



Summary of New Hampshire HB 639 (2023) Leader Osborne's Cannabis Legalization Bill

A coalition of civil rights and policy groups, cannabis industry professionals, and New Hampshire activists have crafted a 2023 cannabis legalization bill. A revised version of the bill was filed by New Hampshire's House Majority Leader Jason Osborne (R-Auburn) and cosponsored by the House Democratic Leader Matt Wilhelm (D-Manchester).

The bipartisan bill would allow adults who are over the age of 21 to possess up to four ounces of cannabis. It includes home cultivation, state-licensed private cultivation and retail sales, health and safety regulations, and annulment. It would take a free market approach to the industry and avoid excessive fees, capped and scored applications, and similar barriers to entry. It applies the existing 8.5% meals and rooms tax to cannabis and dedicates the proceeds to unfunded pension liabilities, then education (which may result in property tax relief); substance abuse prevention and treatment; and police training to detect impaired drivers.

Here is a summary of key provisions:

Adult-Use Cultivation and 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 outside of the home; and
- Securely cultivate up to six plants (three of which may be mature), and possess the cannabis produced by those plants at home.

Prohibited Conduct and Penalties

- No more than 12 plants can be cultivated per home, regardless of the number of adults.
- Smoking cannabis in public 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.
- Cannabis could not be grown where it is visible from adjoining or public property, and plants must be secure from unauthorized access.
- Regulators could suspend or revoke the registration of cannabis establishments. State Regulation and Licensing of Cannabis Businesses
- A governor-appointed commission — the Cannabis Commission — would regulate and license adult-use cannabis businesses. It would be composed of a full-time commission chair and two part-time commissioners, assisted by staff.
 - At least one commissioner must have experience overseeing a regulated industry, a background in public health, and a background in cannabis regulation or in the production and distribution of cannabis. The governor shall seek to ensure at least one has a background in financing small and minority-owned businesses and that one has worked for civil rights or social justice.
- A 13-member Advisory Board would advise the commission and gather input from the public. It

would include experts in public health, cannabis businesses, law enforcement, and criminal justice or social welfare, along with a representative of cannabis consumers, a medical cannabis patient, and an attorney.

- The commission would license cannabis retailers, cultivators, product manufacturers, transporters, 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, 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 school unless the municipality establishes a different buffer.
- Cannabis products could not include nicotine or other addictive or toxic additives.
- Avoids High Barriers to Entry, Takes a Free Market Approach
- The bill avoids barriers to small businesses succeeding, such as excessive fees, licensing caps with competitive scoring, and requiring property at the time of application.
- Does not include a statewide limit on the number of licensees.
- Applicants — or at least one director, officer, or partner of the applicant — must be New Hampshire residents for at least three years.

Preserving and Integrating the Medical Cannabis Program

- Directs the Cannabis Commission and DHHS to develop a proposal within 20 months for a slow, deliberate transition of the medical program under the authority of the Commission. 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 enact a bill to effectuate the transfer.
- 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 \$100,000 in application and licensing fees.
- 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 discipline employees for off-hours cannabis use, as long as they do not work while impaired or federal law does not require otherwise.
- 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 government benefits based on state-legal, responsible cannabis conduct.

Taxation, Fees, and Distributing the Revenue

- Applies 8.5% Meals and Rooms Tax to adult-use cannabis sales (not to medical cannabis).
- Non-refundable application fees generally could not exceed \$1,000 for the state, plus \$500 for the municipality. Fees are lower for the smallest cultivation facilities (up to \$75).
- Annual licensing fees of no more than \$10,000 would be imposed on cannabis establishments. In the case of the smallest growers, the fees could not exceed \$250.
- The revenue — after administrative costs — would be distributed as follows:
 - 80% for unfunded pension liabilities; if/when those liabilities are fully funded, this portion would go to the education trust fund, contributing to property tax relief.
 - 10% to a new Substance Abuse Prevention and Recovery Trust 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% to municipalities that have at least one operational cannabis retailer.
 - Up to 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.

Annulment and Resentencing for Past Convictions

- Automatically annuls records for past misdemeanor and violation-level cannabis possession offenses.
- Creates a sentence-review process for cannabis convictions. The court would determine if reducing the sentence to time served or a lower sentence is in the interests of justice.
- Allows anyone with a cannabis offense to petition for annulment.
- Dismisses pending charges for adults 21+ possessing no more than the legal limit.

Timeline

- Adults could possess and cultivate cannabis upon legalization.
- Rules for cultivation facilities and dual-use (ATC conversions) are due within one year of passage. All other rules are due within 15 months of passage.
- The commission would begin accepting applications in the following timeframes:
 - within 14 months of passage for cultivation facilities,
 - within 17 months for manufacturing facilities, transporters, and labs, and
 - within 18 for retailers.
- 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 including graduation rates, illegal and legal drug use, and convictions related to cannabis.

Changes from the Coalition Draft

The bill crafted by the cannabis coalition included some provisions, which were omitted from the bill House Majority Leader Osborne filed. The provisions would have:

- Prevented excessive market concentration by limiting the number of licenses of any one type a person could own or be a significant investor in to three initially, and then one-fifth of the total number of licenses;
- Ensured testing labs and tracking are truly independent by providing that no lab — or individual with a 10% or greater interest in one — could have a significant interest in another cannabis business;
- Provided outreach to and support — including technical assistance, training, and loans — to priority applicants, which would be defined as distressed farmers, veterans, and individuals particularly impacted by prohibition; and
- Allocated a total of 10% of the cannabis tax revenue — after all administrative costs — to the Cannabis Business Development Fund (for the above support for priority applicants) and the Justice Reinvestment (job training, reentry, literacy training, legal aid, and youth services).