



New Hampshire Cannabis Legalization Summary of Legalization Amendment to SB 98

In early 2023, New Hampshire’s Republican and Democratic House leaders — Representative Jason Osborne (R-Auburn) and Representative Matt Wilhelm (D-Manchester) — introduced a bill (HB 639) to legalize and regulate cannabis for adults 21 and older. The original language was crafted by a broad coalition of civil rights and policy organizations, industry representatives, and cannabis policy advocates. An amended version of the bill passed the House of Representatives in a 272-109 (71%) vote but was defeated in a 14-10 vote in the Senate. Three of the votes against HB 639 had previously voted for, or even sponsored, legalization that included state-run stores.

The day after HB 639’s defeat in the Senate, Gov. Chris Sununu (R) announced he would support legalization that met certain parameters, including state-run stores. House Commerce and Consumer Affairs Committee Chair John Hunt has proposed an amendment to a Senate-passed bill, SB 98, that uses HB 639 as a starting point, but includes language to address Gov. Sununu’s priorities. The amendment would allow private production of cannabis but would have all retail sales through either Liquor Commission-run stores, agency stores (operated pursuant to annual or seasonal licenses from Commission), or from alternative treatment centers (medical dispensaries) with a dual-use certificate. There would be no tax.

Here are key provisions of the cannabis amendment to SB 98:

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 would be punishable by a civil fine of up to \$500.
- 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-Run Retail and Distribution; Regulation and Licensing of Cannabis Businesses

- The Liquor Commission — renamed the Liquor and Cannabis Commission — would operate cannabis retail stores, and could also issue licenses to operate agency stores, by the year or season. Existing alternative treatment centers (ATCs, or medical dispensaries) could also apply to serve adults at retail.
- All distribution and wholesaling would be controlled by the commission.
- The commission would regulate and license private cannabis 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.
 - Private cannabis businesses could not be located within 2,000 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.
 - 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. Allows ATCs to convert to for-profit entities.

Local Control

- All municipalities would vote in November 2024 whether to allow retail stores and other cannabis establishments. They could not ban delivery.
- Localities that opt in would consider “innovative land use control” zoning.

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.

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.

Fees, Appropriations, and Distributing Cannabis Revenue

- 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 must be reasonable. Cultivation facility fees must be tiered based on size.
- The bill seems to envision the proceeds of cannabis stores going to a Cannabis Fund, but is not explicit. The cannabis fund's 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:
 - \$17.5 million to Commission in the biennium 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 cannabis upon legalization.
- Rules for dual-use (ATC conversions) are due within 18 months of passage.
- Localities would vote on whether to allow cannabis businesses on November 5, 2024.
- Applications for private cannabis licenses would be accepted beginning July 1, 2025.
- Licenses would be granted within 90 days of the application's submission.