



[www.njbia.org/recovery](http://www.njbia.org/recovery)

November 30, 2020

**RE: New Jersey Workplace Regulation of Marijuana**

Dear Member of the Legislature,

As the leaders of the Garden State's major business associations, we write to you regarding the two versions of the Employer Protection Sections in the recreational cannabis legalization bills, A-21 / S-21. ***Recent amendments to these bills further weaken the workplace safety provisions contained in the original legislation.***

Currently, the legislation is calling for the use of Drug Recognition Experts (DREs). A business will essentially need to hire or train a DRE to determine if an employee is in fact impaired. This will place additional burdens and costs on the business community. Furthermore, the New Jersey Supreme Court is currently hearing a case to determine whether DRE testimony is even admissible in court.

As you determine how best to balance individual employee rights with the needs of employers to protect their employees and the public, it is useful to know what other states are doing with respect to workplace safety. As you will see below, most states that have legalized recreational marijuana allow employers to prohibit off-duty recreational marijuana use by employees, or allow an employer to drug test current and prospective employees. Moreover, it does not appear that DREs have been adopted in any other state as a means for employers to identify impaired employees in the workplace.

Our request of you is to protect the rights of our employer community to maintain a drug-free workplace, and thus both worker and public safety, without increasing the burdens on a business community that has been severely impacted by COVID-19 over the last nine months. Given the fact that we are for the first time legalizing recreational marijuana, we must proceed cautiously and err on the side of workplace safety.

**Marijuana Workplace Safety in Legalized States**

- **Alaska**
  - Employers can have a zero-tolerance policy prohibiting their employees from using marijuana<sup>1</sup>
- **Colorado**
  - Employers are allowed to test for marijuana and make employment decisions based on drug test results<sup>2</sup>
- **California**
  - Within California Health and Safety Code:

---

<sup>1</sup> <http://dhss.alaska.gov/dph/Director/Documents/marijuana/ResponsibleConsumerFactBook.pdf>

<sup>2</sup> <https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>



authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.”

- **Michigan**
  - Michigan Regulation and Taxation of Marihuana Act<sup>8</sup>
    - “This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. **This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy** or for working while under the influence of marihuana. **This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person** with respect to hire, tenure, terms, conditions, or privileges of employment **because of that person's violation of a workplace drug policy** or because that person was working while under the influence of marihuana.”
- **Nevada**
  - Title 56 Nevada Revised Statutes 678D<sup>9</sup>
    - “The provisions of this chapter do not prohibit.... A public or private employer from maintaining, enacting and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under this chapter....”
- **Vermont**
  - (18 V.S.A. § 4230a)<sup>10</sup>: “Nothing in this section shall be construed to do any of the following...create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees.”
  - (21 V.S.A. § 512)<sup>11</sup>: “An employer may require an applicant for employment to submit to a drug test only if all of the following conditions are met:
    - (1) Conditional offer of employment. The applicant has been given an offer of employment conditioned on the applicant receiving a negative test result.
    - (2) Notice. The applicant received written notice of the drug testing procedure and a list of the drugs to be tested. The notice shall also state that therapeutic levels of medically-prescribed drugs tested will not be reported. The notice required under this subdivision may not be waived by the applicant.
    - (3) Administration. The drug test is administered in accordance with section 514 of this title.”

Thank you again for your consideration of this important issue. Please contact Chrissy Buteas or Ray Cantor at NJBIA to discuss this further and answer any questions you may have at [cbuteas@njbias.org](mailto:cbuteas@njbias.org) or [rcantor@njbias.org](mailto:rcantor@njbias.org).

Sincerely,

African American Chamber of Commerce of New Jersey, Inc.

---

<sup>8</sup> [https://www.legislature.mi.gov/\(S\(nmdgpgqpbj1ophhijr0bqtrc\)\)/mileg.aspx?page=getObject&objectName=mcl-333-27954&highlight=adverse](https://www.legislature.mi.gov/(S(nmdgpgqpbj1ophhijr0bqtrc))/mileg.aspx?page=getObject&objectName=mcl-333-27954&highlight=adverse)

<sup>9</sup> <https://www.leg.state.nv.us/NRS/NRS-678D.html>

<sup>10</sup> <https://legislature.vermont.gov/statutes/section/18/084/04230>

<sup>11</sup> <https://legislature.vermont.gov/statutes/section/21/005/00512>

American Camp Association NY/NJ  
New Jersey Camps Government Affairs Project  
American Council of Engineering Companies of New Jersey  
American Physical Therapy Association of New Jersey  
Bernards Township Regional Chamber of Commerce  
Big I New Jersey  
BioNJ  
Burlington County Regional Chamber of Commerce  
Bus Association of New Jersey  
Cape May County Chamber of Commerce  
Capital Region Minority Chamber of Commerce  
Center for Non-Profits  
Chamber of Commerce of Greater Philadelphia  
Chamber of Commerce Southern New Jersey  
CLB NJ  
Commerce and Industry Association of New Jersey  
CrossState Credit Union Association  
Downtown New Jersey  
Early Childhood Education Advocates  
Eastern Monmouth Area Chamber of Commerce  
Employers Association of NJ  
Fuel Merchants Associates of NJ  
Garden State Initiative  
Garden State Pharmacy Owners, Inc  
Global Business Alliance  
Gloucester County Chamber of Commerce  
Greater Atlantic City Chamber of Commerce  
Greater Toms River Chamber of Commerce  
Greater Westfield Area Chamber of Commerce  
Health Care Association of NJ  
Healthcare Institute of NJ  
Hoboken Chamber of Commerce  
Home Care & Hospice Association of New Jersey  
Home Health Services Association of New Jersey  
Hudson County Chamber of Commerce  
Hunterdon County Chamber of Commerce  
Independent Insurance Agents & Brokers of NJ  
Insurance Council of New Jersey  
International Health, Racquet and Sportsclub Association  
Jersey Shore Partnership  
Mahwah Regional Chamber of Commerce  
Marine Trades Association of New Jersey  
Medical Society of New Jersey  
Middlesex County Regional Chamber of Commerce  
Meadowlands Chamber

Monmouth Ocean Development Council  
Morris County Chamber of Commerce  
NAIOP-NJ  
National Federation of Independent Business (NFIB)  
Newark Venture Partners  
Newark Alliance  
Newark Regional Business Partnership  
New Jersey Apartment Association  
New Jersey Asphalt Pavement Association  
New Jersey Association of Osteopathic Physicians and Surgeons  
New Jersey Association of Mental Health & Addiction Agencies  
New Jersey Bankers Association  
New Jersey Builders Association  
New Jersey Business & Industry Association  
New Jersey Campground Owners and Outdoor Lodging Association  
New Jersey Chemistry Council  
New Jersey Civil Justice Institute  
New Jersey Coalition of Automotive Retailers  
New Jersey Concrete and Aggregate Association  
New Jersey Council of County Colleges  
New Jersey Dental Association  
New Jersey Food Council  
New Jersey Gasoline-Convenience-Automotive Association  
New Jersey Hospital Association  
New Jersey Hotel and Lodging Industry Association  
New Jersey Independent Electrical Contractors Association  
New Jersey LGBT Chamber of Commerce  
New Jersey Liquor Store Alliance  
New Jersey Manufacturing Extension Program, Inc.  
New Jersey Motor Truck Association  
New Jersey Pharmacists Association  
New Jersey Podiatric Medical Society  
New Jersey Realtors  
New Jersey Restaurant & Hospitality Association  
New Jersey Retail Merchants Association  
New Jersey Salon and Spa Coalition  
New Jersey Self Insurers Association  
New Jersey Society of Certified Public Accountants  
NJ Society of Optometric Physicians (NJSOP)  
New Jersey State Chamber of Commerce  
New Jersey State Funeral Directors Association  
New Jersey State Veterans Chamber of Commerce  
New Jersey Tourism Industry Association  
New Jersey Utilities Association  
New Jersey YMCA State Alliance

New Jersey Warehousemen & Movers Association  
New Jersey Utilities Association  
New York Shipping Association, Inc.  
North Jersey Jewish Business Alliance  
Ocean City Chamber of Commerce  
Princeton Mercer Regional Chamber of Commerce  
Professional Insurance Agents of New Jersey (PIANJ)  
Recreational Fishing Alliance  
Salem County Chamber of Commerce  
Somerset County Business Partnership  
Southern NJ Development Council  
Southern Ocean County Chamber of Commerce  
Statewide Hispanic Chamber of Commerce of NJ  
Sussex County Chamber of Commerce  
TechUnited:NJ  
The New Jersey Leadership Council of the National Association of Professional Employer Organizations  
The United Boatmen of N.J.  
Union Township Chamber of Commerce  
United Way of Northern New Jersey  
Utility & Transportation Contractors Association  
Washington Borough BiD

CC: Governor Phil Murphy