Module 1

How Does the CREAMM Act Affect you?

By Mollie Hartman Lustig

Topics for Today

- The CREAMM ACT and associated legislation
- Difference between the CREAMM ACT and Personal Use Rules and Regulations
- Protections built into the CREAMM ACT
  - Law Enforcement
  - Workplace/Drug Testing
  - Business Treatment of Cannabis Businesses
- Expungements

Taught by: Mollie Hartman Lustig

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2020 Constitutional Amendment

Amends Article IV, Section VII of the NJ Constitution:

13. The growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis, by persons 21 years of age or older, and not by persons under 21 years of age, shall be lawful and subject to regulation by the Cannabis Regulatory Commission created by P.L.2019, c.153 (C.24:6I-5.1 et al.), or any successor to that commission.

(1) The commission's or successor's regulatory authority concerning legalized cannabis shall be authorized by law enacted by the Legislature.

(2) The receipts from retail purchases of cannabis or products created from or which include cannabis shall only be subject to the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et. seq.), as amended and supplemented, or any other subsequent law of similar effect; provided, however, that a municipality, subject to authorization by law enacted by the Legislature, may adopt an ordinance to impose an additional municipal tax on the sale, or any other form of transfer, of cannabis or products created from or which include cannabis by an authorized party located in a municipality. The municipal tax rate shall not exceed two percent of the receipts from each sale of cannabis or products created from or which include cannabis by an authorized party or the equivalent value from any other form of transfer by an authorized party.

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Some new, some not so new, New Jersey Laws

S21 or the CREAMM ACT: *Legalizes* possession of 1oz or less for 21+.

S2535: *Decriminalizes* possession of up to 6 oz and distribution of up to 1 oz of marijuana. First offense subject to written warning. Can only impose fines as a result of subsequent offenses.

S3454: "Cleans-Up" the discrepancies between S21 and S2535 regarding penalties for those under 21. . .and other things.

A5472: revises S3454 and now mandates that parents of those under 18 are notified for first cannabis/marijuana offenses, and limits detention to writing of the ticket.

Chapter 30A: recodified from N.J.A.C. 8:64 – increases MMJ patient limits to 3 ounces every 30 days.

N.J.A.C. 17:30: Adult Use Rules and Regulations

S3235: "Intoxicating Hemp Law"

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Passed by both houses on Dec. 17, 2020

Signed into Law 2/22/21

[Second Reprint]

SENATE, No. 21

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:
Senator NICHOLAS P. SCUTARI
District 22 (Middlesex, Somerset and Union)
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

"New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act"; legalizes personal use cannabis for certain adults, subject to State regulation; decriminalizes small amount marijuana and hashish possession; removes marijuana as Schedule I drug.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on December 14, 2020, with amendments.

The CREAMM ACT

The following is not unlawful, for persons 21 and over, when obtained directly from a licensed retailer, evidenced by packaging, sales slip, invoice, or other statement.

a. Possessing, displaying, purchasing, or transporting:

- cannabis paraphernalia
- one ounce or less of cannabis
- the equivalent of one ounce or less of cannabis in solid, liquid, or concentrate form
- 5 grams or less of cannabis resin

b. Transferring without remuneration: 1 oz or less.

c. Taking delivery or *lawfully* consuming cannabis.

d. Assisting another person to engage in the acts described above, provided they are of legal age and the assistance being provided is with the consumer's consent and without renumeration.

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Definitions

"Cannabis" is not:

- Medical marijuana
- Marijuana as defined and applied in the criminal code
- Marijuana as defined and applied to the New Jersey Controlled Dangerous Substances Act
- Hemp pursuant to the New Jersey Hemp Farming Act

"Marijuana"

- Refers to illegal product coming from the legacy market.
- Product that does not come from an ATC or a licensed adult use retailer

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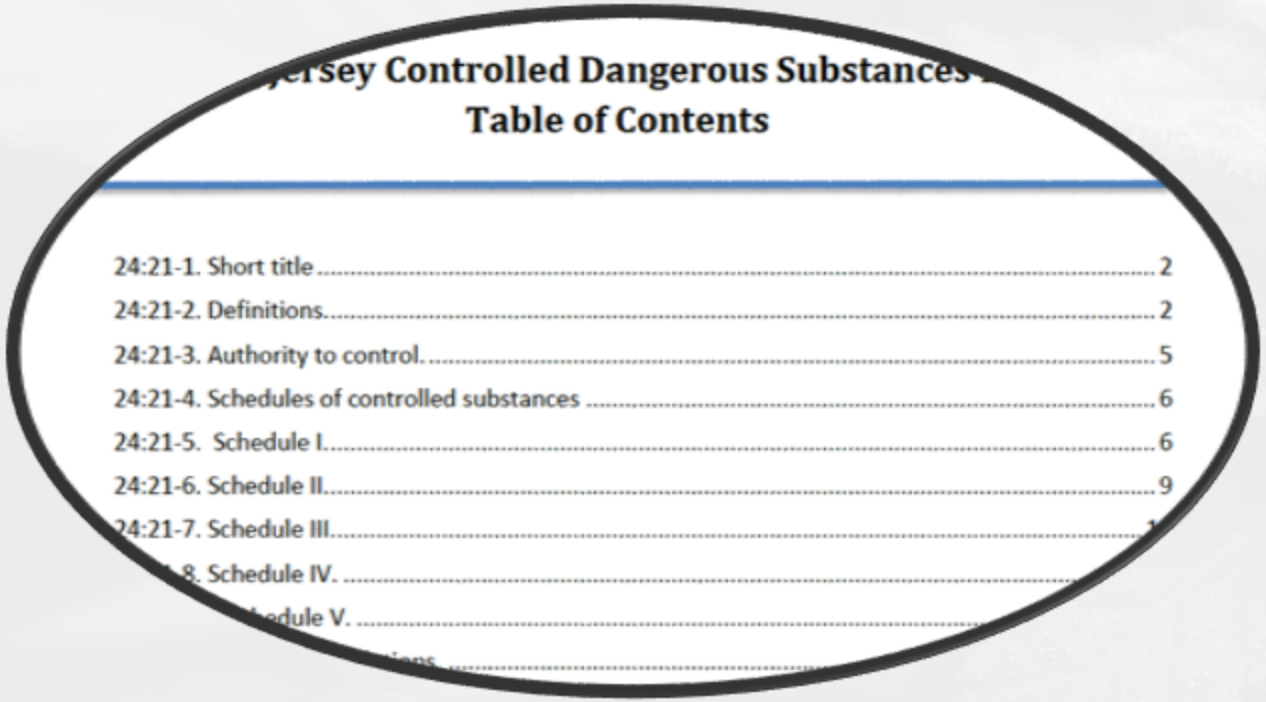
CREAMMA De-Schedules Cannabis Under NJ Law


ersey Controlled Dangerous Substances

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The Controlled Dangerous Substances Law, P.L.1970, c.226 (C.24:21-5) is amended

(10) Marihuana; except that on and after the effective date of [this bill], marihuana shall no longer be included in Schedule I, and shall not be designated or rescheduled and included in any other schedule by the director pursuant to the director's designation and rescheduling authority set forth in section 3 of P.L.1970, c.226 (C.24:21-3).

(17) Tetrahydrocannabinols, except when found in hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," or cannabis or a cannabis item as those terms are defined in section 3 [of this bill] that is grown, cultivated, produced, or manufactured in accordance with [this bill].

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Clean Up Bill S3454 & A5472

(2) (a) A person under the legal age to purchase alcoholic beverages or cannabis items is not capable of giving lawful consent to a search to determine a violation of this section, and a law enforcement officer shall not request that a person consent to a search for that purpose.

(b) The odor of an alcoholic beverage, marijuana, hashish, cannabis, or cannabis item, or burnt marijuana, hashish, cannabis, or cannabis item, shall not constitute reasonable articulable suspicion to initiate an investigatory stop of a person, nor shall it constitute probable cause to initiate a search of a person or that person's personal property to determine a violation of paragraph (1) of this subsection.

(3) If responding to or initiating an encounter related to a suspected possession of use of alcohol or cannabis by a minor, law enforcement shall be guilty of a crime of official deprivation of civil rights if they knowingly request consent to search a person who is not legal age to give consent, or by searching that person after wrongfully obtaining consent, initiating a stop without reasonable suspicion, initiating a search without PC, issuing a warning or write up without a proper basis, or detaining a minor beyond what is necessary to issue that warning, or any other unlawful act arising from an encounter with a minor.

(4) . . the video and audio recording functions of a law enforcement officer's body worn camera, as defined in that section, shall be activated

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Those under 21 are subject to:

first offense = warning, + parental notification per **A5472**

second offense = warning, + parental notification

third and subsequent offenses = write-up with a referral for accessing community services

PBA president says new weed law restricts cops from 'upholding basic law and order'

Colligan seeks fixed to marijuana legalization law

By Ashley Gallagher, July 30 2021 11:55 am

The head of the state's largest law enforcement union is sounding alarms over the outcome of a marijuana legalization law he claims is restricting police officers from "upholding basic law and order across New Jersey."

In a letter to Senate President Steve Sweeney and Assembly Speaker Craig Coughlin last week and was obtained by the New Jersey Globe, New Jersey State Policemen's Benevolent Association President Patrick Colligan said that minors hav learned that that police officers can't detain, search or arrest them without potentially facing civil rights charges.

According to Colligan, "public pot use by minors…have overwhelmed police departments throughout the Jersey shore anc elsewhere."

"It should not take an incident of a deadly DUI by a minor or a drug dealer using am minor as a mule gone wrong for the legislature to correct this," said Colligan. "Minors know very well that a police officer can't detain, search or arrest them fc violations of the law without facing a 3rd Degree charge for deprivation of human rights."

Colligan is appealing to the legislature to fix the law, saying it has "led to confusion, concern and morale issues."

"Our members have reported to us numerous examples where they have come across minors suspected of breaking this and other laws where they felt helpless to stop a minor for fear of losing their jobs," Colligan said. "This is unacceptable, and it will only get worse.

He cited the Beach Haven mobs, which was a pop-up party of teenagers that was spread on social media, voicing concer that police have their hands tied.

CHAPTER 30

PERSONAL USE CANNABIS RULES

Authority

N.J.S.A. 24:6I-31 et seq.

Source and Effective Date

R.2023 d.034, effective February 8, 2023.
See: 54 N.J.R. 1470(a), 55 N.J.R. 402(a).

Chapter Expiration Date

Chapter 30, Personal Use Cannabis Rules, expires on February 8, 2030.

Chapter Historical Note

Chapter 30, Urban Enterprise Zone Authority, was adopted as R.1987 d.203, effective May 4, 1987. See: 18 N.J.R. 2191(b), 19 N.J.R. 773(a). Pursuant to Executive Order No. 66(1978), Chapter 30 was readopted as R.1992 d.161, effective March 11, 1992. See: 24 N.J.R. 343(a), 24 N.J.R. 1375(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Urban Enter-

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2). See: 53

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, Subchapter
13, Cannabis
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bchapter 16,
bchapter 17,
as recodified

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SUBCHAPTER 7. CANNABIS BUSINESS CONDITIONAL AND ANNUAL LICENSING PROCESS

Adult Use Rules and Regulations

First Adopted
- August 19, 2021

Amended:
- August 1, 2022
- January 17, 2023
- August 7, 2023

Last amended, effective
- March 6, 2023

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Personal Protections built into The CREAMM Act

b. The ***presence of cannabinoid metabolites in the bodily*** fluids of a person engaged in conduct permitted under CREAMMA

(1) with respect to a ***student, tenant, or employee***, other than as set forth in section 48 of CREAMMA, shall not form the basis for refusal to enroll or employ or lease to or otherwise penalize that person, unless failing to do so would put the school, employer, or landlord in violation of a federal contract or cause it to lose federal funding;

(2) with respect to a ***patient***, shall not constitute the use of an illicit substance resulting in denial of medical care, including organ transplant, and a patient's use of cannabis items may only be considered with respect to evidence-based clinical criteria; and

(3) with respect to a ***parent*** or legal guardian of a child or newborn infant, or a pregnant woman, shall not form the sole or primary basis for any action or proceeding by the Division of Child Protection and Permanency, or any successor agencies;

provided, however, that nothing in this paragraph shall preclude any action or proceeding by the division based on harm or risk of harm to a child or the use of information on the presence of cannabinoid metabolites in the bodily fluids of any person in any action or proceeding.

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N.J.S.A. 24:6I-51
N.J.A.C. 17:30-2.3

People and entities engaged in activities authorized by the statute and rules are protected from criminal prosecution. N.J.A.C. 17:30(2)

New Requirements on Law Enforcement

U.S. NEWS

Jersey Shore towns say state's marijuana law handcuffs police and emboldens rowdy teens

None of the following shall, individually or collectively, constitute reasonable articulable suspicion of a crime:

(Unless on property used for school purposes which is owned by a school or school board, or at any detention facility, adult correctional facility, or youth correction facility)

a. The odor of cannabis or burnt cannabis;
b. The possession of or the suspicion of possession of marijuana or hashish without evidence of quantity in excess of any amount that would exceed the amount of cannabis items which may be lawfully possessed pursuant to this bill;
c. The possession of marijuana or hashish without evidence of quantity in excess of any amount that would exceed the amount of cannabis items which may be lawfully possessed pursuant to this bill in proximity to any amount of cash or currency.

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https://apnews.com/article/jersey-shore-rowdy-teens-marijuana-drinking-police-3febd99c052eaad884c3e7d50ad8fa19

Motor Vehicles Provisions in CREAMMA

Section 48 – Nothing in this bill "is intended to allow driving under the influence of cannabis items or driving while impaired by cannabis items or to supersede laws related to driving under the influence of marijuana or cannabis items or driving while impaired by marijuana or cannabis items."

Section 83 – Amends Section 1 of P.L.1983, c.307 (C.39:4-51a)
Cannot consume alcohol or cannabis while operating a motor vehicle.
Passengers cannot consume alcohol, and shall not consume by means of smoking, vaping, or aerosolizing a cannabis item, while the motor vehicle is being operated.

Section 84 – Amends Section 6 of P.L.2000, c.83 (C.39:4-51b)

6. a. All occupants of a motor vehicle are prohibited from possessing open or unsealed alcohol container or unsealed cannabis item that is intended to be consumed by means of smoking, vaping, or aerosolizing. . .

b. A person shall not be deemed to be in possession of an opened or unsealed cannabis item if such it is located in the trunk of the motor vehicle . . .

c. First offense is subject to a fine of $200. Second/subsequent offense subject to a find of $250 or 10 days of community service.

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Nothing in the CREAMM Act…

- Requires an employer to amend the rights and obligations of employers to maintain a drug and alcohol-free workplace or other policy
- Requires an employer to accommodate the consumption or being under the influence of cannabis in the workplace.
- Requires an owner of property from prohibiting or otherwise regulating the consumption, use, display, or. . . transfer, of cannabis items on or in that property.
- Is intended to permit any person to possess, consume, display, or . . . transfer of cannabis items in a school, hospital, detention facility, adult correctional facility, or youth correctional facility.
- Is intended to permit the smoking, vaping, or aerosolizing of cannabis items in any place in which a Federal, State, or local law prohibits the smoking of tobacco.

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N.J.A.C. 17:30-2.2
N.J.S.A. 24:6I-52

CREAMM ACT Employer/Employee Protections

a. (1) No employer shall refuse to hire, discharge or take any adverse action against any because that person does or does not use cannabis items

An employee shall not be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee's bodily fluid from engaging in conduct permitted under this bill.

BUT

b. Nothing in this bill:

(1)(a) Requires an employer to amend or repeal, or affect, restrict or preempt the rights and obligations of employers to maintain a drug- and alcohol-free workplace . . .

SAFETY SENSITIVE POSITIONS: CAN COPS USE CANNABIS?

Jersey City loses another case in battle to stop police officers from using cannabis

Updated: Jul. 13, 2024, 3:06 p.m. | Published: Jul. 12, 2024, 2:00 p.m.

New Jersey cops are winning fight to use cannabis while off duty

A state panel has ordered a cop reinstated after she was fired for using cannabis

BY: SOPHIE NIETO-MUNOZ - AUGUST 28, 2023 7:02 AM

State law allows police to consume marijuana when off duty, attorney general says

BY: NIKITA BIRYUKOV - APRIL 14, 2022 4:57 PM

N.J.S.A. 24:6I-51

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Workplace Drug Testing & CRC Guidance on Workplace Impairment

Notwithstanding the provisions of N.J.S.A. 24:6I-52:

- The Commission in consultation with the Police Training Commission established pursuant to N.J.S.A. 52:17B-70, must develop standards for a Workplace Impairment Recognition Expert certification.
- Until then, no physical evaluation of an employee being drug tested shall be required.
- Medical cannabis users are entitled to additional protections under the Jake Honig Act.

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N.J.A.C. 17:30-2.1(e)

Workplace Drug Testing

An employer may require an employee to undergo a drug test upon:

- reasonable suspicion of an employee's usage of a cannabis item while engaged in the performance of the employee's work responsibilities, or
- upon finding any observable signs of intoxication related to usage of a cannabis item
- or following a work-related accident subject to investigation by the employer

A drug test may also be done randomly, pre-employment, or regular screening to determine use during an employee's prescribed work hours.

Can use results of drug test in determining dismissal, suspension, demotion, or other disciplinary action.

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N.J.S.A. 24:6I-52

Business Treatment of Cannabis Businesses

Banking

- "A financial institution . . .shall not, subject to the suspension or revocation of a charter or other available enforcement action by the Commissioner of Banking and Insurance, engage in any discriminatory activities with respect to the banking activities of a cannabis establishment, distributor, or delivery service, or the banking activities of a person associated with a cannabis establishment, distributor, or delivery service."

Farmland Assessed Land

- In no case shall a cannabis cultivator operate or be located on 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.).

NO State or Local Economic Incentives

- "State or local economic incentive" means a financial incentive, awarded by the State, any political subdivision of the State, or any agency or instrumentality of the State or political subdivision of the State, to any non-governmental person, association, for-profit or non-profit corporation, joint venture, limited liability company, partnership, sole proprietorship, or other form of business organization or entity, or agreed to between the government and non-governmental parties, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

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N.J.S.A. § 24:6I-49

Expungement

Any case that includes a conviction or adjudication of delinquency solely for one or more crimes or offenses.

Shall be expunged by operation of law, and any remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment shall be vacated by operation of law.

New Jersey Courts
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Expungement of Certain Marijuana or Hashish Cases

The Marijuana Decriminalization Law, which took effect July 1, 2021, required the expungement of certain marijuana and hashish cases. As a result, the Supreme Court has ordered that thousands of cases be expunged.

An expungement means this case is no longer part of your record.

You do not have to report this case on a job application, housing application, or college application. The case has been removed from the public record and cannot be used to keep you from school, housing, or most jobs.

The courts have expunged the cases of anyone convicted or adjudicated delinquent if your case has only one of these three offenses:

- N.J.S.A. 2C:35-5(b)(12) - Distribution of marijuana less than 1 ounce or hashish less than 5 grams
- N.J.S.A. 2C:35-10(a)(3) - Possession of more than 50 grams of marijuana, or more than 5 grams of hashish
- N..

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- N..

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Thank You