

~~legislative subpoenas; records; penalties~~
~~(now: legislative subpoena, records, privilege)~~
(now: medical marijuana; research; mental health)

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SENATE BILL 1408

AN ACT

AMENDING SECTION 36-2803, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2803.02; AMENDING SECTION 36-2806, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2812; AMENDING SECTIONS 36-2817 AND 36-2820, ARIZONA REVISED STATUTES; RELATING TO MEDICAL MARIJUANA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Subject to the requirements of article IV, part 1,
3 section 1, Constitution of Arizona, section 36-2803, Arizona Revised
4 Statutes, is amended to read:

5 36-2803. Rulemaking; notice; testing of marijuana and
6 marijuana products; fees

7 A. The department shall adopt rules:

8 1. Governing the manner in which the department considers petitions
9 from the public to add debilitating medical conditions or treatments to
10 the list of debilitating medical conditions set forth in section 36-2801,
11 paragraph 3, including public notice of, and an opportunity to comment in
12 a public hearing on, petitions.

13 2. Establishing the form and content of registration and renewal
14 applications submitted under this chapter.

15 3. Governing the manner in which the department considers
16 applications for and renewals of registry identification cards.

17 4. Governing nonprofit medical marijuana dispensaries to protect
18 against diversion and theft without imposing an undue burden on nonprofit
19 medical marijuana dispensaries or compromising the confidentiality of
20 cardholders, including:

21 (a) The manner in which the department considers applications for
22 and renewals of registration certificates.

23 (b) Minimum oversight requirements for nonprofit medical marijuana
24 dispensaries.

25 (c) Minimum recordkeeping requirements for nonprofit medical
26 marijuana dispensaries.

27 (d) Minimum security requirements for nonprofit medical marijuana
28 dispensaries, including requirements to protect each registered nonprofit
29 medical marijuana dispensary location by a fully operational security
30 alarm system.

31 (e) Procedures for suspending or revoking the registration
32 certificate of nonprofit medical marijuana dispensaries that violate this
33 chapter or the rules adopted pursuant to this section.

34 5. Establishing application and renewal fees for registry
35 identification cards, nonprofit medical marijuana dispensary registration
36 certificates and independent third-party laboratory certificates,
37 according to the following:

38 (a) The total amount of all fees shall generate revenues that are
39 sufficient to implement and administer this chapter, except that fee
40 revenue may be offset or supplemented by private donations.

41 (b) Nonprofit medical marijuana dispensary application fees may not
42 exceed \$5,000.

43 (c) Nonprofit medical marijuana dispensary renewal fees may not
44 exceed \$1,000.

(d) The total amount of revenue generated from nonprofit medical marijuana dispensary application and renewal fees, registry identification card fees for nonprofit medical marijuana dispensary agents and independent third-party laboratory agents and application and renewal fees for independent third-party laboratories shall be sufficient to implement and administer this chapter, including the verification system, except that the fee revenue may be offset or supplemented by private donations.

(e) The department may establish a sliding scale of patient application and renewal fees THAT ARE based on a qualifying patient's household income AND THAT ARE REASONABLE AND RELATED TO THE ACTUAL COSTS OF PROCESSING APPLICATIONS AND RENEWALS.

(f) The department may consider private donations under section 36-2817 to reduce application and renewal fees.

B. The department of health services shall adopt rules that require each nonprofit medical marijuana dispensary to display in a conspicuous location a sign that warns pregnant women about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report. The rules shall include the specific warning language that must be included on the sign. The cost and display of the sign required by rule shall be borne by the nonprofit medical marijuana dispensary. The rules shall also require each certifying physician to attest that the physician has provided information to each qualifying female patient that warns about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

C. The department is authorized to adopt the rules set forth in subsections A and B of this section and shall adopt those rules pursuant to title 41, chapter 6.

D. The department of health services shall post prominently on its public website a warning about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

E. ~~Beginning November 1, 2020~~, Before selling or dispensing marijuana or marijuana products to registered qualified patients or registered designated caregivers, nonprofit medical marijuana dispensaries shall test marijuana and marijuana products for medical use to determine unsafe levels of microbial contamination, heavy metals, pesticides, ~~herbicides~~, fungicides, growth regulators and residual solvents and confirm the potency of the marijuana to be dispensed. THE DRIED FLOWERS

1 OF THE MARIJUANA PLANT ARE NOT REQUIRED TO BE TESTED FOR RESIDUAL
2 SOLVENTS.

3 F. ~~Beginning November 1, 2020,~~ Nonprofit medical marijuana
4 dispensaries shall:

5 1. Provide test results to a registered qualifying patient or
6 designated caregiver immediately on request.

7 2. Display in a conspicuous location a sign that notifies patients
8 of their right to receive the certified independent third-party laboratory
9 test results for marijuana and marijuana products for medical use.

10 G. The department shall adopt rules to certify and regulate
11 independent third-party laboratories that analyze marijuana cultivated for
12 medical use. The department shall establish certification fees for
13 laboratories pursuant to subsection A of this section. In order to be
14 certified as an independent third-party laboratory that is allowed to test
15 marijuana and marijuana products for medical use pursuant to this chapter,
16 an independent third-party laboratory:

17 1. Must meet requirements established by the department, including
18 reporting and health and safety requirements.

19 2. May not have any direct or indirect familial or financial
20 relationship with or interest in a nonprofit medical marijuana dispensary
21 or related medical marijuana business entity or management company, or any
22 direct or indirect familial or financial relationship with a designated
23 caregiver for whom the laboratory is testing marijuana and marijuana
24 products for medical use in this state.

25 3. Must have a quality assurance program and standards.

26 4. Must have an adequate chain of custody and sample requirement
27 policies.

28 5. Must have an adequate records retention process to preserve
29 records.

30 6. Must establish procedures to ensure that results are accurate,
31 precise and scientifically valid before reporting the results.

32 7. Must be accredited by a national or international accreditation
33 association or other similar accrediting entity, as determined by the
34 department.

35 8. Must establish policies and procedures for disposal and reverse
36 distribution of samples that are collected by the laboratory.

37 H. The department may conduct proficiency testing and remediate
38 problems with independent third-party laboratories that are certified and
39 regulated pursuant to this chapter. Remediation may include assessing
40 civil penalties and suspending or revoking a laboratory's certification.

Sec. 2. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, title 36, chapter 28.1, Arizona Revised Statutes, is amended by adding section 36-2803.02, to read:

36-2803.02. Warning labels; requirements; definitions

A. THE DEPARTMENT SHALL DEVELOP A WARNING LABEL THAT INCLUDES A STATEMENT THAT MARIJUANA USE MAY AFFECT THE HEALTH OF A PREGNANT WOMAN AND THE UNBORN CHILD. THE DEPARTMENT SHALL REQUIRE THE LABEL TO BE AFFIXED TO THE PACKAGING OF ANY MEDICAL MARIJUANA THAT IS DISPENSED BY A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY TO A QUALIFIED PATIENT OR A DESIGNATED CAREGIVER AND ANY MARIJUANA OR MARIJUANA PRODUCT THAT IS SOLD BY A MARIJUANA ESTABLISHMENT PURSUANT TO CHAPTER 28.2 OF THIS TITLE.

B. FOR THE PURPOSES OF THIS SECTION, "MARIJUANA", "MARIJUANA ESTABLISHMENT" AND "MARIJUANA PRODUCTS" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2850.

Sec. 3. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, section 36-2806, Arizona Revised Statutes, is amended to read:

36-2806. Registered nonprofit medical marijuana dispensaries: requirements; rules; inspections; testing

A. A registered nonprofit medical marijuana dispensary shall be operated on a not-for-profit basis. The bylaws of a registered nonprofit medical marijuana dispensary shall contain such provisions relative to the disposition of revenues and receipts to establish and maintain its nonprofit character. A registered nonprofit medical marijuana dispensary need not be recognized as tax-exempt by the internal revenue service and is not required to incorporate pursuant to title 10, chapter 19, article 1.

B. The operating documents of a registered nonprofit medical marijuana dispensary shall include procedures ~~for the oversight of~~ TO OVERSEE the registered nonprofit medical marijuana dispensary and procedures to ensure accurate recordkeeping.

C. A registered nonprofit medical marijuana dispensary shall ~~have a single secure entrance and shall~~ implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.

D. A registered nonprofit medical marijuana dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the registered qualifying patients' designated caregivers or an independent third-party laboratory agent or a certified independent third-party laboratory for the purposes prescribed in this chapter and department rule.

E. All cultivation of marijuana must take place in an enclosed, locked facility, at a physical address provided to the department during

1 the registration process, that can be accessed only by registered
2 nonprofit medical marijuana dispensary agents associated in the registry
3 with the nonprofit medical marijuana dispensary.

4 F. A registered nonprofit medical marijuana dispensary may acquire
5 usable marijuana or marijuana plants from a registered qualifying patient
6 or a registered designated caregiver only if the registered qualifying
7 patient or registered designated caregiver receives no compensation for
8 the marijuana.

9 G. A nonprofit medical marijuana dispensary shall not allow any
10 person to consume marijuana on the property of the nonprofit medical
11 marijuana dispensary.

12 H. Registered nonprofit medical marijuana dispensaries are subject
13 to reasonable inspection by the department. The department ~~shall give~~
14 ~~reasonable notice of an inspection under this subsection~~ MAY VISIT AND
15 INSPECT A NONPROFIT MEDICAL MARIJUANA DISPENSARY AT ANY TIME DURING
16 REGULAR HOURS OF OPERATION AS NECESSARY TO DETERMINE WHETHER THE
17 DISPENSARY COMPLIES WITH THIS CHAPTER AND THE RULES ADOPTED PURSUANT TO
18 THIS CHAPTER.

19 I. ~~Beginning November 1, 2020,~~ Registered nonprofit medical
20 marijuana dispensaries are subject to product testing by certified
21 independent third-party laboratories pursuant to this chapter and rules
22 adopted pursuant to this chapter.

23 J. Notwithstanding title 13, chapter 34, an employee of the
24 department or an independent third-party laboratory agent may not be
25 charged with or prosecuted for possession of marijuana that is cultivated
26 for medical use as required by this chapter and the rules adopted pursuant
27 to this chapter.

28 Sec. 4. Subject to the requirements of article IV, part 1,
29 section 1, Constitution of Arizona, title 36, chapter 28.1, Arizona
30 Revised Statutes, is amended by adding section 36-2812, to read:

31 36-2812. Marijuana research; grants; posting

32 A. THE DEPARTMENT SHALL PROVIDE GRANTS FROM MONIES IN THE MEDICAL
33 MARIJUANA FUND ESTABLISHED BY SECTION 36-2817 FOR RESEARCH ON THE
34 CORRELATION BETWEEN MARIJUANA USE AND MENTAL ILLNESS, INCLUDING PSYCHOSIS,
35 AND VIOLENT BEHAVIOR.

36 B. THE DEPARTMENT SHALL POST ON ITS PUBLIC WEBSITE ALL RESEARCH
37 CONDUCTED PURSUANT TO THE GRANTS PROVIDED UNDER THIS SECTION.

38 Sec. 5. Subject to the requirements of article IV, part 1,
39 section 1, Constitution of Arizona, section 36-2817, Arizona Revised
40 Statutes, is amended to read:

41 36-2817. Medical marijuana fund; private donations; use of
42 monies

43 A. The medical marijuana fund is established consisting of fees
44 collected, civil penalties imposed and private donations received under

1 this chapter. The department shall administer the fund. Monies in the
2 fund are continuously appropriated.

3 B. The director of the department may accept and spend private
4 grants, gifts, donations, contributions and devises to assist in carrying
5 out ~~the provisions of~~ this chapter.

6 C. Monies in the medical marijuana fund do not revert to the state
7 general fund at the end of a fiscal year.

8 D. On ~~the effective date of this amendment to this section~~ NOVEMBER
9 30, 2020, the director of the department shall transfer the following sums
10 from the medical marijuana fund for the following purposes:

11 1. \$15,000,000 to the Arizona teachers academy fund established by
12 section 15-1655.

13 2. \$10,000,000 to the department to fund the formation and
14 operation of councils, commissions and programs dedicated to improving
15 public health, including teen suicide prevention, the maternal mortality
16 review program, improving youth health, substance abuse prevention,
17 addressing adverse childhood experiences, the Arizona poison control
18 system established pursuant to section 36-1161, the Arizona health
19 improvement plan, the child fatality review team established pursuant to
20 section 36-3501 and the chronic pain self management program.

21 3. \$10,000,000 to the governor's office of highway safety to
22 distribute grants for the following purposes:

23 (a) Reducing impaired driving, including conducting training
24 programs and purchasing equipment for detecting, testing and enforcing
25 laws against driving, flying or boating while impaired.

26 (b) Equipment, training and personnel costs for dedicated traffic
27 enforcement.

28 4. \$2,000,000 to the department to implement, carry out and enforce
29 chapter 28.2 of this title.

30 5. \$4,000,000 to the department to distribute grants to qualified
31 nonprofit entities that will provide outreach to individuals who may be
32 eligible to file petitions for expungement pursuant to section 36-2862 and
33 will assist with the expungement petition process. The department shall
34 distribute grants pursuant to this paragraph on or before June 30, 2021.

35 6. \$2,000,000 to the department **OF HEALTH SERVICES** to develop and
36 implement, in conjunction with the department of economic security and
37 other state agencies, a social equity ownership program to promote the
38 ownership and operation of marijuana establishments and marijuana testing
39 facilities by individuals from communities disproportionately impacted by
40 the enforcement of previous marijuana laws. For the purposes of this
41 paragraph, "marijuana establishment" and "marijuana testing facility" have
42 the same meanings prescribed in section 36-2850.

43 7. \$1,000,000 to the department to fund programs and grants to
44 qualified nonprofit organizations for education and community outreach
45 related to chapter 28.2 of this title.

1 8. \$1,000,000 to the smart and safe Arizona fund established by
2 section 36-2856.

3 E. AFTER ALL COSTS INCURRED TO IMPLEMENT, CARRY OUT AND ENFORCE
4 THIS CHAPTER AND THE RULES ADOPTED PURSUANT TO THIS CHAPTER ARE PAID FOR
5 FISCAL YEAR 2021-2022, THE DEPARTMENT SHALL TRANSFER FROM THE MEDICAL
6 MARIJUANA FUND THE FOLLOWING SUMS FOR THE FOLLOWING PURPOSES:

7 1. \$1,250,000 TO THE DEPARTMENT FOR SUICIDE PREVENTION.

8 2. \$1,250,000 TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
9 FOR SUICIDE PREVENTION.

10 3. \$2,000,000 TO THE INSTITUTE FOR MENTAL HEALTH RESEARCH FOR
11 RESEARCH TO IMPROVE MENTAL HEALTH SERVICES, RESEARCH AND EDUCATION IN THIS
12 STATE.

13 4. \$2,000,000 TO THE DEPARTMENT FOR THE PRIMARY CARE PROVIDER LOAN
14 REPAYMENT PROGRAM AND THE RURAL PRIVATE PRIMARY CARE PROVIDER LOAN
15 REPAYMENT PROGRAM ESTABLISHED BY CHAPTER 21 OF THIS TITLE. THE DEPARTMENT
16 SHALL PRIORITIZE RURAL PROVIDERS IN THE AREAS OF MENTAL HEALTH CARE AND
17 BEHAVIORAL HEALTH CARE IF FEASIBLE AND APPROPRIATE.

18 5. \$2,000,000 TO THE BOARD OF MEDICAL STUDENT LOANS FOR THE
19 PURPOSES OF TITLE 15, CHAPTER 13, ARTICLE 7. THE BOARD SHALL PRIORITIZE
20 STUDENTS WHO INTEND TO PRACTICE IN THE AREA OF PSYCHIATRY OR OTHER AREAS
21 OF PRACTICE THAT TREAT MENTAL ILLNESS IF FEASIBLE AND APPROPRIATE.

22 6. \$5,000,000 TO COUNTY PUBLIC HEALTH DEPARTMENTS, IN PROPORTION TO
23 THE POPULATION OF EACH COUNTY, FOR THE PURPOSES OF ADDRESSING IMPORTANT
24 PUBLIC HEALTH ISSUES AND COMMUNITIES Affected BY DRUG ADDICTION AND
25 INCARCERATION.

26 7. \$1,000,000 TO THE DEPARTMENT FOR THE HEALTH CARE DIRECTIVES
27 REGISTRY ESTABLISHED PURSUANT TO SECTION 36-3291.

28 F. MONIES TRANSFERRED PURSUANT TO SUBSECTION E OF THIS SECTION DO
29 NOT REVERT TO THE STATE GENERAL FUND.

30 G. THE DIRECTOR SHALL MAKE A ONETIME TRANSFER OF \$250,000 FROM THE
31 MEDICAL MARIJUANA FUND TO THE DEPARTMENT TO PROVIDE GRANTS FOR MARIJUANA
32 RESEARCH STUDIES PURSUANT TO SECTION 36-2812.

33 Sec. 6. Subject to the requirements of article IV, part 1,
34 section 1, Constitution of Arizona, section 36-2820, Arizona Revised
35 Statutes, is amended to read:

36 36-2820. Use of outside counsel

37 Subject to NOTWITHSTANDING section 41-192, the department may employ
38 legal counsel and make an expenditure or incur an indebtedness for legal
39 services ~~for the purposes of defending~~ TO IMPLEMENT, ADVISE ON OR DEFEND
40 this chapter, CHAPTER 28.2 or the rules adopted pursuant to this chapter
41 OR CHAPTER 28.2.

1 Sec. 7. Exemption from rulemaking

2 For the purposes of this act, the department of health services is
3 exempt from the rulemaking requirements of title 41, chapters 6 and 6.1,
4 Arizona Revised Statutes, for thirty-six months after the effective date
5 of this act, except that the department shall provide the public with a
6 reasonable opportunity to comment on the proposed rules.

7 Sec. 8. Requirements for enactment; three-fourths vote

8 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
9 this act is effective only on the affirmative vote of at least
10 three-fourths of the members of each house of the legislature.