be made between
32 medical and non-medical uses of cannabis. Hence, the purpose of
33 P.L. c. (C.)(pending before the Legislature as this bill) is to
34 protect from arrest, prosecution, property forfeiture, and criminal
35 and other penalties, those patients who use cannabis to alleviate
36 suffering from qualifying medical conditions, as well as their
37 insurance carriers.³

38
39 3. (New section) ¹a.¹ Personal injury protection benefits
40 provided pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or
41 section 4 of P.L.1998, c.21 (C.39:6A-3.1) shall include coverage for
42 costs associated with the medical use of ¹【marijuana】 cannabis¹
43 provided that ¹【:

44 a. The ¹【 the¹ insured is a qualifying patient authorized for the
45 medical use of ¹【marijuana】 cannabis¹ pursuant to P.L.2009, c.307
46 (C.24:6I-1 et al) ¹【; and ¹【 .¹

1 b. ¹["At least one other medication or treatment has been
2 attempted and found to be unsuccessful in treating the patient's
3 debilitating medical condition."]

4 A private passenger automobile insurer shall not be required to
5 provide coverage for costs associated with the medical use of
6 cannabis upon intervention by the federal government to enforce the
7 "Controlled Substances Act" (21 U.S.C. s.802 et seq.).

8 c. Notwithstanding any provision of the insurance policy to the
9 contrary, ³["if for any reason payment by the insurer to the medical
10 cannabis dispensary is not feasible, the"] an³ insurer shall remit
11 directly to the insured the costs for any benefits associated with the
12 medical use of cannabis upon proof of payment by the insured to
13 the medical cannabis dispensary.¹

14
15 4. (New section) ¹a.¹ Workers' compensation benefits paid by
16 any employer or a workers' compensation insurance carrier of an
17 employer for an injury to an employee under R.S.34:15-1 et seq.
18 shall include coverage for costs associated with the medical use of
19 ¹["marijuana"] cannabis¹ provided that ¹[":

20 a. The ¹the¹ employee is a qualifying patient authorized for the
21 medical use of ¹["marijuana"] cannabis¹ pursuant to P.L.2009, c.307
22 (C.24:6I-1 et al) ¹["; and"] ¹.

23 b. ¹["At least one other medication or treatment has been
24 attempted and found to be unsuccessful in treating the patient's
25 debilitating medical condition."]

26 An employer or workers' compensation insurance carrier shall
27 not be required to provide coverage for costs associated with the
28 medical use of cannabis upon intervention by the federal
29 government to enforce the "Controlled Substances Act" (21 U.S.C.
30 s.802 et seq.).

31 c. Notwithstanding any provision of the employer's plan or
32 insurance policy to the contrary, ³["if for any reason payment by the
33 employer or carrier to the medical cannabis dispensary is not
34 feasible, the"] an³ employer or carrier shall remit directly to the
35 employee the costs for any benefits associated with the medical use
36 of cannabis upon proof of payment by the employee to the medical
37 cannabis dispensary.¹

38
39 ²⁵. (New section) a. A carrier that offers a health benefits plan
40 in this State shall provide coverage for costs associated with the
41 medical use of cannabis provided that the covered person is a
42 qualifying patient authorized for the medical use of cannabis pursuant
43 to P.L.2009, c.307 (C.24:6I-1 et al).

44 b. A carrier shall not be required to provide coverage for costs
45 associated with the medical use of cannabis upon intervention by the
46 federal government to enforce the "Controlled Substances Act" (21
47 U.S.C. s.802 et seq.).

1 c. Notwithstanding any provision of the health benefits plan to
2 the contrary, ³if for any reason payment by the carrier to the medical
3 cannabis dispensary is not feasible, the ³a carrier shall remit directly
4 to the covered person the costs for any benefits associated with the
5 medical use of cannabis upon proof of payment by the covered person
6 to the medical cannabis dispensary.

7 d. As used in this section:

8 "Carrier" means an insurance company, health service corporation,
9 hospital service corporation, medical service corporation, or health
10 maintenance organization authorized to issue health benefits plans in
11 this State or any entity contracted to administer health benefits in
12 connection with the State Health Benefits Program or School
13 Employees' Health Benefits Program.²

14
15 ³6. (New section) If any part, section, clause, paragraph,
16 sentence, or provision, section of P.L. c. (C.)(pending
17 before the Legislature as this bill) shall be adjudged by any court of
18 competent jurisdiction to be unconstitutional or otherwise invalid,
19 that judgment shall not affect, impair, or invalidate the remainder
20 thereof, but shall be confined in its operation to the section, clause,
21 paragraph, sentence, or provision thereof directly involved in the
22 controversy in which the judgment shall have been rendered.³

23
24 ³7. (New section) The Commissioner of Health, the
25 Commissioner of Banking and Insurance, and the Executive
26 Director of the Cannabis Regulatory Commission shall establish a
27 program to ensure that employers or workers' compensation
28 insurance carriers, private passenger automobile insurance carriers,
29 private health insurance carriers, and health care practitioners are in
30 compliance with the provisions of "Jake Honig Compassionate Use
31 Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.). The
32 program shall require an employer or workers' compensation
33 insurance carrier, private passenger automobile insurance carrier,
34 private health insurance carrier, health care practitioner as defined
35 in section 3 of P.L.2009, c.307 (C.24:6I-3), and medical cannabis
36 dispensary as defined in section 3 of P.L.2009, c.307 (C.24:6I-3) to
37 report information, to be determined by the Commissioner of
38 Health, the Commissioner of Banking and Insurance, and the
39 Executive Director of the Cannabis Regulatory Commission, to the
40 Department of Health, the Department of Banking and Insurance,
41 and the Cannabis Regulatory Commission. The program may
42 investigate and audit any of the entities required to report
43 information pursuant to this section.³

44
45 ¹[5.] ³[6. ¹] ³8. ³ This act shall take effect on the 90th day next
46 following enactment.