

SB 38 - FINAL VERSION

02/18/2021 0281s
06/24/2021 2044EBA

2021 SESSION

21-0893
11/08

SENATE BILL **38**

AN ACT relative to the organization of alternative treatment centers.

SPONSORS: Sen. Avar, 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

AMENDED 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 as of January 1, 2021 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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 Statement of Intent. The general court recognizes that the state of New Hampshire in 2013
2 authorized 4 regional licenses for alternative treatment centers to distribute therapeutic cannabis to
3 New Hampshire citizens who have been diagnosed by a provider as having a qualifying medical
4 condition and who possesses a valid registry identification card issued pursuant to RSA 126-X:4.
5 The licensed alternative treatment centers have been formed as voluntary not-for-profit entities
6 under RSA 292 as required by statute. The not-for-profit requirement has had a detrimental effect
7 on the ability of the licensed alternative treatment centers to distribute affordable products due to
8 their inability to finance operations through sales of equity rather than borrowing funds from
9 private lending sources. Therefore, the general court hereby addresses the patient affordability
10 issues by allowing only the alternative treatment centers holding licenses under RSA 126-X as of
11 January 1, 2021 to convert their business under the provisions and definitions set forth below.

12 2 Public Health; Use of Cannabis for Therapeutic Purposes; Definitions; Alternative Treatment
13 Center. Amend RSA 126-X:1, I to read as follows:

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

20 3 Public Health; Use of Cannabis for Therapeutic Purposes; Departmental Administration;
21 Application Form. Amend RSA 126-X:7, IV(a)(4) to read as follows:

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

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1 4 Public Health; Requirements for Alternative Treatment Centers. Amend RSA 126-X:8, I to
2 read as follows:

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

6 5 New Paragraphs; Public Health; Use of Cannabis for Therapeutic Purposes; Alternative
7 Treatment Centers; Requirements. Amend RSA 126-X:8 by inserting after paragraph XVIII the
8 following new paragraphs:

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

12 XX. An alternative treatment center organized as a voluntary corporation under RSA 292
13 may, on or before December 31, 2021, convert from a voluntary corporation under RSA 292 to either
14 a domestic business corporation organized under RSA 293-A or a limited liability company organized
15 under RSA 304-C in any of the following ways:

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

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

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

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

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

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

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

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

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

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

292:7 Change of Name; Amending Articles.

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

II. *An alternative treatment center registered pursuant to RSA 126-X and organized under this chapter may, pursuant to RSA 126-X:8, XX, convert to either a domestic*

corporation organized under RSA 293-A or a limited liability company organized under RSA 304-C, and may merge with a domestic business corporation organized under RSA 293-A or a limited liability company organized under RSA 304-C.

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

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

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

I. Any other business entity, ***including alternative treatment centers pursuant to RSA 126-X:8, XX***, may make a statutory conversion of its business organization form to the limited liability company business organization form under this act by complying with the requirements of this section and with applicable law governing the other business entity. ***Approval of a conversion of an alternative treatment center pursuant to this paragraph shall be as outlined in RSA 126-X:8, XX.***

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

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

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

VETOED 7/13/21 | Veto Sustained January 5, 2022