



NH Commission Bill Summary

Some members of New Hampshire's interim cannabis commission put together a draft cannabis bill dated October 2, 2023, and invited feedback. The bill would license private growers and manufacturers and set up a state franchise model for retail stores. The franchises would be privately operated. ATCs (medical dispensaries) could apply for and be issued licenses to cultivate, produce products, and/or sell at retail to adult-use consumers, provided they prioritize therapeutic cannabis. A 15% gross receipts "franchise fee" would be levied on both dual-licensed ATCs and franchisees. The draft includes several worthy provisions from HB 639 to stop ruining lives for cannabis.

Here is a short summary:

Adult-Use Personal Possession

- Adults 21 and older could possess and share 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 is prohibited.
- Smoking or vaping cannabis in an area "accessible to the public" carries a civil fine of up to \$500 plus forfeiture of "all cannabis and cannabis products."
- 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.

Cannabis Retail Franchises

- The number of cannabis retail franchises cannot exceed the number of state liquor stores (currently 65).
- The commission is directed to submit statutory language and initiate rulemaking for cannabis franchises within 24 months.
- Rules must include: "location of the franchise retail outlet;" store design; the size and nature of facilities; the handling, storage, and sale of cannabis; operating hours; "operation of the franchise;" "discount and compensation;" "advertising and promotion;" selection of applicants; renewals; "industry interest;" and requirements that franchisees prominently stock low- and moderate-THC products.

Cannabis Business Licensing and Regulation

- The commission would regulate and license private cannabis cultivators, product manufacturers, transporters, and testing labs. It would establish procedures to select cannabis cultivation and manufacturing facilities where there are local caps.
- It is unclear if the commission would set statewide caps on these licenses.

- Rules include the “pricing structure for the wholesale price.”
- The commission would develop rules, including governing security, transportation, lab testing, health and safety, training, potency limits, labeling, packaging, recordkeeping, and restrictions on where cannabis businesses may be located.
- Licensees must use approved inventory tracking software.
- Limits individual serving sizes to 20 milligrams of THC, unless changed by the commission.
- Requires rulemaking on advertising, including prohibiting marketing to minors and prohibiting mass marketing likely to reach minors. Prohibits billboards and sound trucks consistent with the state’s alcohol advertising prohibitions.
- Requires prior approval for packaging and labeling. Sets parameters including banning false or misleading ads, banning features consistent with products marketed to youth, prohibiting anything encouraging excessive consumption; and requiring it to be clear the product includes cannabis. Decisions are due within 60 days.
- Prohibits products and packaging that mimic trademarked products.
- The commission will determine qualifications for licensees and “criteria for selection among applicants” when there are more qualified applicants than there are number of licenses available in a particular municipality.
- The commission, assisted by the Department of Health and Human Services, would develop materials to be distributed with cannabis, including information on its risks, how to recognize problematic cannabis use, and how to obtain treatment. There would be two versions, one of which would be specific to higher-potency products.
- It could also require informational posters to be displayed at retailers, outlining cannabis’ risks.
- Cannabis businesses could not be located within 2,000 feet of a preschool, elementary school, or secondary school.
- Cannabis products could not include nicotine or other addictive or toxic additives.
- Applicants — or at least one director, officer, or partner of the applicant — must be New Hampshire residents for at least three years.

The Therapeutic Cannabis Program

- ATCs would be prohibited from applying to operate cannabis franchises, but they could apply for and be granted separate licenses to apply to co-locate with and operate an adult-use retail store, cultivation facility, product manufacturing facility, and/or transporter.
- The sales of medical and adult-use cannabis must be separated — such as by having separate counters.
- Allows ATCs to convert to for-profit entities.
- ATCs that receive adult-use licenses must:
 - maintain or increase the diversity of therapeutic cannabis products available
 - avoid raising prices for qualifying patients beyond the rate of inflation, for at least two years
 - take measures to prioritize therapeutic cannabis. This may include patient-only hours in the event of crowding and/or suspending adult-use sales in the event of shortages.

Local Control

- All municipalities would vote in November 2024 on whether to allow retail stores and other cannabis establishments. They could not ban delivery.

- Localities that opt-in “shall 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

- A person could not be denied organ transplants, child custody, and state or local government benefits based on state-legal, responsible cannabis conduct.
- 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.

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: Liquor Commission

- The commission will establish a 10% pay bump for commission staff working on both liquor and cannabis until 18 months after the first franchise retail license is issued.
- Allows regulators to craft reasonable health and safety restrictions on cannabis accessories sold in the state, which may include prohibiting toxic or addictive additives and prohibiting types of vaporizers that are particularly likely to be utilized by minors without detection. Provides the commission may not completely ban or unreasonably restrict the manufacture or sale of vaporization devices.
- Within 36 months, the commission will make recommendations to the legislature regarding regulating hemp products, cannabinoids, synthetic cannabinoids, and intoxicating products derived from hemp.
- Authorizes the commission to retain consultants through a competitive bid process for cannabis marketing and regulation.
- Provides, "In the event that the commission determines New Hampshire cannabis revenues are being diverted by actions taken by persons holding any type of cannabis license, the commission may take such marketing or merchandising action, or both, as it deems necessary, including sanctions against the competing entities."

Miscellaneous

- Prohibits manufacturing, selling, or importing alcohol products infused with THC or cannabis.
- Allows tobacco retailers to sell cannabis accessories.

- Provides cannabis-related contracts that are legal under state law are enforceable.
- 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.

Franchise and Other Fees

- A 15% “franchise fee” is imposed each month on gross revenue from both cannabis franchise retailers and adult-use stores operated by ATCs.
 - 1% of the fee will accrue to the municipality where the retailer is located.
 - It is not entirely clear if medical cannabis sales are exempt.
- Directs the commission to set application, licensing, and renewal fees, without any cap or guidance other than that the cultivation facilities’ fees must be tiered.

Fees, Appropriations, and Distributing Cannabis Revenue

- Revenue from the franchise fee and from state cannabis stores would be deposited in a Cannabis Fund. The cannabis fund’s revenue — after administrative costs — would be distributed as follows:
 - \$100,000 for data collection and reporting on the health impacts of cannabis prohibition and regulation
 - 50% of the remainder to the education trust fund, to allow 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:
 - A total of \$17.6 million to the commission in the biennium ending 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.
- Within 24 months the commission must submit statutory language and initiate rulemaking for licensing cannabis businesses, franchises, and dual-use facilities.
- Within 24 months the commission must submit statutory language and initiate rulemaking for the advertising, manufacture, and sale of cannabis and cannabis products.
- Localities would vote on whether to allow cannabis businesses on November 5, 2024.
- One section of the bill provides applications for private cannabis licenses would be accepted beginning July 1, 2025, but another says initial rulemaking is not due for 24 months.
- There is no deadline for the issuance of licenses.