



N.H. 2023 Adult-Use Cannabis Bill Summary

A broad coalition of civil rights and policy groups, cannabis industry professionals, and New Hampshire activists crafted a 2023 cannabis legalization bill that was filed by New Hampshire's Republican and Democratic House leaders — Representative Jason Osborne (R-Auburn) and Representative Matt Wilhelm (D-Manchester). The House Commerce and Consumer Affairs and Ways and Means committees amended and passed the bill (HB 639). On April 6, 2023, the full House of Representatives passed HB 639 in a 272-109 (71%) vote, sending it to the Senate.

Here is a summary of key provisions of HB 639, as amended in the House. While the bill remains a dramatic improvement over the status quo, MPP was particularly disappointed that it was amended to remove home cultivation and annulments and release.

Adult-Use Possession

Adults who are 21 and older would be allowed to:

- Possess and give away up to four ounces of cannabis, 20 grams of concentrated cannabis, and infused products with 2,000 milligrams of THC.
- Pending charges for those quantities would be dismissed.

Prohibited Conduct and Penalties

- Home cultivation would be prohibited.
- Smoking or vaping cannabis in a public place where smoking or vaping tobacco is prohibited would be punishable by a civil fine of up to \$50.
- Drivers could not consume cannabis while operating a vehicle and passengers could not smoke or vaporize cannabis.
- Regulators could suspend or revoke the registration of cannabis establishments.

State Regulation and Licensing of Cannabis Businesses

- The Liquor Commission — renamed the Liquor and Cannabis Commission — would regulate and license adult-use cannabis businesses. The commission would license cannabis retailers, cultivators, product manufacturers, and independent testing labs. It could authorize additional types of businesses.
- The commission would develop comprehensive rules, including governing security, lab testing, health and safety, potency limits on products, packaging, labeling, recordkeeping, and transportation, and restricting advertising. It would also determine qualifications for licensees.
- The commission, assisted by the Department of Health and Human Services (DHHS), would develop materials to be distributed with cannabis, including information on its risks, how to recognize problematic cannabis use, and how to obtain treatment. It could also require informational posters to be displayed at retailers, outlining cannabis' risks.
- Cannabis establishments could not be located within 1,000 feet of a pre-school, elementary school, or secondary school.

- Cannabis products could not include nicotine or other addictive or toxic additives.
- There would be no statewide limit on the number of licensees, but localities could impose local limits.
- Applicants — or at least one director, officer, or partner of the applicant — must be New Hampshire residents for at least three years, except in the case of testing labs.

Preserving and Integrating the Medical Cannabis Program

- Directs the commission and DHHS to develop a proposal for integrating the therapeutic cannabis program within 20 months. The plan would include a proposal to allow adult-use retailers to serve medical cannabis patients if they get a therapeutic cannabis endorsement and meet requirements. The legislature would have to pass a bill to enact the recommendations.
- Allows ATCs to apply to also serve adult-use consumers if they meet requirements including prioritizing patient access and avoiding price hikes. They would also have to pay a conversion fee determined by regulators (the original bill had a \$100,000 fee that went mostly to starting up an equitable and just industry). Allows ATCs to convert to for-profit entities.

Local Control

- Localities could enact regulations and licensing requirements, limit the number of cannabis businesses, or ban them altogether. They could not ban delivery.
- The Commission must forward each application to the locality where it would operate and consider the locality's input.

Private Employers and Private Property

- Employment law is unchanged for private employers.
- Landlords could prohibit cannabis smoking and cultivation at their rental properties, but in most cases could not prohibit the non-smoked use or possession of cannabis by tenants.
- Property owners could prohibit the consumption and display of cannabis.

Limited Non-Discrimination Protections

- State and local government employers could not refuse to hire or discipline employees for off-hours cannabis use, including testing positive for cannabis, as long as they do not work while impaired or federal law does not require otherwise. They also could not take negative action for prior non-violent cannabis convictions, other than distribution of cannabis to a minor.
- A person's professional or occupational license could not be subject to discipline because they provide cannabis-related advice or services or for other state-legal cannabis activities.
- A person could not be denied organ transplants, child custody, and state or local government benefits based on state-legal, responsible cannabis conduct.

Legal Protections

- The odor of cannabis — and possession of a legal amount — cannot be the legal basis for a search or stop.
- Pre-trial release, parole, and probation generally cannot be revoked for state-legal cannabis-related activity, including testing positive for using cannabis.

Taxation, Fees, Appropriations, and Distributing Cannabis Revenue

- Imposes a 12.5% tax on final products sold to retailers..
 - Regulators must determine the value of the products transferred for affiliated businesses.
 - Regulators must study the efficacy of this approach and whether adjustments should be made and report back by October 2024 and each year thereafter.
- The non-refundable part of application fees cannot exceed \$1,000 to the state and \$500 to the municipality — except for the smallest cultivators, where the local fee cap is \$75.
- Licensing fees, unlike the introduced bill, though they must be reasonable. Cultivation facility fees must be tiered based on size.
- The revenue — after administrative costs — would be distributed as follows:
 - \$100,000 for data collection and reporting on health impacts of cannabis prohibition and regulation
 - 50% of the remainder to the education trust fund, to allow local property tax relief
 - 30% for unfunded pension liabilities 10% or \$25 million (whichever is less) to a new Substance Abuse Prevention and Recovery Fund for evidence-based, voluntary programs for substance abuse-related prevention, treatment, and recovery; dual-diagnosis treatment of both mental health and substance misuse disorders; funding and training to foster an informed, adequately paid behavioral health workforce; and public education campaigns educating youth and adults about the health and safety risks of alcohol, tobacco, cannabis, and other substances.
 - 5% for children’s behavioral health services
 - 5% to public safety agencies, for hiring and training to prevent impaired driving (DRE and ARIDE) and to assist in responding to drug overdose incidents.
- Appropriates the following amounts:
 - \$7 million to Commission in the year ending on June 30, 2024
 - \$8 million to Commission in the year ending on June 30, 2025
 - \$500,000 to the recovery and prevention fund for a public education campaign prior to the first sales.

Timeline

- Adults could possess and cultivate cannabis upon legalization.
- Rules for dual-use (ATC conversions) are due within 18 months of passage.
- Rulemaking must be “initiated” within 15 months of passage for most of the bill, but within a year for dual-use (ATC conversions) and the regulation of cultivators.
- The bill does not include specific deadlines for accepting applications.
- Licenses would be granted within 90 days of the application’s submission.

Miscellaneous

- Provides that cannabis-related contracts that are legal under state law are enforceable.
- Provides that state-legal cannabis-related business expenses are deductible.
- Provides for the collection of baseline data, and more current data (at least every two years) including graduation rates, illegal and legal drug use, and convictions related to cannabis.