

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 5211

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 7, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5211, with committee amendments.

This bill, as amended, updates and clarifies recent legislation passed by both Houses of the Legislature on December 17, 2020 concerning cannabis legalization, and marijuana and hashish decriminalization.

Section 1 is amended to permit vacating, by operation of law, (1) various existing entries of guilt or placements in a diversionary program for matters without a judgment of conviction or final disposition, and (2) various existing convictions, remaining sentences, ongoing supervision, and unpaid court-ordered financial assistance, as soon as may be practicable but no later than the first day of the fifth month following the effective date of the Second Reprint of Assembly Bill No. 21, titled the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.” The “as soon as practicable” language added by this bill creates the possibility of earlier resolution of these matters.

Section 2 makes changes in the definitions section of the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.” The definitions of “cannabis item” and “cannabis resin” are amended to reference the definition of “medical cannabis” in section 3 of P.L.2009, c.307 (C.24:6I-3), which applies to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.). The reference is done to clarify that medical cannabis is excluded from these definitions.

Section 3 amends the title of the act which is being amended in section 4, concerning underage possession of marijuana or cannabis items. The bill provides that any person under the legal age to purchase cannabis items (21 years of age) who knowingly possesses marijuana or any cannabis item, the amount of which is what could be lawfully possessed if the person were of legal age, in any school, public conveyance, public place, or motor vehicle shall be subject to a civil penalty of not less than \$50 nor more than \$250; if the amount possessed is more than what could be lawfully possessed if

the person were of legal age, the civil penalty would be not less than \$100 nor more than \$500. The civil penalty would be recovered in a summary proceeding in the name of the municipality pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.). Both the municipal court with territorial jurisdiction over an underage possession violation and the Superior Court would have jurisdiction of proceedings for the enforcement of a civil penalty, as well as the requirement, if so ordered by the court, for a person to participate in an alcohol or drug abuse education or treatment program as set forth in the section. Such education or treatment would not exceed 30 days, as a violation does not involve the possibility of confinement, an additional period which, under current law, would have provided another means to determine the period for the education or treatment.

All of the above concerning civil penalties and court proceedings would not apply to a person under the age of 18 years who committed a possession violation. Such a person would instead be subject to a law enforcement curbside warning or stationhouse adjustment, conducted in accordance with Attorney General Law Enforcement Directive No. 2020-12, issued on December 3, 2020 to address a range of policies, practices, and procedures to promote juvenile justice reform. A “curbside warning” is defined in the bill as “a brief, informal interaction between a law enforcement officer and a person under the age of 18 years who the officer observed engage in a violation . . . . During the interaction, the officer shall counsel the person to discontinue the conduct, warn the person about the potential consequences of future delinquency, and then conclude the interaction without taking any further action.” The more involved option for a “stationhouse adjustment” is defined in the bill as “a mechanism that allows law enforcement agencies to resolve a violation . . . by a person under the age of 18 years without formal court proceedings. A stationhouse adjustment, which shall be memorialized in a signed agreement, establishes one or more conditions that the person shall meet in exchange for the law enforcement agency declining to pursue a formal delinquency complaint against the person.”

Section 4 is additionally amended to establish an immunity from prosecution for any underage person in need of medical assistance due to the consumption of marijuana, and the underage person who called 9-1-1 to get that person assistance, as well as up to two other persons acting in concert with the underage person who made the call. This immunity is the same immunity already provided for situations involving the underage consumption of alcohol, and expanded to the underage consumption of cannabis items by the recently passed legislation.

Section 5 of the bill amends the title of the act amended by section 6 to include “marijuana” in section 1 of P.L.1981, c.197 (C.2C:33-16) concerning possession of certain regulated items on school property by adults 21 years of age or older, including alcohol, marijuana, or cannabis items. Such possession of marijuana or cannabis items would be graded a disorderly persons offense, punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

Section 7 amends N.J.S.2C:35-2 which is the definitions section for chapter 35 of the criminal code, the “Comprehensive Drug Reform Act of 1987,” to make changes in the definition of “hashish” and “marijuana” to reference and exclude medical cannabis.

Section 8 amends N.J.S.2C:35-5, concerning unlawful distribution, and section 9 amends N.J.S.2C:35-10, concerning unlawful possession, to remove provisions pertaining to civil rights protections and law enforcement informational reporting. The bill does not eliminate these provisions but recodifies them as two separate sections to be allocated outside of the criminal penalty sections; these are sections 15 and 16 in this bill. The amendments to N.J.S.2C:35-10 also cross-reference the new provisions addressing unlawful underage possession and unlawful adult possession on school property as described above, as otherwise the recently passed legislation on cannabis legalization and marijuana and hashish decriminalization make the act of small amount possession of marijuana or hashish no longer a punishable crime, offense, act of delinquency, or civil violation of law.

Section 10 amends section 3 of P.L.2009, c.307 (C.24:6I-3) to delete the definition of “cannabis” and include an expanded definition of “medical cannabis” that is more parallel to the definition of “cannabis” in the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” and that includes clarifications that cannabis and cannabis items, marijuana, and hemp and hemp products are excluded from the updated definition.

Section 11 amends section 2 of P.L.1970, c.226 (C.24:2I-2) to include medical cannabis within the definition of “drugs” and “hashish,” clarifying that medical cannabis is excluded from those definitions, and to include a cross-reference to the new definition of “medical cannabis.”

Section 12 provides an exclusionary reference to medical cannabis in the Schedule I definition of “tetrahydrocannabinols.”

Section 13 concerns employer and employee workplace policies and protections, and includes guidance for drug testing by employers using certified Workplace Impairment Recognition Experts. The bill amends the section to make a correction indicating that the State’s Drug Recognition Expert program, which

trains police officers to detect, identify, and apprehend drug-impaired motor vehicle operators, is provided by the State Police, not the Police Training Commission as originally stated, and any certified Drug Recognition Expert may be eligible for immediate certification as a Workplace Impairment Recognition Expert.

Section 14 amends section 6 of P.L.1984, c.56 (C.52:17B-71) to make a similar corrective reference to the State Police concerning the Drug Recognition Expert program, and provides that the State Police will consult with the Cannabis Regulatory Commission concerning the development of standards and curricula for certification as a Workplace Impairment Recognition Expert.

As previously stated, sections 15 and 16 contain provisions pertaining to civil rights protections and law enforcement informational reporting, which are re-codifying language from N.J.S.2C:35-5 and -10.

Section 17 is the effective date section. The bill takes effect immediately, but section 13, concerning workplace policies and protections, only becomes operative upon adoption of the initial rules and regulations by the Cannabis Regulatory Commission, which will cover workplace issues and a myriad of other aspects of the creation of a legalized cannabis marketplace.

The bill, as amended and reported, is identical to Senate Bill No. 3320, also amended and reported by the Senate Judiciary Committee today.

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

- eliminate any fine for underage possession of marijuana or cannabis items, and instead establish civil penalties of not less than \$50 nor more than \$250 dollars, and not less than \$100 nor more than \$500 if the possession of marijuana or cannabis items exceeds the amount of cannabis items that could be lawfully possessed if the person were of legal age. The higher civil penalty would also apply to the underage consumption of marijuana or hashish;

- for a person under the age of 18 years, an underage possession or consumption violation would instead result in a law enforcement “curbside warning” or more involved “stationhouse adjustment” conducted in accordance with Attorney General Law Enforcement Directive No. 2020-12, and which terms are codified in the bill based on that directive;

- eliminate references to the term “offense,” and replace it with the term “violation,” to recognize that underage possession or consumption would no longer be considered a disorderly persons or petty disorderly persons offense subject to a possible term of imprisonment;

- provide, for persons 18 years of age and older, but still not of legal age to possess or consume cannabis items, that the court involved

in the collection of the aforementioned possession or consumption civil penalties could order participation in an alcohol or drug abuse education or treatment program for a period not to exceed 30 days; and

- establish an immunity from prosecution for any underage person in need of medical assistance due to the consumption of marijuana, and the underage person who called 9-1-1 to get that person assistance, as well as up to two other persons acting in concert with the underage person who made the call, which is the same immunity already provided for situations involving the underage consumption of alcohol, and expanded to the underage consumption of cannabis items by the recently passed legislation being updated and clarified by this bill.

FISCAL IMPACT:

The Office of Legislative Services anticipates that the bill will have an indeterminate impact on municipal revenues and expenditures. The bill removes the disorderly persons violation for individuals ages 18-21 violating cannabis and marijuana possession and consumption laws, which will result in fewer cases being adjudicated in municipal courts thereby reducing both court expenses and the revenues municipalities receive from court penalties and fines. However, the bill implements various civil penalties for these offenses, which will increase municipal revenues. Municipal courts try both offenses and the municipality in which a case is tried receives any penalty or fine that its municipal court imposes on a defendant. The net impact of these countervailing effects on municipal revenues cannot be known at this time.

Under the provisions of the bill, for a person under the age of 18 years, an underage possession or consumption violation would result in a law enforcement “curbside warning” or more involved “stationhouse adjustment” resulting in an increase in expenditures for municipalities due to additional enforcement efforts. The State will also incur increased costs for the new responsibilities of the Superior Court to enforce fines and oversee drug education orders.