

REFERENCE TITLE: marijuana; advertising; labeling; signage; sale

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2809

Introduced by
Representatives Osborne: Barton, Blackman, Bolick, Bowers, Chaplik,
Chávez, Cobb, Cook, Dunn, Friese, Griffin, Hernandez A, John, Kaiser,
Kavanagh, Lieberman, Longdon, Nguyen, Nutt, Parker, Pawlik, Payne,
Pingerelli, Shah, Sierra, Toma, Udall, Weninger, Wilmeth

AN ACT

AMENDING SECTIONS 36-2854, 36-2858, 36-2859 AND 36-2860, ARIZONA REVISED
STATUTES; RELATING TO ADULT USE OF 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 36-2854, Arizona Revised
4 Statutes, is amended to read:

5 36-2854. Rules; licensing; early applicants; fees; civil
6 penalty; legal counsel

7 A. The department shall adopt rules to implement and enforce this
8 chapter and regulate marijuana, marijuana products, marijuana
9 establishments and marijuana testing facilities. Those rules shall include
10 requirements for:

11 1. Licensing marijuana establishments and marijuana testing
12 facilities, including conducting investigations and background checks to
13 determine eligibility for licensing for marijuana establishment and
14 marijuana testing facility applicants, except that:

15 (a) An application for a marijuana establishment license or
16 marijuana testing facility license may not require the disclosure of the
17 identity of any person who is entitled to a share of less than ten percent
18 of the profits of an applicant that is a publicly traded corporation.

19 (b) The department may not issue more than one marijuana
20 establishment license for every ten pharmacies that have registered under
21 section 32-1929, that have obtained a pharmacy permit from the Arizona
22 board of pharmacy and that operate within this state.

23 (c) Notwithstanding subdivision (b) of this paragraph, the
24 department may issue a marijuana establishment license to not more than
25 two marijuana establishments per county that contains no registered
26 nonprofit medical marijuana dispensaries, or one marijuana establishment
27 license per county that contains one registered nonprofit medical
28 marijuana dispensary. Any license issued pursuant to this subdivision
29 shall be for a fixed county and may not be relocated outside of that
30 county.

31 (d) The department shall accept applications for marijuana
32 establishment licenses from early applicants beginning January 19, 2021
33 through March 9, 2021. Not later than sixty days after receiving an
34 application pursuant to this subdivision, the department shall issue a
35 marijuana establishment license to each qualified early applicant. If the
36 department has not adopted final rules pursuant to this section at the
37 time marijuana establishment licenses are issued pursuant to this
38 subdivision, licensees shall comply with the rules adopted by the
39 department to implement chapter 28.1 of this title except those that are
40 inconsistent with this chapter.

41 (e) After issuing marijuana establishment licenses to qualified
42 early applicants, the department shall issue marijuana establishment
43 licenses available under subdivisions (b) and (c) of this paragraph by
44 random selection and according to rules adopted pursuant to this section.
45 At least sixty days ~~prior to~~ BEFORE any random selection, the department

1 shall prominently publicize the random selection on its website and
2 through other means of general distribution intended to reach as many
3 interested parties as possible and shall provide notice through an email
4 notification system to which interested parties can subscribe.

5 (f) Notwithstanding subdivisions (b) and (c) of this paragraph, and
6 ~~no~~ NOT later than six months after the department adopts final rules to
7 implement a social equity ownership program pursuant to paragraph 9 of
8 this subsection, the department shall issue twenty-six additional
9 marijuana establishment licenses to entities that are qualified pursuant
10 to the social equity ownership program.

11 (g) Licenses issued by the department to marijuana establishments
12 and marijuana testing facilities shall be valid for a period of two years.

13 2. Licensing fees and renewal fees for marijuana establishments and
14 marijuana testing facilities in amounts that are reasonable and related to
15 the actual cost of processing applications for licenses and renewals and
16 that do not exceed five times the fees prescribed by the department to
17 register or renew a nonprofit medical marijuana dispensary.

18 3. The security of marijuana establishments and marijuana testing
19 facilities.

20 4. Marijuana establishments to safely cultivate, process and
21 manufacture marijuana and marijuana products.

22 5. Tracking, testing, labeling and packaging marijuana and
23 marijuana products, including requirements that marijuana and marijuana
24 products be:

25 (a) Sold to consumers in clearly and conspicuously labeled
26 containers that contain accurate warnings regarding the use of marijuana
27 or marijuana products.

28 (b) Placed in child-resistant packaging on exit from a marijuana
29 establishment.

30 6. Forms of government-issued identification that are acceptable by
31 a marijuana establishment verifying a consumer's age and procedures
32 related to verifying a consumer's age consistent with section 4-241.
33 Until the department adopts final rules related to verifying a consumer's
34 age, marijuana establishments shall comply with the proof of legal age
35 requirements prescribed in section 4-241.

36 7. The potency of edible marijuana products that may be sold to
37 consumers by marijuana establishments at reasonable levels ~~upon~~ ON
38 consideration of industry standards, except that the rules:

39 (a) Shall limit the strength of edible marijuana products to ~~no~~ NOT
40 more than ten milligrams of tetrahydrocannabinol per serving or one
41 hundred milligrams of tetrahydrocannabinol per package.

42 (b) Shall require that if a marijuana product contains more than
43 one serving, it must be delineated or scored into standard serving sizes
44 and homogenized to ensure uniform disbursement throughout the marijuana
45 product.

1 8. Ensuring the health, safety and training of employees of
2 marijuana establishments and marijuana testing facilities.

3 9. The creation and implementation of a social equity ownership
4 program to promote the ownership and operation of marijuana establishments
5 and marijuana testing facilities by individuals from communities
6 disproportionately impacted by the enforcement of previous marijuana laws.

7 10. REQUIRING MARIJUANA ESTABLISHMENTS TO DISPLAY IN A CONSPICUOUS
8 LOCATION A SIGN THAT WARNS PREGNANT WOMEN ABOUT THE POTENTIAL DANGERS TO
9 FETUSES CAUSED BY SMOKING OR INGESTING MARIJUANA WHILE PREGNANT OR TO
10 INFANTS WHILE BREASTFEEDING AND THE RISK OF BEING REPORTED TO THE
11 DEPARTMENT OF CHILD SAFETY DURING PREGNANCY OR AT THE BIRTH OF THE CHILD
12 BY PERSONS WHO ARE REQUIRED TO REPORT. THE RULES SHALL INCLUDE THE
13 SPECIFIC WARNING LANGUAGE THAT MUST BE INCLUDED ON THE SIGN. THE COST AND
14 DISPLAY OF THE SIGN REQUIRED BY RULE SHALL BE BORNE BY THE MARIJUANA
15 ESTABLISHMENT.

16 11. PROHIBITING A MARIJUANA ESTABLISHMENT RETAIL SITE FROM
17 PROVIDING SAMPLES OF MARIJUANA OR MARIJUANA PRODUCTS FOR ON-SITE USE AND
18 AT NO COST TO A CONSUMER.

19 B. The department may:

20 1. Subject to title 41, chapter 6, article 10, deny any application
21 submitted or deny, suspend or revoke, in whole or in part, any
22 registration or license issued under this chapter if the registered or
23 licensed party or an officer, agent or employee of the registered or
24 licensed party does any of the following:

25 (a) Violates this chapter or any rule adopted pursuant to this
26 chapter.

27 (b) Has been, is or may continue to be in substantial violation of
28 the requirements for licensing or registration and, as a result, the
29 health or safety of the general public is in immediate danger.

30 2. Subject to title 41, chapter 6, article 10, and unless another
31 penalty is provided elsewhere in this chapter, assess a civil penalty
32 against a person that violates this chapter or any rule adopted pursuant
33 to this chapter in an amount not to exceed \$1,000 for each violation.
34 Each day a violation occurs constitutes a separate violation. The maximum
35 amount of any assessment is \$25,000 for any thirty-day period. In
36 determining the amount of a civil penalty assessed against a person, the
37 department shall consider all of the factors set forth in section 36-2816,
38 subsection H. All civil penalties collected by the department pursuant to
39 this paragraph shall be deposited in the smart and safe Arizona fund
40 established by section 36-2856.

41 3. At any time during regular hours of operation, visit and inspect
42 a marijuana establishment, marijuana testing facility or dual licensee to
43 determine if it complies with this chapter and rules adopted pursuant to
44 this chapter. The department shall make at least one unannounced visit
45 annually to each facility licensed pursuant to this chapter.

1 4. Adopt any other rules **THAT ARE** not expressly stated in this
2 section **AND** that are necessary to ensure the safe and responsible
3 cultivation, sale, processing, manufacture, testing and transport of
4 marijuana and marijuana products.

5 C. Until the department adopts rules permitting and regulating
6 delivery by marijuana establishments pursuant to subsection D of this
7 section, delivery is unlawful under this chapter.

8 D. On or after January 1, 2023, the department may, and ~~it~~ **NOT**
9 later than January 1, 2025 the department shall, adopt rules to permit and
10 regulate delivery by marijuana establishments. The rules shall:

11 1. Require that delivery and the marijuana and marijuana products
12 to be delivered originate from a designated retail location of a marijuana
13 establishment and only after an order is made with the marijuana
14 establishment by a consumer.

15 2. Prohibit delivery to any property owned or leased by the United
16 States, this state, a political subdivision of this state or the Arizona
17 board of regents.

18 3. Limit the amount of marijuana and marijuana products based on
19 retail price that may be in a delivery vehicle during a single trip from
20 the designated retail location of a marijuana establishment.

21 4. Prohibit extra or unallocated marijuana or marijuana products in
22 delivery vehicles.

23 5. Require that deliveries be made only by marijuana facility
24 agents in unmarked vehicles that are equipped with a global positioning
25 system or similar location tracking system and video surveillance and
26 recording equipment, and that contain a locked compartment in which
27 marijuana and marijuana products must be stored.

28 6. Require delivery logs necessary to ensure compliance with this
29 subsection and rules adopted pursuant to this subsection.

30 7. Require inspections to ensure compliance with this subsection
31 and rules adopted pursuant to this subsection.

32 8. Include any other provisions necessary to ensure safe and
33 restricted delivery.

34 9. Require dual licensees to comply with the rules adopted pursuant
35 to this subsection.

36 E. Except as provided in subsection D of this section, the
37 department may not permit delivery of marijuana or marijuana products
38 under this chapter by any individual or entity. In addition to any other
39 penalty imposed by law, an individual or entity that delivers marijuana or
40 marijuana products in a manner that is not authorized by this chapter
41 shall pay a civil penalty of \$20,000 per violation to the smart and safe
42 Arizona fund established by section 36-2856. This subsection may be
43 enforced by the attorney general.

44 F. All rules adopted by the department pursuant to this section
45 shall be consistent with the purpose of this chapter.

1 G. The department may not adopt any rule that:

2 1. Prohibits the operation of marijuana establishments, either
3 expressly or through requirements that make the operation of a marijuana
4 establishment unduly burdensome.

5 2. Prohibits or interferes with the ability of a dual licensee to
6 operate a marijuana establishment and a nonprofit medical marijuana
7 dispensary at shared locations.

8 H. Notwithstanding section 41-192, the department may employ legal
9 counsel and make an expenditure or incur an indebtedness for legal
10 services for the purposes of:

11 1. Defending this chapter or rules adopted pursuant to this
12 chapter.

13 2. Defending chapter 28.1 of this title or rules adopted pursuant
14 to chapter 28.1 of this title.

15 I. The department shall deposit all license fees, application fees
16 and renewal fees paid to the department pursuant to this chapter in the
17 smart and safe Arizona fund established by section 36-2856.

18 J. On request, the department shall share with the department of
19 revenue information regarding a marijuana establishment, marijuana testing
20 facility or dual licensee, including its name, physical address,
21 cultivation site and transaction privilege tax license number.

22 K. Notwithstanding any other law, the department may:

23 1. License an independent third-party laboratory to also operate as
24 a marijuana testing facility.

25 2. Operate a marijuana testing facility.

26 L. The department shall maintain and publish a current list of all
27 marijuana establishments and marijuana testing facilities by name and
28 license number.

29 M. Notwithstanding any other law, the issuance of an occupational,
30 professional or other regulatory license or certification to a person by a
31 jurisdiction or regulatory authority outside this state does not entitle
32 that person to be issued a marijuana establishment license, a marijuana
33 testing facility license, or any other license, registration or
34 certification under this chapter.

35 Sec. 2. Subject to the requirements of article IV, part 1,
36 section 1, Constitution of Arizona, section 36-2858, Arizona Revised
37 Statutes, is amended to read:

38 36-2858. Lawful operation of marijuana establishments and
39 marijuana testing facilities; prohibition;
40 definition

41 A. Except as specifically and expressly provided in section 36-2857
42 and notwithstanding any other law, it is lawful and is not an offense
43 under the laws of this state or any locality, may not constitute the basis
44 for detention, search or arrest, and may not constitute the sole basis for

1 seizure or forfeiture of assets or the basis for imposing penalties under
2 the laws of this state or any locality for:

3 1. A marijuana establishment, or an agent acting on behalf of a
4 marijuana establishment, to:

5 (a) Possess marijuana or marijuana products.

6 (b) Purchase, sell or transport marijuana and marijuana products to
7 or from a marijuana establishment.

8 (c) Sell marijuana and marijuana products to consumers, except that
9 a marijuana establishment may not sell more than one ounce of marijuana to
10 a consumer in a single transaction, not more than five grams of which may
11 be in the form of marijuana concentrate.

12 (d) Cultivate, produce, test or process marijuana or manufacture
13 marijuana or marijuana products by any means, including chemical
14 extraction or chemical synthesis.

15 2. An agent acting on behalf of a marijuana establishment to sell
16 or otherwise transfer marijuana to an individual under twenty-one years of
17 age, if the agent reasonably verified that the individual appeared to be
18 twenty-one years of age or older by means of a government-issued
19 photographic identification in compliance with rules adopted pursuant to
20 section 36-2854, subsection A, paragraph 6.

21 3. A marijuana testing facility, or an agent acting on behalf of a
22 marijuana testing facility, to obtain, possess, process, repackage,
23 transfer, transport or test marijuana and marijuana products.

24 4. A nonprofit medical marijuana dispensary or a marijuana
25 establishment, or an agent acting on behalf of a nonprofit medical
26 marijuana dispensary or a marijuana establishment, to sell or otherwise
27 transfer marijuana or marijuana products to a nonprofit medical marijuana
28 dispensary, a marijuana establishment or an agent acting on behalf of a
29 nonprofit medical marijuana dispensary or a marijuana establishment.

30 5. Any individual, corporation or other entity to sell, lease or
31 otherwise allow property or goods that are owned, managed or controlled by
32 the individual, corporation or other entity to be used for any activity
33 authorized by this chapter, or to provide services to a marijuana
34 establishment, or marijuana testing facility or agent acting on behalf of
35 a marijuana establishment or marijuana testing facility in connection with
36 any activity authorized by this chapter.

37 B. This section does not preclude the department from imposing
38 penalties against a marijuana establishment or marijuana testing facility
39 for failing to comply with this chapter or rules adopted pursuant to this
40 chapter.

41 C. A marijuana establishment may be owned or operated by a
42 publicly traded company.

43 D. Notwithstanding any other law, a dual licensee:

44 1. May hold a marijuana establishment license and operate a
45 marijuana establishment pursuant to this chapter.

1 2. May operate on a for-profit basis if the dual licensee
2 promptly notifies the department and department of revenue and takes any
3 actions necessary to enable its for-profit operation, including
4 converting its corporate form and amending its organizational and
5 operating documents.

6 3. Must continue to hold both its marijuana establishment license
7 and nonprofit medical marijuana dispensary registration, regardless of
8 any change in ownership of the dual licensee, unless it terminates its
9 status as a dual licensee and forfeits either its marijuana
10 establishment license or nonprofit medical marijuana dispensary
11 registration by notifying the department of such a termination and
12 forfeiture.

13 4. ~~May~~ **IS** not ~~be~~ required to:

14 (a) Employ or contract with a medical director.

15 (b) Obtain nonprofit medical marijuana dispensary agent or
16 marijuana facility agent registrations for outside vendors that do not
17 have regular, unsupervised access to the interior of the dual ~~licensee~~
18 **LICENSEE'S PREMISES**.

19 (c) Have a single secure entrance as required by section 36-2806,
20 subsection C, but may be required to implement appropriate security
21 measures to deter and prevent the theft of marijuana and to reasonably
22 regulate customer access to the premises.

23 (d) Comply with any other provision of chapter 28.1 of this title
24 or any rule adopted pursuant to chapter 28.1 of this title that makes
25 its operation as a dual licensee unduly burdensome.

26 E. Notwithstanding any other law, a dual licensee that elects to
27 operate on a for-profit basis pursuant to subsection D, paragraph 2 of
28 this section:

29 1. Is subject to the taxes imposed pursuant to title 43.

30 2. Is not required to submit its annual financial statements or
31 an audit report to the department for purposes of renewing its nonprofit
32 medical marijuana dispensary registration.

33 F. Notwithstanding any other law, a dual licensee must conduct
34 both of the following operations at a shared location:

35 1. Sell marijuana and marijuana products to consumers pursuant to
36 this chapter.

37 2. Dispense marijuana to registered qualifying patients and
38 registered designated caregivers pursuant to chapter 28.1 of this title.

39 G. Notwithstanding chapter 28.1 of this title or any rule adopted
40 pursuant to chapter 28.1 of this title, a dual licensee may engage in
41 any act, practice, conduct or transaction allowed for a marijuana
42 establishment by this chapter.

1 H. Notwithstanding any other law:
2 1. An individual may be an applicant, principal officer or board
3 member of more than one marijuana establishment or more than one dual
4 licensee regardless of the establishment's location.
5 2. Two or more marijuana establishments or dual licensees may
6 designate a single off-site location as prescribed in section 36-2850,
7 paragraph 18, subdivision (c) to be jointly used by those dual licensees
8 or marijuana establishments.
9 I. Marijuana establishments, marijuana testing facilities and
10 dual licensees that are subject to applicable federal or state
11 antidiscrimination laws may not pay their employees differently based
12 solely on a protected class status such as sex, race, color, religion,
13 national origin, age or disability. This subsection does not expand or
14 modify the jurisdictional reach, provisions or requirements of any
15 applicable ~~anti-discrimination~~ ANTIDISCRIMINATION law.
16 J. MARIJUANA ESTABLISHMENTS ARE PROHIBITED FROM SELLING MARIJUANA
17 OR MARIJUANA PRODUCTS TO PERSONS WHO ARE OBVIOUSLY INTOXICATED. FOR THE
18 PURPOSES OF THIS SUBSECTION, "OBVIOUSLY INTOXICATED" MEANS AFFECTED BY
19 ALCOHOL OR DRUGS TO SUCH AN EXTENT THAT A PERSON'S PHYSICAL FACULTIES
20 ARE SUBSTANTIALLY IMPAIRED AND THE IMPAIRMENT IS SHOWN BY SIGNIFICANTLY
21 UNCOORDINATED PHYSICAL ACTION OR SIGNIFICANT PHYSICAL DYSFUNCTION THAT
22 WOULD BE OBVIOUS TO A REASONABLE PERSON.
23 Sec. 3. Subject to the requirements of article IV, part 1,
24 section 1, Constitution of Arizona, section 36-2859, Arizona Revised
25 Statutes, is amended to read:
26 36-2859. Advertising restrictions; enforcement; civil penalty
27 A. A marijuana establishment or nonprofit medical marijuana
28 dispensary may engage in advertising, BUT MAY NOT:
29 1. USE GRAPHICS DESIGNED TO ATTRACT INDIVIDUALS WHO ARE UNDER THE
30 AGE OF TWENTY-ONE.
31 2. ADVERTISE WITHIN ONE MILE OF ANY PUBLIC OR PRIVATE SCHOOL
32 PROVIDING INSTRUCTION TO STUDENTS IN ANY COMBINATION OF KINDERGARTEN
33 PROGRAMS OR GRADES ONE THROUGH TWELVE.
34 3. SPONSOR ANY ATHLETIC, MUSICAL, ARTISTIC OR OTHER SOCIAL OR
35 CULTURAL EVENT OR ANY ENTRY FEE OR TEAM IN ANY EVENT.
36 B. An advertising platform may host advertising only if ~~and~~ BOTH of
37 the following apply:
38 1. The advertising is authorized by a marijuana establishment or
39 nonprofit medical marijuana dispensary.
40 2. The advertising accurately and legibly identifies the marijuana
41 establishment or nonprofit medical marijuana dispensary responsible for
42 the content of the advertising by name and license number or registration
43 number.
44 C. Any advertising under this chapter involving direct,
45 individualized communication or dialogue shall use a method of age

1 affirmation to verify that the recipient is twenty-one years of age or
2 older before engaging in that communication or dialogue. For the purposes
3 of this subsection, that method of age affirmation may include user
4 confirmation, birth date disclosure or other similar registration methods.

5 D. It is unlawful for an individual or entity other than a
6 marijuana establishment or dual licensee to do any of the following in a
7 manner that is not authorized by this chapter or rules adopted by the
8 department pursuant to this chapter:

9 1. Facilitate the delivery of marijuana or marijuana products.

10 2. Solicit or accept orders for marijuana or marijuana products or
11 operate a platform that solicits or accepts orders for marijuana or
12 marijuana products.

13 3. Operate a listing service related to the sale or delivery of
14 marijuana or marijuana products.

15 E. A marijuana establishment that violates this section is subject
16 to disciplinary action by the department pursuant to section 36-2854,
17 subsection B. A nonprofit medical marijuana dispensary that violates this
18 section is subject to disciplinary action by the department pursuant to
19 section 36-2816.

20 F. In addition to any other penalty imposed by law, an individual
21 or entity other than a marijuana establishment or nonprofit medical
22 marijuana dispensary that advertises marijuana or marijuana products in
23 violation of this section or otherwise violates this section shall pay a
24 civil penalty of \$20,000 per violation to the smart and safe Arizona fund
25 established by section 36-2856. This subsection may be enforced by the
26 attorney general.

27 Sec. 4. Subject to the requirements of article IV, part 1,
28 section 1, Constitution of Arizona, section 36-2860, Arizona Revised
29 Statutes, is amended to read:

30 36-2860. Packaging; labeling; restrictions on particular
31 marijuana products

32 A. A marijuana establishment may not:

33 1. Package or label marijuana or marijuana products in a false or
34 misleading manner.

35 2. Manufacture or sell marijuana products that resemble the form of
36 a human, animal, insect, fruit, toy or cartoon.

37 3. Sell or advertise marijuana or marijuana products with names
38 that resemble or imitate food or drink brands marketed to children, or
39 otherwise advertise marijuana or marijuana products to children.

40 B. IN ADDITION TO ANY OTHER LABELING REQUIREMENTS, A MARIJUANA
41 ESTABLISHMENT SHALL LABEL ALL MARIJUANA AND MARIJUANA PRODUCTS AT A RETAIL
42 SITE WITH A WARNING THAT READS "SHOULD NOT BE USED BY WOMEN WHO ARE
43 PREGNANT OR BREASTFEEDING".

1 ~~B.~~ C. A marijuana establishment that violates this section is
2 subject to disciplinary action by the department pursuant to section
3 36-2854, subsection B.

4 Sec. 5. Requirements for enactment; three-fourths vote

5 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
6 sections 36-2854, 36-2858, 36-2859 and 36-2860, Arizona Revised Statutes,
7 as amended by this act, are effective only on the affirmative vote of at
8 least three-fourths of the members of each house of the legislature.