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2010 SESSION

10-2617.0

09/04

HOUSE BILL

*[bill number]*

AN ACT

allowing purchase and use of marijuana by adults, regulating the purchase and use of marijuana, and imposing taxes on the wholesale and retail sale of marijuana.

SPONSORS:

[sponsors]

COMMITTEE:

[committee]

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ANALYSIS

This bill allows the purchase and use of marijuana by adults, regulates the purchase and use of marijuana, and imposes taxes on the wholesale and retail sale of marijuana.

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Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears ~~[in brackets and struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Ten*

AN ACT allowing purchase and use of marijuana by adults, regulating the purchase and use of marijuana, and imposing taxes on the wholesale and retail sale of marijuana.

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

1 Findings. The general court finds that:

2 I. There were more than 840,000 arrests for marijuana offenses in the United States in  
3 2008, which is more than half of the population of New Hampshire;

4 II. Because decades of arresting millions of marijuana users has failed to prevent teenagers,  
5 or anyone else, from using marijuana, the state of New Hampshire should take a new approach by  
6 strictly regulating marijuana with the goal of reducing teenage access to marijuana;

7 III. Rather than spending millions of taxpayer dollars arresting marijuana users, the state  
8 of New Hampshire should instead generate millions of dollars by taxing and regulating marijuana,  
9 and earmark part of these revenues to prevent and treat the abuse of marijuana, tobacco, alcohol,  
10 and other drugs;

11 IV. By allowing adults aged 21 and older to use marijuana legally in the privacy of the home,  
12 police will be able to spend more time preventing and investigating serious crimes like murder, rape,  
13 assault, robbery, burglary, and driving under the influence of alcohol and other drugs; and

14 V. If certain portions of this act are found to be inoperable or unconstitutional, it is the  
15 intent of the people of the state of New Hampshire to implement as much of the act as possible.

16 2 New Chapter; Regulation of Marijuana. Amend RSA by inserting after chapter 318-D the  
17 following new chapter:

18 CHAPTER 318-E

19 Regulation of Marijuana

20 318-E:1 Definitions. In this chapter:

21 I. "Marijuana" means a plant of the genus Cannabis or its product, but the term does not  
22 include hashish.

23 II. "Marijuana paraphernalia" means equipment, products, and materials which are used or  
24 intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing,  
25 compounding, converting, producing, processing, preparing, testing, analyzing, packaging,  
26 repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing marijuana  
27 into the human body.

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1 III. "Retailer" means an establishment licensed pursuant to RSA 77-F to purchase  
2 marijuana and marijuana paraphernalia from a wholesaler and to sell marijuana and marijuana  
3 paraphernalia to the customer.

4 IV. "State prosecution" means prosecution initiated or maintained by the state of  
5 New Hampshire or an agency or political subdivision of the state of New Hampshire.

6 V. "Wholesaler" means an establishment licensed pursuant to RSA 77-F to cultivate,  
7 prepare, package, and sell marijuana to a retailer or another wholesaler, but not to sell marijuana to  
8 the customer or general public.

9 318-E:2 Authorized Activities. Except as otherwise provided in this chapter:

10 I. A person who is 21 years of age or older and who acts in compliance with the provisions of  
11 this chapter shall be exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets,  
12 discipline by any state or local licensing board, or state prosecution for the following acts:

13 (a) Using, obtaining, purchasing, transporting, or possessing, actually or constructively,  
14 one ounce or less of marijuana.

15 (b) Controlling any premises or vehicle where up to one ounce of marijuana is possessed  
16 or deposited.

17 (c) Selling marijuana seeds to a wholesaler.

18 (d) Possession or use of marijuana paraphernalia.

19 (e) Cultivation of no more than 3 marijuana plants on the person's property, provided  
20 that the plants are cultivated in a locked, enclosed location that cannot be accessed by any person  
21 under 21 and provided that the plants are not visible to the public.

22 (f) Transfer of one ounce or less of marijuana without remuneration to a person who is  
23 21 years of age or older.

24 (g) Aiding and abetting another person who is 21 years of age or older in the possession  
25 or use of one ounce or less of marijuana.

26 (h) Aiding and abetting another person who is 21 years of age or older in the possession  
27 or use of marijuana paraphernalia.

28 (i) Any combination of the acts described in subparagraphs (a) to (h), inclusive.

29 II. A retailer or any person who is 21 years of age or older and acting in his or her capacity  
30 as an owner, employee, or agent of a retailer who acts in compliance with the provisions of this  
31 chapter shall be exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets,  
32 discipline by any state or local licensing board, or state prosecution for the following acts:

33 (a) Transporting or possessing, actually or constructively, marijuana.

34 (b) Possession of marijuana paraphernalia.

35 (c) Obtaining or purchasing marijuana and marijuana paraphernalia from a wholesaler.

36 (d) Selling marijuana or marijuana paraphernalia to any person who is 21 years of age  
37 or older.

1 (e) Aiding and abetting any person who is 21 years of age or older in the possession or  
2 use of one ounce or less of marijuana.

3 (f) Aiding and abetting any person who is 21 years of age or older in the possession or  
4 use of marijuana paraphernalia.

5 (g) Controlling any premises or vehicle where up to one ounce of marijuana is possessed  
6 or deposited in accordance with this chapter and RSA 77-F.

7 (h) Any combination of the acts described in subparagraphs (a) to (g), inclusive.

8 III. A wholesaler or any person who is 21 years of age or older and acting in his or her  
9 capacity as an owner, employee, or agent of a wholesaler who acts in compliance with the provisions  
10 of this chapter shall be exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets,  
11 discipline by any state or local licensing board, and state prosecution for the following acts:

12 (a) Cultivating, packing, processing, transporting, or manufacturing marijuana.

13 (b) Transporting or possessing, actually or constructively, marijuana.

14 (c) Possession of marijuana paraphernalia.

15 (c) Selling marijuana or marijuana paraphernalia to a retailer or a wholesaler.

16 (d) Purchasing marijuana from a wholesaler.

17 (e) Purchasing marijuana seeds from a resident of New Hampshire who is 21 years of  
18 age or older.

19 (f) Aiding and abetting any person who is 21 years of age or older in the possession or  
20 use of one ounce or less of marijuana.

21 (g) Controlling any premises or vehicle where up to one ounce of marijuana is possessed  
22 or deposited in accordance with this chapter and RSA 77-F.

23 (h) Any combination of the acts described in subparagraphs (a) to (g), inclusive.

24 IV. Except as provided in paragraph V, in a prosecution for selling, giving, or otherwise  
25 furnishing marijuana or marijuana paraphernalia to any person who is under 21 years of age, it  
26 shall be an affirmative defense if:

27 (a) The person who sold, gave, or otherwise furnished marijuana or marijuana  
28 paraphernalia to a person who is under 21 years of age was a retailer or was acting in his or her  
29 capacity as an owner, employee, or agent of a retailer at the time the marijuana or marijuana  
30 paraphernalia was sold, given, or otherwise furnished to the person; and

31 (b) Immediately before selling, giving, or otherwise furnishing marijuana or marijuana  
32 paraphernalia to a person who is under 21 years of age, the person who sold, gave, or otherwise  
33 furnished the marijuana or marijuana paraphernalia was shown a document which appeared to be  
34 issued by an agency of a federal, state, or local government and which indicated that the person to  
35 whom the marijuana or marijuana paraphernalia was sold, given, or otherwise furnished was 21  
36 years of age or older at the time the marijuana or marijuana paraphernalia was sold, given, or  
37 otherwise furnished to the person.

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1 V. The affirmative defense set forth in paragraph IV shall not apply if:

2 (a) The document which was shown to the person who sold, gave, or otherwise furnished  
3 the marijuana or marijuana paraphernalia was counterfeit, forged, or altered, or was issued to a  
4 person other than the person to whom the marijuana or marijuana paraphernalia was sold, given, or  
5 otherwise furnished; and

6 (b) Under the circumstances, a reasonable person would have known or suspected that  
7 the document was counterfeit, forged, or altered, or was issued to a person other than the person to  
8 whom the marijuana or marijuana paraphernalia was sold, given, or otherwise furnished.

9 318-E:3 Illegal Activities. The provisions of this chapter shall not authorize, and no person shall  
10 be exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state  
11 or local licensing board and state prosecution for, nor may he or she establish an affirmative defense  
12 to charges arising from, any of the following acts:

13 I. Driving, operating, or being in actual physical control of a vehicle or a vessel under power  
14 or sail while under the influence of marijuana.

15 II. Possessing marijuana if the person is a prisoner.

16 III. Possessing marijuana or possessing drug paraphernalia, if the possession of the  
17 marijuana or drug paraphernalia is discovered because the person engaged or assisted in the use of  
18 marijuana in:

19 (a) Any public place or in any place open to the public.

20 (b) Any local detention facility, county jail, state prison, reformatory, or other  
21 correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

22 (c) Any preschool, elementary school, junior high school, or high school.

23 IV. Possessing, using, transferring, selling, or cultivating marijuana or committing any  
24 other act involving marijuana in violation of the provisions of this chapter, unless such conduct is  
25 authorized by another provision of New Hampshire law.

26 318-E:4 Employers. The provisions of this chapter shall not require employers to accommodate  
27 the use, possession, or being under the influence of marijuana in a place of employment.

28 318-E:5 Penalty for Minors. Any minor who falsely represents himself to be 21 years of age or  
29 older in order to obtain any marijuana or marijuana paraphernalia pursuant to this chapter shall be  
30 guilty of a misdemeanor.

31 3 New Section; Controlled Drug Act; Limitation on Penalties. Amend RSA 318-B by inserting  
32 after section 26-a the following new section:

33 318-B:26-b Limitation on Penalties. The penalties provided for in this chapter shall not apply to  
34 those acting in accordance with RSA 318-E and RSA 77-F.

35 4 New Chapter; Taxation of Marijuana. Amend RSA by inserting after chapter 77-E the  
36 following new chapter:

Taxation of Marijuana

77-F:1 As used in this chapter:

I. "Department" means the department of revenue administration.

II. "Marijuana" means a plant of the genus Cannabis or its product, but the term does not include hashish.

III. "Retailer" means an establishment licensed pursuant to this chapter to purchase marijuana and marijuana paraphernalia from a wholesaler and to sell marijuana and marijuana paraphernalia to the customer.

IV. "Wholesaler" means an establishment licensed pursuant to this chapter to cultivate, prepare, package, and sell marijuana to a retailer or another wholesaler.

77-F:2 Retailer Licenses. Except as otherwise provided in RSA 77-F:4:

I. An entity may apply, in accordance with the provisions of this chapter and the rules adopted pursuant to this chapter, for the issuance of a license authorizing the entity to act as a retailer pursuant to the provisions of this chapter.

II. The department shall issue a license authorizing an entity to act as a retailer pursuant to the provisions of this chapter if the department determines that the applicant satisfies the requirements set forth in this chapter and the rules adopted pursuant to this chapter. The department shall approve each qualified applicant within 90 days of its submission of its application.

III. The fee for the initial issuance of a license as a retailer is \$1,000. A license as a retailer shall be renewed annually. The fee for renewal of a license as a retailer is \$1,000.

IV. If the department fails to issue a retailer license to a qualified applicant within 90 days of its submission of its application and the applicant holds a valid retail tobacco license pursuant to RSA 178:19-a, the applicant shall be deemed to be a retailer as defined in this chapter.

V. As used in this section, "qualified applicant" means any entity that:

(a) Complies with any rules adopted pursuant to RSA 77-F:11 relative to application for and issuance of a license; and

(b) Satisfies the requirements set forth in this chapter and the rules adopted pursuant to this chapter.

77-F:3 Wholesaler Licenses. Except as otherwise provided in RSA 77-F:4:

I. An entity may apply, in accordance with the provisions of this chapter and the rules adopted pursuant to this chapter, for the issuance of a license authorizing the entity to act as a wholesaler pursuant to the provisions of this chapter.

II. The department shall issue a license authorizing an entity to act as a wholesaler pursuant to the provisions of this chapter if the department determines that the applicant satisfies the requirements set forth in this chapter and the rules adopted pursuant to this chapter. The department shall approve each qualified applicant within 90 days of its submission of its application.

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1 III. The fee for the initial issuance of a license as a wholesaler is \$1,000. A license as a  
2 wholesaler shall be renewed annually. The fee for renewal of a license as a wholesaler is \$1,000.

3 IV. If the department fails to issue a wholesaler license to a qualified applicant within 90  
4 days of its submission of its application and the applicant is a person who holds a valid retail tobacco  
5 wholesale license pursuant to RSA 78:2, the applicant shall be deemed to be a wholesaler as defined  
6 in this chapter.

7 V. As used in this section, "qualified applicant" means any entity that:

8 (a) Complies with any rules adopted pursuant to RSA 77-F:11 concerning application for  
9 and issuance of a license; and

10 (b) Satisfies the requirements set forth in this chapter and the rules adopted pursuant to  
11 this chapter.

12 77-F:4 Prohibition on Licenses. The department shall not issue a license as a retailer or  
13 wholesaler to an entity:

14 I. That is located within 500 feet of the property line of a preschool, elementary school,  
15 junior high school, or high school, or structure used primarily for religious services or worship;

16 II. That is engaged in business as a gas station, convenience store, grocery store, night club,  
17 dance hall, or licensed gaming establishment; or

18 III. That sells intoxicating liquor for consumption on or off the premises.

19 77-F:5 Prohibited Activities by Retailers.

20 I. A retailer shall not:

21 (a) Sell, give, or otherwise furnish marijuana or marijuana paraphernalia to any person  
22 who is under 21 years of age.

23 (b) Allow any person who is under 21 years of age to be present on the premises of its  
24 establishment.

25 (c) Knowingly sell, give, or otherwise furnish an amount of marijuana to a person that  
26 would cause that person to possess more than one ounce of marijuana.

27 (d) Purchase marijuana from any person other than a wholesaler.

28 (e) Purchase or sell, give, or otherwise furnish marijuana in any manner other than as  
29 authorized pursuant to the provisions of this chapter and any rules adopted pursuant to this  
30 chapter.

31 (f) Sell marijuana that has been adulterated or contaminated by any controlled  
32 substance or illegal additive or pesticide.

33 II. In addition to any other penalty provided pursuant to specific statute, a person who  
34 violates this section shall be guilty of a misdemeanor and shall be punished by a fine of not more  
35 than \$1,000. The department may also suspend or terminate the license of a retailer who commits  
36 multiple or serious violations of this section or rules issued pursuant to it.

1 III. Except as otherwise provided in this paragraph, in a prosecution for a violation of  
2 subparagraph I(b), it is an affirmative defense that immediately before allowing the person who is  
3 under 21 years of age onto the premises, the person who allowed the person onto the premises was  
4 shown a document which appeared to be issued by an agency of a federal, state, or local government  
5 and which indicated that the person who was allowed onto the premises of the retailer was 21 years  
6 of age or older at the time the person was allowed onto the premises of the retailer. The affirmative  
7 defense set forth in this paragraph shall not apply if:

8 (a) The document which was shown to the person who allowed the person who is under  
9 21 years of age onto the premises of the retailer was counterfeit, forged, or altered, or was issued to a  
10 person other than the person who was allowed onto the premises of the retailer; and

11 (b) Under the circumstances, a reasonable person would have known or suspected that  
12 the document was counterfeit, forged, or altered, or was issued to a person other than the person  
13 who was allowed onto the premises.

14 IV. In this section, "marijuana paraphernalia" shall have the same meaning as in RSA 318-  
15 E:1, II.

16 77-F:6 Prohibited Activities by Wholesalers.

17 I. A wholesaler shall not:

18 (a) Allow any person who is under 21 years of age to be present on the premises of its  
19 establishment.

20 (b) Sell, give, or otherwise furnish marijuana to any person other than a retailer or  
21 wholesaler.

22 (c) Purchase marijuana from any person other than a wholesaler.

23 (d) Purchase or sell, give, or otherwise furnish marijuana in any manner other than as  
24 authorized pursuant to the provisions of this chapter and any rules adopted pursuant to this  
25 chapter.

26 (e) Sell marijuana that has been adulterated or contaminated by any controlled  
27 substance or illegal additive or pesticide.

28 II. In addition to any other penalty provided pursuant to specific statute, a person who  
29 violates this section shall be guilty of a misdemeanor and shall be punished by a fine of not more  
30 than \$1,000. The department may also suspend or terminate the license of a wholesaler who  
31 commits multiple or serious violations of this section or rules issued pursuant to it.

32 III. Except as otherwise provided in this paragraph, in a prosecution for a violation of  
33 subparagraph I(a), it is an affirmative defense that immediately before allowing the person who is  
34 under 21 years of age onto the premises, the person who allowed the person onto the premises was  
35 shown a document which appeared to be issued by an agency of a federal, state, or local government  
36 and which indicated that the person who was allowed onto the premises of the wholesaler was 21

1 years of age or older at the time the person was allowed onto the premises of the wholesaler. The  
2 affirmative defense set forth in this paragraph shall not apply if:

3 (a) The document which was shown to the person who allowed the person who is under  
4 21 years of age onto the premises of the wholesaler was counterfeit, forged, or altered, or was issued  
5 to a person other than the person who was allowed onto the premises of the wholesaler; and

6 (b) Under the circumstances, a reasonable person would have known or suspected that  
7 the document was counterfeit, forged, or altered, or was issued to a person other than the person  
8 who was allowed onto the premises.

9 77-F:7 Rate of Tax.

10 I. An excise tax is hereby imposed upon wholesalers and shall be collected on all marijuana  
11 sold to retailers at the rate of \$45 per ounce or proportionate part thereof.

12 II. For the purpose of determining the tax for the retail sale of marijuana pursuant to this  
13 chapter, the tax for the sale of marijuana shall be at a rate of 19 percent of the wholesaler price.

14 77-F:8 Distribution of Taxes. The department shall apportion the money remitted to the  
15 department from license fees and taxes collected pursuant to this chapter in the following manner:

16 I. The department shall retain sufficient money to defray the entire cost of administration of  
17 this chapter.

18 II. After retaining sufficient money to defray the entire cost of administration of this chapter  
19 pursuant to paragraph I, the department shall remit the remaining money to the state treasurer for  
20 deposit in the general fund, 50 percent of which shall be distributed to the department of health and  
21 human services through the operating budget for use in voluntary programs for the prevention or  
22 treatment of the abuse of alcohol, tobacco, or controlled substances.

23 77-F:9 Advertising Prohibited. No person shall advertise the sale of marijuana through  
24 television, radio, newspapers, magazines, billboards, the Internet, or any other written or oral  
25 commercial media.

26 77-F:10 Transporting Marijuana. The provisions of this chapter shall not authorize any person  
27 to transport marijuana into or outside the state of New Hampshire, unless federal law permits such  
28 transport.

29 77-F:11 Administration; Rulemaking.

30 I. The department shall be responsible for administering and carrying out the provisions of  
31 this chapter.

32 II. The department shall adopt rules that:

33 (a) Establish procedures for the application for and issuance of licenses to retailers and  
34 wholesalers, including, without limitation, the content and form for an application to be licensed as a  
35 retailer or wholesaler.

36 (b) Specify the procedures for the collection of taxes levied pursuant to this chapter.

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1 (c) Specify the content, form, and timing of reports which shall be submitted to the  
2 department by a retailer or wholesaler, including, without limitation, the requirement that  
3 information on sales, expenses, inventory, and taxes collected be reported to the department.

4 (d) Establish the requirements concerning the records that shall be created and  
5 maintained by a retailer or wholesaler.

6 (e) Establish reasonable security requirements that shall be adhered to by retailers or  
7 wholesalers.

8 (f) Specify the requirements for the packaging and labeling of marijuana.

9 (g) Require the posting or display of the license of a retailer or wholesaler.

10 (h) Establish the procedures for inspecting and auditing the records or premises of a  
11 retailer or wholesaler.

12 (i) Establish the procedures for hearings to contest the denial of an application for a  
13 license as a retailer or wholesaler.

14 (j) Establish the procedures for hearings to contest the suspension or revocation of a  
15 license as a retailer or wholesaler for a violation of any provision of this chapter or the rules adopted  
16 pursuant to this chapter.

17 5 Rulemaking Required; Retailers and Wholesalers.

18 I. The commissioner of the department of revenue administration shall adopt rules under  
19 RSA 77-F:11 to implement this act and shall begin processing applications for retailers and  
20 wholesalers within 180 days of the effective date of this act.

21 II. If the department fails to adopt such rules within 180 days of the effective date of this  
22 act, any person who holds a valid retail tobacco license pursuant to RSA 178:19-a shall be deemed to  
23 be a retailer if such person:

24 (a) Notifies the department in writing of its readiness to apply;

25 (b) Pays the department the \$1,000 license fee; and

26 (c) Satisfies the requirements set forth in RSA 77-F:1 to 77-F:11.

27 III. If the department fails to issue such rules within 180 days of the effective date of this  
28 act, any person who holds a tobacco wholesale license pursuant to RSA 78:2 shall be deemed to be a  
29 licensed wholesaler if such establishment:

30 (a) Notifies the department in writing of its readiness to apply;

31 (b) Pays the department the \$1,000 license fee; and

32 (c) Satisfies the requirements set forth in RSA 77-F:1 to 77-F:11.

33 IV. If the department fails to adopt rules to implement this act and fails to begin processing  
34 applications for retailers and wholesalers within 180 days of the effective date of this act, a retailer,  
35 wholesaler, or person who desires to purchase marijuana pursuant to this act may commence an  
36 action in a court of competent jurisdiction to compel the department to perform the actions mandated  
37 pursuant to the provisions of this act.

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1           6 Severability. If any provision of this act, or the application thereof to any person, thing, or  
2           circumstance is held invalid, such invalidity shall not affect the provisions or application of this act  
3           which can be given effect without the invalid provision or application, and to this end the provisions  
4           of this act are declared to be severable.

5           7 Effective Date. This act shall take effect January 1, 2011.