

House Engrossed Senate Bill

~~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.

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

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

12 (f) The department may consider private donations under section  
13 36-2817 to reduce application and renewal fees.

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

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

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

39 E. ~~Beginning November 1, 2020,~~ Before selling or dispensing  
40 marijuana or marijuana products to registered qualified patients or  
41 registered designated caregivers, nonprofit medical marijuana dispensaries  
42 shall test marijuana and marijuana products for medical use to determine  
43 unsafe levels of microbial contamination, heavy metals, pesticides,  
44 ~~herbicides,~~ fungicides, growth regulators and residual solvents and  
45 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.

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

4           36-2803.02. Warning labels; requirements; definitions

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

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

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

18           36-2806. Registered nonprofit medical marijuana dispensaries;  
19           requirements; rules; inspections; testing

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

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

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

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

44           E. All cultivation of marijuana must take place in an enclosed,  
45 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.