

Committee Report

REGULAR CALENDAR

May 13, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Commerce and Consumer Affairs to
which was referred SB 38,**

**AN ACT relative to the organization of alternative
treatment centers. Having considered the same, report
the same with the recommendation that the bill OUGHT
TO PASS.**

Rep. Christy Bartlett

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Commerce and Consumer Affairs
Bill Number:	SB 38
Title:	relative to the organization of alternative treatment centers.
Date:	May 13, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill has come before the Legislature in the past. Alternative treatment centers dispense medical cannabis. It is now a mature business serving over 10,000 NH patients. However, these businesses are restricted to being able to organize as non-profits only. This restricts their ability to raise capital and borrow money to grow their businesses. As federal law is in conflict with state law, these businesses pay much higher interest rates when they are able to use credit. This cost is passed onto their clients. These same clients who need the legally-acquired medical cannabis cannot be covered under insurance and must pay higher rates than those in neighboring states that do not operate under the same conditions. We heard a great deal of testimony from these patients about their needs for the prescriptions and balancing those costs with other life costs. Some are forced to have to cross state lines to purchase cannabis more cheaply and transport it back home illegally. This bill would allow these licensed treatment centers to operate as any other business does in a for-profit basis. This is no longer an experiment to see whether the products are safe and effective. This has been established, but by tying the hands of the businesses from being unable to raise capital, we are restricting them. This is a pro-business bill and good for NH patients.

Vote 11-8.

Rep. Christy Bartlett
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Commerce and Consumer Affairs

SB 38, relative to the organization of alternative treatment centers. **OUGHT TO PASS.**

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SB 38 relative to the organization of alternative treatment centers

Majority Report

OTP 11-8

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Rep Christy D. Bartlett

5/19/21

Voting Sheets

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/22/2021 9:55:55 AM
Roll Call Committee Registers
Report



2021 SESSION

Commerce and Consumer Affairs

Bill #: SB38 Motion: RETAIN AM #: _____ Exec Session Date: 5/13/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman	9		
Potucek, John M. Vice Chairman	1		
Osborne, Jason M.	2		
Ammon, Keith M. Clerk	3		
Abramson, Max		1	
Ham, Bonnie D.	4		
Depalma IV, Joseph	5		
Greeson, Jeffrey	6		
Johnson, Dawn M.	7		
Terry, Paul A.	8		
Bartlett, Christy D.		2	
Abel, Richard M.		3	
Herbert, Christopher J.		4	
Van Houten, Constance		5	
Fargo, Kristina M.		6	
Weston, Joyce		7	
Beaulieu, Jane E.		8	
Burroughs, Anita D.		9	
McAleer, Chris R.		10	
TOTAL VOTE:	9	10	

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OFFICE OF THE HOUSE CLERK



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Commerce and Consumer Affairs

Bill #: SB38 Motion: OTP AM #: _____ Exec Session Date: 5/13/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman		8	
Potucek, John M. Vice Chairman		1	
Osborne, Jason M.		2	
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Greeson, Jeffrey		5	
Johnson, Dawn M.		6	
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Fargo, Kristina M.	7		
Weston, Joyce	8		
Beaulieu, Jane E.	9		
Burroughs, Anita D.	10		
McAleer, Chris R.	11		
TOTAL VOTE:	11	8	

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 38

BILL TITLE: relative to the organization of alternative treatment centers.

DATE: March 24, 2021

LOB ROOM: Remote **Time Public Hearing Called to Order:** 9:45 a.m.

Time Adjourned: 10:44 a.m.

Committee Members: Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

Bill Sponsors:

Sen. Avard

Sen. Bradley

Sen. Cavanaugh

Sen. Watters

Sen. Ward

Rep. McGuire

Rep. Edwards

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen Avard

This bill permits alternative treatment centers to organize as business corporations and limited liability companies and provides the procedure for alternative treatment centers organized as voluntary corporations as of January 1, 2021 to convert to business corporations or limited liability companies. This bill allows ATCs to operate as for-profit. They're not able to benefit as a non-profit, so they're asking to operate as a for-profit. If they need a loan, they need to borrow at up to 50% interest, and that cost has to be passed on to their patients. This bill doesn't legalize marijuana. They're asking to change the language to enter into a for-profit status.

Rep Hunt: What was the history of this bill last year?

A: Senator French had an issue with monopoly, so the language was changed.

Rep Hunt: This would allow venture capital and what if the VC was RJ Reynolds?

A: That question never came up.

Rep Herbert

Q: Are you related to the school board member Avard in Manchester?

A: It depends. Yes.

Q: Besides the inability to borrow money, was the concern over quality? Some organizations have a license to provide a very pure, high quality product. If VC came in, there was concern that some organizations would be put out of business.

A: This helps them survive as an organization, according to them, and doesn't change the quality. Sen French amended the language to prevent monopolies.

Rep Bartlett

Q: This was passed by our committee last term and tabled. I think it's the third time we've heard this bill. It's a simple bill to allow non-profit to become for-profit, would you believe?

A: You said it better than I did.

Mike McLaughlin

Sanctuary ATC. SB145 came from the Senate in 2019, passed the house on voice vote. Governor vetoed that bill because he thought it could lead to industrialization of the industry. The license they need to go through the state, under the full control of the state. SB38, what we set up does not help NH citizens. What has happened in the seven years since the passage of the bill. Patient numbers are up to 10,000. Patients care about. Not-for-profit ATCs cannot receive any of the benefits that not-for-profits receive. We have to go to non-traditional lenders to get financing. There is no benefit to the state or patients the way that the system was set up. Changes in the program are natural. There is no change to the way this will be regulated, tested, advertised. The history of the bill is not negative. The only bump in the road was the governor's opinion is that industrialization could happen. Under HHS rules, you cannot transfer the license. The state would control if RJ Reynolds or some other big player tried to come in. Let's have a market that's efficient for the patients. I urge you to look beyond the hidden specter and remember there's 10,000 people. People near the border states are crossing state lines and buying retail to satisfy their medicinal needs. We need to be able to service people in the north country. It's hard to find harm in this bill. This is a constantly maturing process.

Rep Van Houten

Q: Public Health section talks about board of managers and board of directors. Is that a structural change?

A: An LLC has a managing director and a board of managers. Much of the language shows how you would convert to a for-profit LLC. It's a term of art.

Rep Edwards

Government does a few things well and a lot of things not well. It doesn't react to slow, environmental change. We were hearing policy bills regularly about what diagnosis were included. The state is way too involved in the management. We have recreational pot all around us. There are new sources of weed that competes with our ATC centers. If we want our ATC centers to compete, we need a more flexible management style to let them survive.

Rep Herbert

Q: I understand your reasoning, but what would distinguish the ATCs from their competitors. They have a quality standard that recreational suppliers don't have. Would they compete on price and still maintain an advantage on quality?

A: As a matter of state policy, we made a decision that medical cannabis is something we wanted to make available to medical patients. The physician could refer the patient over to an ATC. The ATC would sit down, take a look at conditions, and counsel the patient on the types of cannabis that would help them. Over half of the prescriptions are non-smokable. Recreational marijuana is dominated by smoke-ables. If they decide to self-medicate, they may not find the same things as what's available through ATC. The patients of ATCs receive palliative care to reduce their symptoms of their disease condition. If those go away and put people in the position that they need to self-medicate, they may not receive the best cannibals for their condition.

Q: Does insurance play a role? If you're receiving a medically prescribed drug, can it be insured?

A: I've been looking at this from a policy angle and not an insurance angle. Someone on your committee could probably answer that better.

Rep Weston

Q: We have four ATCs. Are they doing enough business to continue as a for-profit and would we see more if this change is made?

A: I don't know. I haven't been into the weeds on this. What kind of management changes? Price, Packaging, Product, something else. We could see the evolution of new service models. Why can't they have mobile dispensaries to better service the North country? If you allow flexible, intelligent management you would improve profitability.

Ted Rebholz

President of Board of Temescal Wellness. We operate two of the licenses in NH. We'll be soon opening another dispensary in Keene. We have been servicing our customers since the beginning. We make all the products that we sell. We're not allowed to ship across state lines. We invest millions of dollars into climate controlled growing rooms to make safe products. This bill would allow us to lower prices and invest more into education. This legislature has modified the program many times to benefit patients. We do not get any of the benefits of non-profits. We pay higher income tax, cannot get traditional financing. We can only borrow from private individuals at 18-20% interest. This bill would allow patients to keep more of their money in state. Maine dispensaries have an active advertising campaign to entice NH patients to cross the border. Operators in Maine and Mass. have lower requirements for medical cannabis. 1 in 3 of our patients surveyed say they bought in Maine or Mass. They don't like the lack of education of operators in other states who don't take it seriously. We're grateful the legislature has made changes to current law. This change is modest and will allow us to lower prices to patients while ensuring their health and safety.

Rep Herbert

Q: What role if any does Insurance play? Would you consider distributing through liquor stores?

A: No reimbursement by healthcare insurers. There's no offsetting amounts through healthcare providers. Second question, we would not do that today since it's not allowable, but we want to maximize access. We want to make it as easy as possible. Until there's a change in the law, we will not be selling our products anywhere else but our ATC.

Rep Abel

Q: What would happen if this bill did not go forward? Survivability question. Is there a possibility that some of the providers would go out of business?

A: Unlikely. It's tough to tell because there are offsetting factors. Growing awareness that cannabis is available for patients. Even new patients may not buy from us 90% of the time. They cross state lines to save money but come to us 10% of the time for education. Our prices are artificially inflated because of this restriction in corporate form.

Q: I can see the rationale for believing that your costs would go down but we'd have to take it on faith that prices would go down?

A: Mass. originally required licensees to be non-profits. I'm not aware that anyone has looked at price impact of that change. There's a lot of demand for cannabis. People are going to look for the easiest way to fulfill those needs. They're driving an extra 20-30 minutes to avail yourself of much lower prices. It's a business imperative to meet consumers where they are. They're crossing state lines to get lower prices. We have no other option than to reduce our prices.

Rep Hunt: What's the company you work for called?

A: Temescal Wellness.

Q: Are you in other states?

A: Massachusetts and we were in Maryland.

Q: Do you sell to recreational users?

A: In Massachusetts we do. You don't need a medical certification, but you need a government issued ID.

Heather Marie Brown

Certified cannabis patient in NH. I'm opposed to this bill. I don't think our dispensaries should be allowed to go from non-profit to for-profit. If you do this, you open up the opportunity for big-canna to come into this market. I've seen in other state watching their medical program slowly dissolve. If dispensaries are concerned with lowering their pricing. NH dispensaries are not my first choice when I need to get my meds because of my limited income. We need to look at the program at the state level. We need to pick apart the program and look at the restrictions the state has put on the program. The ATCs have to pass the increased cost of regulation on to the consumer. We already do have requirements to grow for quality as opposed to quantity. The dispensaries need to keep up on their quantity to meet the demand. The state needs to look at the requirements and restrictions on these dispensaries. We all know recreational cannabis will be made available to the public. If those dispensaries are allowed to go from non-profit to profit bearing. Will these dispensaries be able to keep up with demand and keep up the quality? We do not want out of state interests to come into our state and take over. We want NH cannabis. Big pharma has already taken over. Let's keep cannabis locked down and keep it as a state product. Reduce the costs, requirements, and restrictions so the dispensaries can keep costs down. I'm the patient representative on the Therapeutic Cannabis Oversight Program.

Rep Burroughs

Q: Do you think that an entrepreneurial company would be better suited to grow that revenue and to grow the company than would a non-profit that is not focused on business activities? I personally believe that the restrictions and requirements at the state level will play a major impact in this regardless of where or how the company chooses to proceed, whether they're non-profit. They're still going to be held to those restrictions. If they turn to a for-profit, at that point in time, growing revenue is important yes, but the restrictions won't necessarily be put into place that are in place as far as it being a non-profit run organization.

A: Yes, there could be extra revenue and savings that could be passed on. I could also see a downward slide as far as quality and quantity are concerned. At the end of the day, the quality of the cannabis that drives what patients are looking for.

Rep Bartlett

Q: You purchase your marijuana out of state, you're on the board, but you don't want for-profit.

A: I've seen it go down. In Massachusetts, an eighth of cannabis for \$70-80. The black market is alive and thriving because of the high cost of cannabis. The black-market agents can manufacture higher quality products.

Rep McAleer

Q: You said legalized marijuana will happen in NH. If that happens isn't this bill moot?

A: This bill could have some positive impact. The problems lie when you have outside interests coming into the state. They don't have the care and compassion for individuals in this state.

Rep Greeson

Q: What restrictions would you like removed to encourage people like yourself from purchasing here?

A: When a company has to get rid of the leftover debris after harvesting the buds. The state has many regulations on how that can be disposed of. Explains. All of that adds extra expense. The debris contains no THC and could be disposed of as compost for instance. There are regulations on security. We need some security, but the requirements are a tiny bit of overkill. They create a redundancy in the system. Being able to change that would cut down on costs for the dispensary. There are several areas that could be looked at that would cut down costs at the state level for a dispensary.

Rep Ammon

Q: How much of the cost in Mass. is due to tax from the state?

A: I believe \$15 per eighth of an ounce.

Mike McLaughlin

I just wanted to point out that one of the things that the three ATCs do is provide discounts for people on disability income, Medicaid, and for veterans, and in 2019 put four hundred and two thousand dollars' worth of discounts available to the public. One of the things that it's important to remember is this bill provides a short window for conversion that would have to happen 2021. They are participating heavily in trying to help the patients.

HOUSE COMMITTEE ON COMMERCE & CONSUMER AFFAIRS

PUBLIC HEARING on Bill # SB38
BILL TITLE: relative to the organization of alternative treatment centers.
DATE: March 24, 2021

ROOM: Zoom **Time Public Hearing Called to Order:** 9:45 AM

Time Adjourned: 10:44 AM

(please bold if present)

Committee Members: Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

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House Remote Testify

Commerce and Consumer Affairs Committee Testify List for Bill SB38 on 2021-C

Support: 18 Oppose: 0 Neutral: 0 Total to Testify: 4

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<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>S</u>
mclaughlin, michael	Concord, NH capitolinsights@gmail.com	A Lobbyist	Sanctuary Alternative Treatment Center	Support	Yes (5m)	3,
Avard, Senator Kevin	Nashua, NH kevin.avid@leg.state.nh.us	An Elected Official	Senate District 12	Support	Yes (5m)	3,
Edwards, Rep Jess	Auburn, NH jess.edwards@leg.state.nh.us	An Elected Official	Myself	Support	Yes (2m)	3,
Rebholz, Ted	Wellesley, MA ted@temescalwellness.com	A Member of the Public	Myself	Support	Yes (0m)	3,
Rosenberger, Teresa	Concord, NH trosenberger@bernsteinshur.com	A Lobbyist	Temescal Wellness	Support	No	3,
Cavanaugh, Senator Kevin	Manchester, NH kevin.cavanaugh@leg.state.nh.us	An Elected Official	Myself	Support	No	3,
Hope, Lucinda	Tilton, NH lmhope46@gmail.com	A Member of the Public	Myself	Support	No	3,
Ward, Senator Ruth	Stoddard, NH ruth.ward@leg.state.nh.us	An Elected Official	Senate District 8	Support	No	3,
Watters, Senator David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself (SD 4)	Support	No	3,
Bates, David	Warner, NH dbates3@yahoo.com	A Member of the Public	Myself	Support	No	3,
Fenner-Lukaitis, Elizabeth	Warner, NH glukaitis@mcttelecom.com	A Member of the Public	Myself	Support	No	3,
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Support	No	3,
Courser, Rebecca	Warner, NH rcourser@hotmail.com	A Member of the Public	Myself	Support	No	3,
Fordey, Nicole	Litchfield, NH nikkif610@gmail.com	A Member of the Public	Myself	Support	No	3,
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Support	No	3,
Ingold, Bret	Warner, NH bretingold@gmail.com	A Member of the Public	Myself	Support	No	3,
Johnson, Sara	Warner, NH nhchicagocubfan@gmail.com	A Member of the Public	Myself	Support	No	3,
IMURA, MICHAEL	BOW, NH mikeimura@comcast.net	A Member of the Public	Myself	Support	No	3,

Testimony

Archived: Tuesday, April 27, 2021 12:51:54 PM

From: [Capitol Insights Group](#)

Sent: Tuesday, March 23, 2021 12:49:26 PM

To: [~House Commerce Committee](#)

Subject: SENATE BILL 38

Importance: Normal

Attachments:

[SENATE BILL 38-FACTS.docx](#)  [Testimony SB38 32321.docx](#) 

Dear Mr. Chair and members of the Committee:

Please find attached testimony on behalf of Sanctuary Alternative Treatment Center in support of Senate Bill 38 (SB38). Please let me know if you have any questions.

--

Michael McLaughlin, Esq.
Capitol Insights Group
16 Low Avenue
Concord, New Hampshire 03301
(603) 226-9600
(603) 491-1089

Archived: Tuesday, April 27, 2021 12:53:06 PM
From: Capitol Insights Group
Sent: Saturday, March 20, 2021 3:41:18 PM
To: ~House Commerce Committee
Cc: Carol McGuire; Jess Edwards; Kevin Avard
Subject: New Hampshire Alternative Treatment Centers-Senate Bill 38
Importance: Normal

Dear Chairman Hunt and members of the House Commerce Committee:

I hope that you and yours are all doing well and have stayed safe during the Covid19 pandemic. It has been an unusual session, thank you all for the time and effort to help make it work.

I'm writing on behalf of Sanctuary Alternative Treatment Center (Sanctuary) in support of Senate Bill 38 (SB38). SB38 will give New Hampshire's Alternative Treatment Centers (ATC) the option to operate as a not-for-profit corporation (as they do now), a traditional New Hampshire Corporation or a New Hampshire Limited Liability Company. SB38 lays out the framework for an ATC to convert from a not-for-profit corporation to a traditional New Hampshire Corporation or a New Hampshire Limited Liability Corporation. A conversion will also include coordination with the New Hampshire Attorney General's Office of Charitable Trusts. If, after a fair market valuation of its total assets, an ATC has a positive value those positive assets shall be distributed to one or more charitable organizations. The Office of Charitable Trusts will review conversion plans.

Some of you have had the opportunity to hear this bill before, to those I apologize for reviewing the history of this subject. The legislature has been asked in three separate (and nearly identical) bills to allow New Hampshire's ATC's to convert from a not-for-profit mode of doing business to a for profit business mode (as a corporation or an LLC). In 2019 the Senate and House agreed to pass Senate Bill 145* (SB145). In 2020 the House passed House Bill 1345 (HB1345) but it fell victim to the pandemic and was tabled along with many other bills. This week SB38 will come before you after passing the Senate on an 18-6 "ought to pass as amended" vote. The "yeas" including both the Senate Majority Leader and the Senate Minority Leader!

Why do New Hampshire's ATC's want to convert from a "not-for-profit" business model to a traditional business model? BECAUSE THERE IS NO BENEFIT TO THE STATE, TO PATIENTS OR TO THE BUSINESS AS A NOT-FOR-PROFIT CORPORATION. New Hampshire's ATC's receive none of the advantages enjoyed by a traditional not-for-profit corporation. Due to federal constraints a New Hampshire ATC cannot apply for charitable designation under the Internal Revenue Code. New Hampshire ATC's receive no federal, state, or local tax exemptions, they pay just as a "for profit" business. New Hampshire ATC's cannot raise equity from investors they must raise funds by incurring debt. Again, due to federal constraints, traditional sources of borrowing are not available to New Hampshire ATC's. They must raise the capital required to provide the needed services to New Hampshire patients by using private lenders that charge rates far in excess of traditional rates and far in excess of what an equity investor expects as a return on investment. The net result of being restricted to a "not-for-profit" status? Cash flow that could otherwise be used to lower prices, expand services and better serve New Hampshire patients is paid to lenders. Passing SB38 will result in a direct benefit to New Hampshire citizens by giving New Hampshire ATC's the ability to pass the savings on.

Some argue that the law was passed in 2013 and there's no reason to make such a change. In fact, the law (RSA 126-X) has been evolving every year since it was passed. This year alone there are

at twelve** (12) bills seeking changes in how New Hampshire regulates therapeutic cannabis. SB38 should have a leg up on many bills as it has been passed twice by the House and twice by the Senate. I am available to answer any questions you may have, please feel free to call me on my mobile phone, 603-491-1089. Thank you in advance for your time and thank you for your service to the State.

Mike McLaughlin

Michael McLaughlin, Esq.
Capitol Insights Group
16 Low Avenue
Concord, New Hampshire 03301
(603) 226-9600
(603) 491-1089

* Governor Sununu vetoed SB145 due to concerns of "industrial commercialization of the marijuana industry in New Hampshire", SB38 has language in the bill to restrict sales to foreign corporations.

**SB29,SB37,SB162,HB89,HB90,HB240,HB272,HB350,HB378,HB599,HB605,HB629

SENATE BILL 38 (SB38)
Relative to the Organization of Alternative Treatment Centers

What does SB38 do?

SB38 gives New Hampshire Alternative Treatment Centers (ATC's) the option to become New Hampshire business corporations or a limited liability company.

How are the ATC's organized under current law?

Current law requires ATC's to organize as a not-for-profit entity.

Do the ATC's receive the same benefits as other not-for-profit entities?

NO. None of the benefits of being organized as a not-for-profit entity apply to the ATC's. In fact, being a not-for-profit entity prevents the ATC's from raising funds in any meaningful way but incurring debt. They cannot have equity investors. The debt service is a cost that the passage of SB38 will eliminate for ATC's who are able to recruit equity investors.

Will the state be harmed if the ATC's are able to convert?

NO. The state, or any city or town, will see no change as a result of an ATC reorganizing.

Have there been changes made to the laws enacted in 2013 that allowed ATC's to operate ?

YES. Since 2013 there have been nineteen (19) bills passed that make changes in the laws that govern New Hampshire ATC's. The ability to help New Hampshire citizens suffering from qualifying conditions has been enhanced by the changes. SB38 will help New Hampshire citizens.

How many New Hampshire citizens are qualified patients?

The NH Division of Public Health Services-2019 Data Report lists 8302 New Hampshire qualified patients. Interestingly, nearly 21% of the qualified patients reside in cities and towns represented by members of the Commerce Committee.

What is the #1 complaint of qualifying patients?

According to The NH Division of Public Health Services-2019 Data Report price of therapeutic cannabis is the #1 complaint.

Will the enactment SB38 allow ATC's to reduce the price of therapeutic cannabis?

YES!

TO: Rep. John Hunt-Chair and members of the House Commerce Committee
FR: Michael M. McLaughlin on behalf of Sanctuary Alternative Treatment Center
RE: Senate Bill 38

I'm writing on behalf of Sanctuary Alternative Treatment Center (Sanctuary) in support of Senate Bill 38 (SB38). SB38 will give New Hampshire's Alternative Treatment Centers (ATC) the option to operate as a not-for-profit corporation (as they do now), a traditional New Hampshire Corporation or a New Hampshire Limited Liability Company.

SB38 lays out the framework for an ATC to convert from a not-for-profit corporation to a traditional New Hampshire Corporation or a New Hampshire Limited Liability Corporation. A conversion will also include coordination with the New Hampshire Attorney General's Office of Charitable Trusts. If, after a fair market valuation of its total assets, an ATC has a positive value those positive assets shall be distributed to one or more charitable organizations. The Office of Charitable Trusts will review conversion plans.

Some of you have had the opportunity to hear this bill before, to those I apologize for reviewing the history of this subject. The legislature has been come before the legislature in three separate (and nearly identical). In 2019 the Senate and House agreed to pass Senate Bill 145* (SB145). In 2020 the House passed House Bill 1345 (HB1345) it fell victim to the pandemic and was tabled along with many other bills. Today SB38 comes before you after passing the Senate on an 18-6 "ought to pass as amended" vote. The "yeas" including both the Senate Majority Leader and the Senate Minority Leader!

Why do New Hampshire's ATC's want to convert from a "not-for-profit" business model to a traditional business model? **BECAUSE THERE IS NO BENEFIT TO THE STATE, TO PATIENTS OR TO THE BUSINESS AS A NOT-FOR-PROFIT CORPORATION.** New Hampshire's ATC's receive **none** of the advantages enjoyed by a traditional not-for-profit corporation. Due to federal constraints a New Hampshire ATC cannot apply for charitable designation under the Internal Revenue Code. New

Hampshire ATC's receive no federal, state, or local tax exemptions, they pay just as a "for profit" business. New Hampshire ATC's cannot raise equity from investors they must raise funds by incurring debt. Again, due to federal constraints, traditional sources of borrowing are not available to New Hampshire ATC's. They must raise the capital required to provide the needed services to New Hampshire patients by using private lenders that charge rates far in excess of traditional rates and far in excess of what an equity investor expects as a return on investment. The consequence of being restricted to a "not-for-profit" status? Cash flow that could be used to lower prices, expand services and better serve New Hampshire patients is paid to lenders. Passing SB38 will result in a direct benefit to New Hampshire citizens by giving New Hampshire ATC's the ability to pass the savings on.

Some argue that the law was passed in 2013 and there's no reason to make such a change. In fact, the law (RSA 126-X) has been evolving every year since it was passed. This year alone there are at twelve** (12) bills seeking changes in how New Hampshire regulates therapeutic cannabis. Since the law allowing therapeutic passed there have been nineteen (19) bills passed making changes in the law. SB38 will be the most important change to date.

Does SB38 help perpetuate a state sanctioned monopoly in therapeutic cannabis? No, the state recognized that if it allowed a free market approach to making therapeutic cannabis available to New Hampshire citizens less populated areas of the state would be neglected. The decision made by the state is designed to provide access to as many patients as possible. SB38 will only enhance New Hampshire's ATC's in providing services in all areas of the state.

Respectfully submitted,

Michael McLaughlin, Esq on behalf of
Sanctuary Alternative Treatment Center
Plymouth and Conway New Hampshire

Bill as
Introduced

SB 38 - AS INTRODUCED

2021 SESSION

21-0893

11/08

SENATE BILL **38**

AN ACT relative to the organization of alternative treatment centers.

SPONSORS: Sen. Avard, Dist 12; Sen. Bradley, Dist 3; Sen. Cavanaugh, Dist 16; Sen. Watters,
Dist 4; Sen. Ward, Dist 8; Rep. McGuire, Merr. 29; Rep. Edwards, Rock. 4

COMMITTEE: Commerce

ANALYSIS

This bill permits alternative treatment centers to organize as business corporations and limited liability companies, and provides the procedure for alternative treatment centers organized as voluntary corporations to convert to business corporations or limited liability companies.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the organization of alternative treatment centers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Public Health; Use of Cannabis for Therapeutic Purposes; Definitions; Alternative Treatment
2 Center. Amend RSA 126-X:1, I to read as follows:

3 I. "Alternative treatment center" means a **domestic business corporation organized**
4 **under RSA 293-A, a domestic limited liability company organized under RSA 304-C, or a**
5 not-for-profit [entity] **voluntary corporation organized under RSA 292 that is** registered under
6 RSA 126-X:7 **and** that acquires, possesses, cultivates, manufactures, delivers, transfers, transports,
7 sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying
8 patients and alternative treatment centers.

9 2 Public Health; Use of Cannabis for Therapeutic Purposes; Departmental Administration;
10 Application Form. Amend RSA 126-X:7, IV(a)(4) to read as follows:

11 (4) The name, address, and date of birth of each principal officer and board member
12 of the alternative treatment center. The board of directors **or board of managers, as applicable,**
13 for the [nonprofit] **alternative treatment center** shall include at least one physician, advance
14 practice registered nurse, or pharmacist licensed to practice in New Hampshire and at least one
15 patient qualified to register as a qualifying patient. The majority of board members **or managers,**
16 **as applicable,** shall be New Hampshire residents. A medical professional listed in this
17 subparagraph may be a member of the alternative treatment center board **of directors or**
18 **managers, as applicable,** but shall not maintain an ownership interest in the center.

19 3 Public Health; Requirements for Alternative Treatment Centers. Amend RSA 126-X:8, I to
20 read as follows:

21 I. An alternative treatment center [shall] **may** be operated on a **for-profit or** not-for-profit
22 basis for the benefit of its patients. An alternative treatment center need not be recognized as a tax-
23 exempt organization by the Internal Revenue Service.

24 4 New Paragraphs; Public Health; Use of Cannabis for Therapeutic Purposes; Alternative
25 Treatment Centers; Requirements. Amend RSA 126-X:8 by inserting after paragraph XVIII the
26 following new paragraphs:

27 XIX. Except as otherwise provided in this chapter, an alternative treatment center shall be
28 subject to RSA 293-A if organized as a domestic business corporation, RSA 304-C if organized as a
29 domestic limited liability company, and RSA 292 if organized as a voluntary corporation.

30 XX. An alternative treatment center organized as a voluntary corporation under RSA 292
31 may, on or before December 31, 2021, convert from a voluntary corporation under RSA 292 to either

SB 38 - AS INTRODUCED

- Page 2 -

1 a domestic business corporation organized under RSA 293-A or a limited liability company organized
2 under RSA 304-C in any of the following ways:

3 (a) By adopting a plan of entity conversion in accordance with RSA 293-A or RSA 304-C,
4 as applicable, that includes a provision prohibiting the sale of memberships or shares to a foreign
5 corporation for a period of 3 years, provided that each such conversion shall be authorized by a vote
6 of 2/3 of the members of the board of directors at a meeting duly called for the purpose or by
7 unanimous written consent.

8 (b) By adopting a plan of merger in accordance with RSA 293-A that includes a provision
9 prohibiting the sale of memberships or shares to a foreign corporation for a period of 3 years, for
10 which the domestic business corporation shall be the surviving entity, provided that, such merger
11 shall be authorized by a vote of 2/3 of the members of the board of directors of the alternative
12 treatment center at a meeting duly called for the purpose or by unanimous written consent.

13 (c) By adopting a plan of merger in accordance with RSA 304-C that includes a provision
14 prohibiting the sale of memberships or shares to a foreign corporation for a period of 3 years, for
15 which the domestic limited liability company shall be the surviving entity, provided that, such
16 merger shall be authorized by a vote of 2/3 of the members of the board of directors at a meeting duly
17 called for the purpose or by unanimous written consent.

18 XXI. Articles of entity conversion or articles of merger, as applicable, shall be signed and
19 submitted to the secretary of state pursuant to RSA 293-A or RSA 304-C, as applicable, and the
20 secretary of state shall approve all such filings submitted pursuant to this section.

21 XXII. The secretary of state shall certify such articles of entity conversion or articles of
22 merger and shall provide them to the department. Upon receipt, the department shall update the
23 existing licenses held by the converted or merged alternative treatment center.

24 XXIII. For the purposes of converting or merging an alternative treatment center pursuant
25 to this section, notwithstanding any provision in the articles of agreement or alternative treatment
26 center license applications to the contrary, the members of an alternative treatment center's board of
27 directors may determine that a plan of entity conversion or merger is consistent with its corporate
28 charter, and such voluntary corporation may surrender its articles of agreement in connection with
29 the plan of entity conversion or merger.

30 XXIV.(a) Any alternative treatment center choosing to convert or merge pursuant to this
31 section shall obtain an independent fair market valuation of its total assets as of June 30, 2021. The
32 valuation of the total assets of such alternative treatment center, if positive, shall be distributed to
33 one or more charitable organizations solely for charitable purposes. The director of charitable trusts
34 shall receive a copy of the valuation and may file any objection relating thereto with the court within
35 60 days. Except as set forth in this section and notwithstanding any other law to the contrary, no
36 portion of the assets of such alternative treatment center after the conversion or merger, as
37 applicable, shall be deemed to be charitable assets.

1 (b) Any alternative treatment center choosing to convert or merge pursuant to this
2 section shall submit a copy of the plan of conversion or merger to the director of charitable trusts.
3 The director may file an objection relating to the plan with the court within 60 days.

4 (c) Any alternative treatment center that has converted or merged pursuant to this
5 section shall, on December 31, 2021 and thereafter for 2 years, annually file a letter with the director
6 of charitable trusts certifying compliance with the requirements of RSA 126-X:8, XX.

7 5 Voluntary Corporations; Powers of Corporations; Change of Name; Amending Articles;
8 Conversion and Merger. Amend RSA 292:7 to read as follows:

9 292:7 Change of Name; Amending Articles.

10 **I.** Any corporation now or hereafter organized or registered in accordance with the
11 provisions of this chapter, and any existing corporation which may have been so organized or
12 registered, may change its name, increase or decrease its capital stock or membership certificates,
13 merge with or acquire any other corporation formed pursuant to this chapter, or amend its articles of
14 agreement, by a majority vote of such corporation's board of directors or trustees, at a meeting duly
15 called for that purpose, and by recording a certified copy of such vote in the office of the secretary of
16 state and in the office of the clerk of the town or city in this state which is its principal place of
17 business. In the case of a foreign nonprofit corporation registered in New Hampshire, a copy of the
18 amendment or plan of merger, certified by the proper officer of the state of incorporation, shall be
19 filed with the secretary of state, together with the fee provided in RSA 292:5. The surviving
20 corporation in a merger shall continue to have all the authority and powers vested in the merging
21 corporations, including any powers previously conferred upon them by the legislature.

22 **II. *An alternative treatment center registered pursuant to RSA 126-X and organized***
23 ***under this chapter may, pursuant to RSA 126-X:8, XX, convert to either a domestic***
24 ***corporation organized under RSA 293-A or a limited liability company organized under to***
25 ***RSA 304-C, and may merge with a domestic business corporation organized under RSA 293-***
26 ***A or a limited liability company organized under RSA 304-C.***

27 6 New Paragraph; Business Corporations; Conversion; Entity Conversion Authorized. Amend
28 RSA 293-A:9.50 by inserting after paragraph (f) the following new paragraph:

29 (g) Alternative treatment centers registered pursuant to RSA 126-X and organized
30 pursuant to RSA 292 may become a domestic corporation pursuant to a plan of conversion in
31 accordance RSA 126-X:8, XX and this subdivision. The alternative treatment center shall be deemed
32 to be a domestic unincorporated entity for purposes of applying RSA 293-A:9.50 through RSA 293-
33 A:9.56, except that approval of the conversion shall be as outlined in RSA 126-X:8, XX.

34 7 Limited Liability Companies; Statutory Conversion; Statutory Conversions of Other Business
35 Entities. Amend RSA 304-C:149, I to read as follows:

36 I. Any other business entity, ***including alternative treatment centers pursuant to RSA***
37 ***126-X:8, XX,*** may make a statutory conversion of its business organization form to the limited

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- Page 4 -

1 liability company business organization form under this act by complying with the requirements of
2 this section and with applicable law governing the other business entity. ***Approval of a***
3 ***conversion of an alternative treatment center pursuant to this paragraph shall be as***
4 ***outlined in RSA 126-X:8, XX.***

5 8 New Paragraph; Limited Liability Companies; Statutory Conversion; Approvals of Statutory
6 Conversion. Amend RSA 304-C:149 by inserting after paragraph VIII the following new paragraph:

7 IX. In the case of the conversion of an alternative treatment center registered under RSA
8 126-X and organized pursuant to RSA 292, such conversion shall be approved by the board of
9 directors in accordance with RSA 126-X:8, XX.

10 9 Effective Date. This act shall take effect upon its passage.