



## NH Testimony Cannabis Legalization HB 1633

Re: In support of HB 1633, relative to the legalization and regulation of cannabis, and urging amendments to avoid a veto

Dear Chair Carson and distinguished members of the Senate Judiciary Committee:

My name is Karen O’Keefe. I am the director of state policies for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the nation. I am an attorney who has worked on cannabis policy at MPP since 2003. I have had the pleasure of working with a broad coalition of advocates from all sides of the political spectrum on cannabis policy in New Hampshire for several years.

MPP strongly supports the legalization and regulation of cannabis for adults 21 and older.

Cannabis prohibition has been a harmful failure that derails thousands of lives and puts cannabis consumers, communities, and those involved in cannabis production and sales at risk. On the illicit market, consumers are at risk of cannabis tainted with hazardous pesticides, heavy metals, and even other drugs. Lab testing, potency labeling, worker protections, point-of-sale education, and environmental standards are only possible in the context of legalization and regulation. As the governor recognized last year, a well-regulated legalization and regulation law is harm reduction.

More than 70% of New Hampshire voters support the legalization and regulation of cannabis, and for good reason. While cannabis is not risk-free, it is safer than alcohol, tobacco, and many medications.

New Hampshire has a window of opportunity to legalize cannabis and not let it slip away. The Senate Judiciary Committee should revise HB 1633 to meet the governor’s parameters, while avoiding wholesale changes that have been rejected by the House Commerce and Finance Committees.

### **We urge you to pass HB 1633 OTP, with the following revisions:**

- **Make the 15-store cap a hard cap**, rather than an initial cap that can increase over time. (The governor has been clear that there must be a 15-store cap.)
- Due to that change, the local cap should be revised to avoid an excessive concentration of stores. The local cap of one store per 15,000 residents should be revised to one store per locality or up to two for localities of 30,000+ residents.
- **The school buffer should be expanded from 1,000 feet to 2,000 feet.**
- **The bill should start with a franchise model** pursuant the governor’s parameters. However, to thread the needle between the governor’s strong preference for the franchise model and the House’s rejection of it, **it should include a “trigger clause”** to pivot to an agency store model if legal issues stall implementation.

**The Commission should be authorized to prevent predatory pricing** (pricing at a loss to destroy competition), which is forbidden by federal antitrust law.

**The reference to “normal” adults should be stricken.** At least one senator found the term offensive.

The trigger provision is important to include. That way, the law would be implemented as the governor prefers if it is indeed feasible. If that novel approach is not feasible due to federal law, however, it will provide for a smooth transition to a licensing model that doesn't pose the same legal issues. Without this safeguard, private manufacturers and growers will likely go bankrupt if franchise stores fail to materialize due to federal law issues. This approach respects both for the governor's preference for the franchise model, and the House's significant concerns about the viability of that approach.

I have attached an appendix with possible text for all of these suggested revisions.

Please *oppose* any proposed amendment that would impose a “sin tax” on sales to medical cannabis patients, that would disadvantage alternative treatment centers (and thus the continued access to therapeutic cannabis), or that would increase penalties for currently decriminalized conduct. The language directing DHHS and the Commission to develop a plan for a smooth transition for regulation of the therapeutic cannabis program and adult-use regulations should remain.

### **Concluding Thoughts**

Cannabis legalization increases freedom, generates economic activity and revenue, allows for health and safety protections, and reduces hypocrisy. I hope you will listen to the vast majority of voters and advance HB 1633. Please also adopt amendments to address the governor's parameters, but without a total rewrite that has already been rejected by two House committees.

Sincerely,

Karen O'Keefe

Director of State Policies

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### **Appendix:**

#### **Suggested Amendment Language**

Amend section 1 of the bill by deleting subsection II.

Amend RSA 318-F:1, XII as inserted by section 5 of the bill by replacing it with the following:

318-F:1 XII. “Cannabis retail outlet,” “cannabis outlet,” and “agency store” means a person licensed to purchase cannabis from cannabis cultivation facilities, to purchase cannabis products from cannabis product manufacturing facilities and limited manufacturers, and to sell, transfer, and deliver cannabis and cannabis products to consumers, qualifying patients, and designated caregivers. “Cannabis retail outlet,” “cannabis outlet,” and “agency store” includes retail stores regardless of

operational control model. “Cannabis retail outlet” includes franchise stores, agency stores, and licensed stores. Online pre-ordering is allowed, but consumers must purchase and pick up cannabis and cannabis products at the cannabis retail outlet’s licensed premise.

Amend 318-F:9-a, I by replacing it with the following:

I. (a) Not later than 20 months after the effective date of this section, the commission shall adopt rules pursuant to RSA 541-A for a franchise model to franchise cannabis retail outlets.

(b) If the commission is not able to implement a franchise model and it is required to change to a lower operational control model pursuant to section 31, within 180 days the commission shall adopt rules pursuant to RSA 541-A for an agency store model of cannabis retail outlets.

(c) If the commission is not able to implement a franchise model or agency store model and it is required to change to a lower operational control model pursuant to section 31, within 180 days the commission shall adopt rules pursuant to RSA 541-A for an agency store model of cannabis retail outlets.

(d) The rules shall include the following:

(1) Procedures for the application, issuance, transfer, approval, denial, renewal, suspension, and revocation of cannabis retail outlets. Except as provided in section 31, all cannabis retail outlets shall be franchises.

(2) The commission shall decide within 60 days of receipt of a complete application and provide the decision to the applicant. The commission shall extend the time period for the decision upon written agreement of the applicant.

(3) Notwithstanding any rules created by the commission, any transfer or sale of cannabis retail outlet is subject to approval of the commission.

(4) Rules governing the selection of cannabis retail outlets to include, but not limited to:

(i) Prohibiting the licensure or franchising of more than 15 cannabis retail outlets.

(ii) The location of each proposed cannabis retail outlet.

(iii) Relevant experience, including providing that a major criteria in assessing the relative merits of each application will incorporate the successful operation of an alternative treatment center registered under RSA 126-X and may convert to a cannabis retail outlet for sales permitted under this chapter and RSA 126-X.

(iv) Standard operating procedures for storing, tracking, transporting, employee training, discounting and promotions, record keeping, and the sale of cannabis and cannabis products.

(v) Security measures including, but not limited to, storage facilities for cannabis and cannabis products.

(vi) The size and nature of the facilities, including the layout of the cannabis retail outlet.

(vii) Whether the applicant will have the financial capacity to successfully operate a cannabis retail

outlet.

(viii) Ensuring an equitable distribution of cannabis retail outlets based on geography and population, including allowing no more than the greater of one cannabis retail outlet per municipality or no more than two cannabis retail outlets per municipality with 30,000 or more residents.

(ix) Providing that no cannabis retail outlet may be located within 2,000 feet of a pre-existing cannabis retail outlet unless the municipality where the establishment seeks to operate has established a smaller distance limitation or waived the restriction.

(x) Procedures to revoke the franchise agreement or license of any cannabis retail outlet which is not compliant with the license application or regulatory process.

(xi) Timelines by which cannabis retail outlets must commence operations and procedures for revoking and reissuing cannabis retail outlet where such timeline is not met.

(xii) Procedures to accept applications for cannabis retail outlet within 3 months after a cannabis retail outlet is revoked, surrendered, or not renewed.

(xiii) (1) The commission shall create a franchise agreement, prior to accepting applications for cannabis retail outlets.

(xiv) If the operational control model changes to agency stores pursuant to section 31, the commission shall create an agency store agreement.

III. The franchise or agency agreement may prohibit or restrict lobbying in a manner consistent with the First Amendment.

IV. As conditions of the agency store or franchise agreement, the commission shall:

(a) Restrict lobbying by cannabis retail outlets.

(b) Maintain an accessible website for the public to identify the location, status, and online presence of cannabis retail outlets.

V. The commission has the authority to prevent predatory pricing, which is employing pricing that would only be profitable due to potential gains in eliminating or otherwise harming other competitors.

Amend 318-F:16 as inserted by section 5 of the bill by replacing it with the following:

Restrictions on Location Near Schools. No cannabis establishment shall operate, nor shall a prospective cannabis establishment apply for a license, if the establishment would be located within 2,000 feet of the property line of a pre-existing public or private elementary or secondary school.

Amend 318-F:12, I as inserted by section 5 of the bill by replacing it with the following:

318-F:12 Licensing Procedures for Cannabis Establishments.

I. Each application for a license or franchise to operate a cannabis establishment shall be submitted to the commission.

Amend the bill by replacing section 30 with the following:

30 Contingent Severability of Operational Control.

I. The Liquor Commission shall implement the franchise model as the operational control model, unless otherwise provided in this section.

II. The Liquor Commission shall adopt the agency store model as the operational control model if any of the following occurs:

(a) A court has issued a ruling that prevents implementation of the franchise model, and either all deadlines for appeal have passed, or the highest court to rule on the issue has decided that the franchise model cannot be implemented.

(b) The Liquor Commission or governor announces they will not implement the franchise model due to legal risks; or

(c) At or after July 1, 2026, the Liquor Commission has not selected operators of cannabis retail outlets or given cannabis retail outlets all authorizations needed to begin operations. The Liquor Commission may be granted up to three six-month extensions if it demonstrates it is making substantial progress towards the retail sales and the delay is not due to its failure to act in good faith and with reasonable diligence.