

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

**CHAPTER 336**  
**HOUSE BILL 2541**

AN ACT

AMENDING SECTIONS 23-493 AND 23-493.06, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-493.12; AMENDING SECTION 36-2807, ARIZONA REVISED STATUTES; RELATING TO DRUGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-493, Arizona Revised Statutes, is amended to  
3 read:

4 23-493. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Alcohol" means ethanol, isopropanol or methanol.

7 2. "CURRENT USE OF ANY DRUG" MEANS DRUG USE THAT HAS OCCURRED RECENTLY  
8 ENOUGH TO JUSTIFY AN EMPLOYER'S REASONABLE BELIEF THAT INVOLVEMENT WITH DRUGS  
9 IS ONGOING. CURRENT USE OF ANY DRUG IS NOT LIMITED TO ANY SPECIFIC TIME  
10 FRAME AND DEPENDS ON THE FACTS OF EACH INDIVIDUAL CASE.

11 ~~2-~~ 3. "Drugs" means any substance considered unlawful under the  
12 schedules of the controlled substances section of the comprehensive drug  
13 abuse prevention and control act of 1970, AS AMENDED, (P.L. 91-513; 84 Stat.  
14 1247; 21 United States Code section 812) OR PURSUANT TO TITLE 13, CHAPTER 34  
15 or the metabolite of the substance.

16 ~~3-~~ 4. "Employee" means any person in the service of an employer.

17 ~~4-~~ 5. "Employer" means THIS STATE, A POLITICAL SUBDIVISION OF THIS  
18 STATE OR any person, firm, company, corporation, labor organization,  
19 employment agency or joint labor-management committee, including any public  
20 utility, transit district or special taxing district organized pursuant to  
21 title 48, chapter 17 or 22, that has one or more full-time employees employed  
22 in the same business, or in or about the same establishment, under any  
23 contract of hire, express or implied, oral or written. ~~Employer does not  
24 include the United States, this state and its agencies other than the  
25 department of public safety, the state department of corrections and the  
26 department of juvenile corrections, any political subdivision of this state  
27 or any Native American tribe. The department of public safety, the state  
28 department of corrections and the department of juvenile corrections are  
29 employers for purposes of this paragraph.~~

30 ~~5-~~ 6. "Good faith" means reasonable reliance on fact, or that which  
31 is held out to be factual, without the intent to deceive or be deceived and  
32 without reckless or malicious disregard for the truth. GOOD FAITH DOES NOT  
33 INCLUDE A BELIEF FORMED WITH GROSS NEGLIGENCE. A GOOD FAITH BELIEF MAY BE  
34 BASED ON ANY OF THE FOLLOWING:

35 (a) OBSERVED CONDUCT, BEHAVIOR OR APPEARANCE.

36 (b) INFORMATION REPORTED BY A PERSON BELIEVED TO BE RELIABLE,  
37 INCLUDING A REPORT BY A PERSON WHO WITNESSED THE USE OR POSSESSION OF DRUGS  
38 OR DRUG PARAPHERNALIA AT WORK.

39 (c) WRITTEN, ELECTRONIC OR VERBAL STATEMENTS.

40 (d) LAWFUL VIDEO SURVEILLANCE.

41 (e) RECORDS OF GOVERNMENT AGENCIES, LAW ENFORCEMENT AGENCIES OR  
42 COURTS.

43 (f) RESULTS OF A TEST FOR THE USE OF ALCOHOL OR DRUGS.

44 (g) OTHER INFORMATION REASONABLY BELIEVED TO BE RELIABLE OR ACCURATE.

45 7. "IMPAIRMENT" MEANS SYMPTOMS THAT A PROSPECTIVE EMPLOYEE OR EMPLOYEE  
46 WHILE WORKING MAY BE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL THAT MAY

1 DECREASE OR LESSEN THE EMPLOYEE'S PERFORMANCE OF THE DUTIES OR TASKS OF THE  
2 EMPLOYEE'S JOB POSITION, INCLUDING SYMPTOMS OF THE EMPLOYEE'S SPEECH,  
3 WALKING, STANDING, PHYSICAL DEXTERITY, AGILITY, COORDINATION, ACTIONS,  
4 MOVEMENT, Demeanor, APPEARANCE, CLOTHING, ODOR, IRRATIONAL OR UNUSUAL  
5 BEHAVIOR, NEGLIGENCE OR CARELESSNESS IN OPERATING EQUIPMENT, MACHINERY OR  
6 PRODUCTION OR MANUFACTURING PROCESSES, DISREGARD FOR THE SAFETY OF THE  
7 EMPLOYEE OR OTHERS, INVOLVEMENT IN AN ACCIDENT THAT RESULTS IN SERIOUS DAMAGE  
8 TO EQUIPMENT, MACHINERY OR PROPERTY, DISRUPTION OF A PRODUCTION OR  
9 MANUFACTURING PROCESS, ANY INJURY TO THE EMPLOYEE OR OTHERS OR OTHER SYMPTOMS  
10 CAUSING A REASONABLE SUSPICION OF THE USE OF DRUGS OR ALCOHOL.

11 ~~6-~~ 8. "Prospective employee" means any person who has made  
12 application to any employer, whether written or oral, to become an employee.

13 9. "SAFETY-SENSITIVE POSITION" MEANS ANY JOB DESIGNATED BY AN EMPLOYER  
14 AS A SAFETY-SENSITIVE POSITION OR ANY JOB THAT INCLUDES TASKS OR DUTIES THAT  
15 THE EMPLOYER IN GOOD FAITH BELIEVES COULD AFFECT THE SAFETY OR HEALTH OF THE  
16 EMPLOYEE PERFORMING THE TASK OR OTHERS, INCLUDING ANY OF THE FOLLOWING:

17 (a) OPERATING A MOTOR VEHICLE, OTHER VEHICLE, EQUIPMENT, MACHINERY OR  
18 POWER TOOLS.

19 (b) REPAIRING, MAINTAINING OR MONITORING THE PERFORMANCE OR OPERATION  
20 OF ANY EQUIPMENT, MACHINERY OR MANUFACTURING PROCESS, THE MALFUNCTION OR  
21 DISRUPTION OF WHICH COULD RESULT IN INJURY OR PROPERTY DAMAGE.

22 (c) PERFORMING DUTIES IN THE RESIDENTIAL OR COMMERCIAL PREMISES OF A  
23 CUSTOMER, SUPPLIER OR VENDOR.

24 (d) PREPARING OR HANDLING FOOD OR MEDICINE.

25 (e) WORKING IN ANY OCCUPATION REGULATED PURSUANT TO TITLE 32.

26 ~~7-~~ 10. "Sample" means urine, blood, breath, saliva, hair or other  
27 substances from the person being tested.

28 Sec. 2. Section 23-493.06, Arizona Revised Statutes, is amended to  
29 read:

30 23-493.06. Employer protection from litigation

31 A. No cause of action is or may be established for any person against  
32 an employer who has established a policy and initiated a testing program in  
33 accordance with this article for any of the following:

34 1. Actions in good faith based on the results of a positive drug test  
35 or alcohol impairment test.

36 2. Failure to test for drugs or alcohol impairment or failure to test  
37 for a specific drug or any other controlled substance.

38 3. Failure to test or, if tested, failure to detect any specific drug  
39 or other substance, any medical condition or any mental, emotional or  
40 psychological disorder or condition.

41 4. Termination or suspension of any substance abuse prevention or  
42 testing program or policy.

43 5. ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH BELIEF THAT AN EMPLOYEE  
44 USED OR POSSESSED ANY DRUG WHILE ON THE EMPLOYER'S PREMISES OR DURING THE  
45 HOURS OF EMPLOYMENT.

1           6. ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH BELIEF THAT AN EMPLOYEE  
2 HAD AN IMPAIRMENT WHILE WORKING WHILE ON THE EMPLOYER'S PREMISES OR DURING  
3 HOURS OF EMPLOYMENT.

4           7. ACTIONS TO EXCLUDE AN EMPLOYEE FROM PERFORMING A SAFETY-SENSITIVE  
5 POSITION, INCLUDING REASSIGNING THE EMPLOYEE TO ANOTHER POSITION OR PLACING  
6 AN EMPLOYEE ON PAID OR UNPAID LEAVE, BASED ON THE EMPLOYER'S GOOD FAITH  
7 BELIEF THAT THE EMPLOYEE IS ENGAGED IN THE CURRENT USE OF ANY DRUG, WHETHER  
8 LEGAL, PRESCRIBED BY A PHYSICIAN OR OTHERWISE, IF THE DRUG COULD CAUSE AN  
9 IMPAIRMENT OR OTHERWISE DECREASE OR LESSEN THE EMPLOYEE'S JOB PERFORMANCE OR  
10 ABILITY TO PERFORM THE EMPLOYEE'S JOB DUTIES. THE BELIEF REGARDING THE  
11 EFFECTS OF THE DRUG MAY BE BASED ON INFORMATION INCLUDING RESULTS OF A TEST  
12 FOR THE USE OF ALCOHOL OR DRUGS, WARNING LABELS OR OTHER PRINTED MATERIALS  
13 THAT ACCOMPANY INSTRUCTIONS FOR USE OF THE DRUG, STATEMENTS BY THE EMPLOYEE,  
14 INFORMATION FROM A PHYSICIAN OR PHARMACIST, INFORMATION FROM REPUTABLE  
15 REFERENCE SOURCES IN PRINT OR ON THE INTERNET OR OTHER INFORMATION THE  
16 EMPLOYER IN GOOD FAITH BELIEVES TO BE RELIABLE.

17           B. THE ACTIONS OF AN EMPLOYER PROTECTED BY THIS SECTION INCLUDE  
18 IMPLEMENTING, MONITORING OR MEASURES TO ASSESS, SUPERVISE OR CONTROL THE JOB  
19 PERFORMANCE OF THE EMPLOYEE, REASSIGNMENT OF AN EMPLOYEE TO A DIFFERENT  
20 POSITION OR JOB DUTIES OR SUSPENSION OR TERMINATION OF EMPLOYMENT.

21           Sec. 3. Title 23, chapter 2, article 14, Arizona Revised Statutes, is  
22 amended by adding section 23-493.12, to read:

23           23-493.12. Severability

24           IF A PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR  
25 CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER  
26 PROVISIONS OR APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT  
27 THE INVALID PROVISION OR APPLICATION AND, TO THIS END, THE PROVISIONS OF THIS  
28 ARTICLE ARE SEVERABLE.

29           Sec. 4. Subject to the requirements of article IV, part 1, section 1,  
30 Constitution of Arizona, section 36-2807, Arizona Revised Statutes, is  
31 amended to read:

32           36-2807. Verification system

33           A. Within one hundred twenty days of the effective date of this  
34 chapter, the department shall establish a secure, password-protected,  
35 web-based verification system for use on a twenty-four hour basis by law  
36 enforcement personnel, ~~and~~ nonprofit medical marijuana dispensary agents AND  
37 EMPLOYERS to verify registry identification cards. AN EMPLOYER MAY USE THE  
38 VERIFICATION SYSTEM ONLY TO VERIFY A REGISTRY IDENTIFICATION CARD THAT IS  
39 PROVIDED TO THE EMPLOYER BY A CURRENT EMPLOYEE OR BY AN APPLICANT WHO HAS  
40 RECEIVED A CONDITIONAL OFFER OF EMPLOYMENT.

41           B. The verification system must allow law enforcement personnel and  
42 nonprofit medical marijuana dispensary agents to enter a registry  
43 identification number and verify whether the number corresponds with a  
44 current, valid identification card.

45           C. The system shall disclose:

- 1           1. The name of the cardholder, but must not disclose the cardholder's  
2 address.
- 3           2. The amount of marijuana that each registered qualifying patient  
4 received from nonprofit medical marijuana dispensaries during the past sixty  
5 days.
- 6           D. The verification system must include the following data security  
7 features:
- 8           1. Any time an authorized user enters five invalid registry  
9 identification numbers within five minutes, that user cannot log in to the  
10 system again for ten minutes.
- 11           2. A users log-in information shall be deactivated after ~~5-~~ FIVE  
12 incorrect login attempts until the authorized user contacts the department  
13 and verifies ~~his~~ THE USER'S identity.
- 14           3. The server must reject any log-in request that is not over an  
15 encrypted connection.
- 16           Sec. 5. Retroactivity  
17 This act applies retroactively to from and after April 12, 2011.
- 18           Sec. 6. Requirements for enactment; three-fourths vote  
19 Pursuant to article IV, part 1, section 1, Constitution of Arizona,  
20 section 36-2807, Arizona Revised Statutes, as amended by this act, is  
21 effective only on the affirmative vote of at least three-fourths of the  
22 members of each house of the legislature.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.