

Senate Engrossed

~~rural marijuana establishments; dual licensing~~
(now: marijuana establishments; licensing)

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SENATE BILL 1402

AN ACT

AMENDING SECTIONS 36-2803.01 AND 36-2854, ARIZONA REVISED STATUTES;
RELATING TO 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 36-2803.01, Arizona Revised
4 Statutes, is amended to read:

5 36-2803.01. New dispensary registration certificates;
6 issuance; priority; requirements; definition

7 A. ~~Beginning on April 1, 2020,~~ The department shall issue all new
8 nonprofit medical marijuana dispensary registration certificates in the
9 following order of priority based on the dispensary's geographic area as
10 described in the registration certificate application:

11 1. The geographic area had a registered nonprofit medical marijuana
12 dispensary move from the geographic area and the geographic area is at
13 least twenty-five miles from another dispensary that has been issued a
14 dispensary registration certificate.

15 2. The geographic area is at least twenty-five miles from another
16 dispensary that has been issued a dispensary registration certificate.

17 3. According to rule, ~~if~~ there are no dispensary registration
18 certificate applications as described in paragraph 1 or 2 of this
19 subsection.

20 B. If the department receives multiple applications as described in
21 subsection A, paragraph 1 of this section from previously approved
22 nonprofit medical marijuana dispensary locations, the department shall
23 approve the certificate for the application that serves the most
24 qualifying patients within five miles of the proposed dispensary location.
25 If the department receives multiple applications as described in
26 subsection A, paragraph 2 of this section or if there are no applications
27 from previously approved dispensary locations, the department may issue
28 the registration certificate by random drawing.

29 C. A nonprofit medical marijuana dispensary that receives a
30 registration certificate pursuant to subsection A, paragraph 1 or 2 of
31 this section ~~on or after April 1, 2020~~ must open the dispensary at the
32 approved location within eighteen months after the application is approved
33 or the registration certificate becomes invalid.

34 D. A nonprofit medical marijuana dispensary that is issued a
35 registration certificate pursuant to subsection A, paragraph 1 or 2 of
36 this section may relocate only as follows:

37 1. If the dispensary is located within a city or town, only within
38 that city or town.

39 2. If the dispensary is located within an unincorporated area, only
40 within the unincorporated area of the county where the dispensary is
41 located but not within twenty-five miles from another dispensary that has
42 been issued a dispensary registration certificate.

43 E. THE DEPARTMENT SHALL ISSUE A NEW NONPROFIT MEDICAL MARIJUANA
44 DISPENSARY REGISTRATION CERTIFICATE IF A FINAL ADJUDICATION IN A COURT OF
45 LAW DOES ALL OF THE FOLLOWING:

1 1. FINDS THAT DURING THE PERIOD OF JANUARY 1, 2017 THROUGH DECEMBER
2 31, 2020, AN APPLICANT FILED A COMPLETE AND COMPLIANT APPLICATION WITH THE
3 DEPARTMENT FOR A NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION
4 CERTIFICATE.

5 2. FINDS THAT THE PROPOSED NONPROFIT MEDICAL MARIJUANA DISPENSARY
6 WOULD HAVE BEEN LOCATED EITHER:

7 (a) IN A COUNTY WHERE, AT THE TIME OF THE APPLICATION, THERE WAS NO
8 REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.

9 (b) IN A LOCATION WHERE, AT THE TIME OF APPLICATION, THERE WAS NO
10 REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY WITHIN TWENTY-FIVE
11 MILES.

12 3. FINDS THAT THE DEPARTMENT DECLINED TO PROCESS THE APPLICATION
13 NOTWITHSTANDING THE REQUIREMENTS OF SECTION 36-2804, SUBSECTION C.

14 4. REQUIRES THE DEPARTMENT TO ISSUE THE APPLICANT A NONPROFIT
15 MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE.

16 ~~F.~~ F. For the purposes of this section, "geographic area" means a
17 city, town or unincorporated area of a county.

18 Sec. 2. Subject to the requirements of article IV, part 1,
19 section 1, Constitution of Arizona, section 36-2854, Arizona Revised
20 Statutes, is amended to read:

21 36-2854. Rules; licensing; early applicants; fees; civil
22 penalty; legal counsel

23 A. The department shall adopt rules to implement and enforce this
24 chapter and regulate marijuana, marijuana products, marijuana
25 establishments and marijuana testing facilities. Those rules shall
26 include requirements for:

27 1. Licensing marijuana establishments and marijuana testing
28 facilities, including conducting investigations and background checks to
29 determine eligibility for licensing for marijuana establishment and
30 marijuana testing facility applicants, except that:

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

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

39 (c) Notwithstanding:

40 (i) Subdivision (b) of this paragraph, the department may issue a
41 marijuana establishment license to not more than two marijuana
42 establishments per county that contains no registered nonprofit medical
43 marijuana dispensaries, or one marijuana establishment license per county
44 that contains one registered nonprofit medical marijuana dispensary. Any

1 license issued pursuant to this subdivision shall be for a fixed county
2 and may not be relocated outside of that county.

3 (ii) ANY OTHER LAW, A LICENSEE MAY APPLY FOR A NONPROFIT MEDICAL
4 MARIJUANA DISPENSARY REGISTRATION CERTIFICATE OR A MARIJUANA ESTABLISHMENT
5 LICENSE. THE DEPARTMENT SHALL ISSUE A NONPROFIT MEDICAL MARIJUANA
6 DISPENSARY REGISTRATION CERTIFICATE OR A MARIJUANA ESTABLISHMENT LICENSE
7 TO EACH QUALIFIED APPLICANT ON SUBMITTAL OF A COMPLETE APPLICATION AND THE
8 APPLICATION FEE.

9 (d) The department shall accept applications for marijuana
10 establishment licenses from early applicants beginning January 19, 2021
11 through March 9, 2021. Not later than sixty days after receiving an
12 application pursuant to this subdivision, the department shall issue a
13 marijuana establishment license to each qualified early applicant. If the
14 department has not adopted final rules pursuant to this section at the
15 time marijuana establishment licenses are issued pursuant to this
16 subdivision, licensees shall comply with the rules adopted by the
17 department to implement chapter 28.1 of this title except those that are
18 inconsistent with this chapter.

19 (e) After issuing marijuana establishment licenses to qualified
20 early applicants, the department shall issue marijuana establishment
21 licenses available under subdivisions (b) and (c) of this paragraph by
22 random selection and according to rules adopted pursuant to this section.
23 At least sixty days before any random selection, the department shall
24 prominently publicize the random selection on its website and through
25 other means of general distribution intended to reach as many interested
26 parties as possible and shall provide notice through an email notification
27 system to which interested parties can subscribe.

28 (f) Notwithstanding subdivisions (b) and (c) of this paragraph, and
29 not later than six months after the department adopts final rules to
30 implement a social equity ownership program pursuant to paragraph 9 of
31 this subsection, the department shall issue twenty-six additional
32 marijuana establishment licenses to entities that are qualified pursuant
33 to the social equity ownership program.

34 (g) Licenses issued by the department to marijuana establishments
35 and marijuana testing facilities shall be valid for a period of two years.
36 A dual licensee's initial renewal date, which will be the ongoing renewal
37 date for both the dual licensee's marijuana establishment license and
38 nonprofit medical marijuana dispensary registration, is the earlier of:

39 (i) The date of the marijuana establishment license renewal.

40 (ii) The date of the nonprofit medical marijuana dispensary
41 registration renewal.

42 (h) Beginning September 29, 2021, the department may not issue a
43 marijuana establishment or marijuana testing facility license to an
44 applicant who has an ownership interest in an out-of-state marijuana

1 establishment or marijuana testing facility, or the other state's
2 equivalent, that has had its license revoked by the other state.

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

8 3. The security of marijuana establishments and marijuana testing
9 facilities.

10 4. Marijuana establishments to safely cultivate, process and
11 manufacture marijuana and marijuana products. Not later than December 31,
12 2023, the department shall require licensees to procure, develop, acquire
13 and maintain a system to track marijuana and marijuana products at all
14 points of cultivation, manufacturing and sale. The system developed and
15 maintained pursuant to this paragraph shall:

16 (a) Ensure an accurate accounting and reporting of the production,
17 processing and sale of marijuana and marijuana products.

18 (b) Ensure compliance with rules adopted by the department.

19 (c) Be capable of tracking, at a minimum:

20 (i) The propagation of immature marijuana plants and the production
21 of marijuana by a marijuana establishment.

22 (ii) The processing of marijuana and marijuana products by a
23 marijuana establishment.

24 (iii) The sale and purchase of marijuana and marijuana products
25 between licensees.

26 (iv) The transfer of marijuana and marijuana products between
27 premises for which licenses have been issued.

28 (v) The disposal of marijuana waste.

29 (vi) The identity of the person making the entry in the system and
30 the time, date and location of each entry into the system, including any
31 corrections or changes to that information.

32 (vii) Any other information that the department determines is
33 reasonably necessary to accomplish the duties, functions and powers of the
34 department.

35 (d) Contain a transactional stamp to ensure accuracy, provide for
36 chain of custody of the information and foreclose tampering of the data,
37 human error or intentional misreporting.

38 5. Tracking, testing, labeling consistent with section 36-2854.01
39 and packaging marijuana and marijuana products, including requirements
40 that marijuana and marijuana products be:

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

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

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

7 7. The potency of edible marijuana products that may be sold to
8 consumers by marijuana establishments at reasonable levels on
9 consideration of industry standards, except that the rules:

10 (a) Shall limit the strength of edible marijuana products to not
11 more than ten milligrams of tetrahydrocannabinol per serving or one
12 hundred milligrams of tetrahydrocannabinol per package.

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

17 8. Ensuring the health, safety and training of employees of
18 marijuana establishments and marijuana testing facilities.

19 9. The creation and implementation of a social equity ownership
20 program to promote the ownership and operation of marijuana establishments
21 and marijuana testing facilities by individuals from communities
22 disproportionately impacted by the enforcement of previous marijuana laws.

23 10. Prohibiting a marijuana testing facility from having any direct
24 or indirect familial relationship with or financial ownership interest in
25 a marijuana establishment or related marijuana business entity or
26 management company. The rules shall include prohibiting a marijuana
27 establishment from having any direct or indirect familial relationship
28 with or financial ownership interest in a marijuana testing facility or
29 related marijuana business entity or management company.

30 11. Requiring marijuana establishments to display in a conspicuous
31 location a sign that warns pregnant women about the potential dangers to
32 fetuses caused by smoking or ingesting marijuana while pregnant or to
33 infants while breastfeeding and the risk of being reported to the
34 department of child safety during pregnancy or at the birth of the child
35 by persons who are required to report. The rules shall include the
36 specific warning language that must be included on the sign. The cost and
37 display of the sign required by rule shall be borne by the marijuana
38 establishment.

39 B. The department may:

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

1 (a) Violates this chapter or any rule adopted pursuant to this
2 chapter.

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

6 2. Subject to title 41, chapter 6, article 10, and unless another
7 penalty is provided elsewhere in this chapter, assess a civil penalty
8 against a person that violates this chapter or any rule adopted pursuant
9 to this chapter in an amount not to exceed \$2,000 for each violation.
10 Each day a violation occurs constitutes a separate violation. In
11 determining the amount of a civil penalty assessed against a person, the
12 department shall consider all of the factors set forth in section 36-2816,
13 subsection H. All civil penalties collected by the department pursuant to
14 this paragraph shall be deposited in the smart and safe Arizona fund
15 established by section 36-2856.

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

21 4. Adopt any other rules that are not expressly stated in this
22 section and that are necessary to ensure the safe and responsible
23 cultivation, sale, processing, manufacture, testing and transport of
24 marijuana and marijuana products.

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

28 D. On or after January 1, 2023, the department may, and not later
29 than January 1, 2025 the department shall, adopt rules to permit and
30 regulate delivery by marijuana establishments. The rules shall:

31 1. Require that delivery and the marijuana and marijuana products
32 to be delivered originate from a designated retail location of a marijuana
33 establishment and only after an order is made with the marijuana
34 establishment by a consumer.

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

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

41 4. Prohibit extra or unallocated marijuana or marijuana products in
42 delivery vehicles.

43 5. Require that deliveries be made only by marijuana facility
44 agents in unmarked vehicles that are equipped with a global positioning
45 system or similar location tracking system and video surveillance and

1 recording equipment, and that contain a locked compartment in which
2 marijuana and marijuana products must be stored.

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

5 7. Require inspections to ensure compliance with this subsection
6 and rules adopted pursuant to this subsection.

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

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

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

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

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

22 1. Prohibits the operation of marijuana establishments, either
23 expressly or through requirements that make the operation of a marijuana
24 establishment unduly burdensome.

25 2. Prohibits or interferes with the ability of a dual licensee to
26 operate a marijuana establishment and a nonprofit medical marijuana
27 dispensary at shared locations.

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

31 1. Defending this chapter or rules adopted pursuant to this
32 chapter.

33 2. Defending chapter 28.1 of this title or rules adopted pursuant
34 to chapter 28.1 of this title.

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

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

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

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

45 2. Operate a marijuana testing facility.

1 L. The department shall maintain and publish a current list of all
2 marijuana establishments and marijuana testing facilities by name and
3 license number.

4 M. Notwithstanding any other law, the issuance of an occupational,
5 professional or other regulatory license or certification to a person by a
6 jurisdiction or regulatory authority outside this state does not entitle
7 that person to be issued a marijuana establishment license, a marijuana
8 testing facility license, or any other license, registration or
9 certification under this chapter.

10 N. Until the department adopts rules as required by subsection A,
11 paragraph 10 of this section:

12 1. A marijuana testing facility is prohibited from having any
13 direct or indirect familial relationship with or financial ownership
14 interest in a marijuana establishment or related marijuana business entity
15 or management company.

16 2. A marijuana establishment is prohibited from having any direct
17 or indirect familial relationship with or financial ownership interest in
18 a marijuana testing facility or related marijuana business entity or
19 management company.

20 Sec. 3. Rulemaking exemption

21 Notwithstanding any other law, for the purposes of this act, the
22 department of health services is exempt from the rulemaking requirements
23 of title 41, chapter 6, Arizona Revised Statutes, for one year after the
24 effective date of this act.

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

26 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
27 sections 36-2803.01 and 36-2854, Arizona Revised Statutes, as amended by
28 this act, are effective only on the affirmative vote of at least
29 three-fourths of the members of each house of the legislature.

30 Sec. 5. Emergency

31 This act is an emergency measure that is necessary to preserve the
32 public peace, health or safety and is operative immediately as provided by
33 law.