

REFERENCE TITLE: marijuana; testing

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2393

Introduced by
Representatives Longdon: Hernandez A, Wilmeth, Senator Shope

AN ACT

AMENDING SECTIONS 36-2803, 36-2804.07 AND 36-2817, ARIZONA REVISED STATUTES; REPEALING SECTION 36-2821, 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, 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. Before selling or dispensing marijuana or marijuana products to
40 registered qualified patients or registered designated caregivers,
41 nonprofit medical marijuana dispensaries shall test marijuana and
42 marijuana products for medical use to determine unsafe levels of
43 contamination, including unsafe levels of microbial contamination, heavy
44 metals, pesticides, fungicides, growth regulators and residual solvents
45 and confirm the potency of the marijuana to be dispensed. The dried

1 flowers of the marijuana plant are not required to be tested for residual
2 solvents. If a nonprofit medical marijuana dispensary's test results for
3 heavy metals comply with the prescribed requirements for a period of six
4 consecutive months, heavy metal testing for that dispensary's marijuana
5 and marijuana products is required only on a quarterly basis.

6 F. THE DEPARTMENT SHALL ADOPT RULES THAT DEFINE BATCH AND ENSURE
7 THAT NONPROFIT MEDICAL MARIJUANA DISPENSARIES ARE PROPERLY SUBMITTING
8 MARIJUANA AND MARIJUANA PRODUCTS FOR TESTING CONSISTENT WITH THESE RULES
9 TO ENSURE PATIENT SAFETY.

10 G. THE DEPARTMENT SHALL ADOPT RULES REGARDING SAMPLING PROCEDURES
11 AND ENSURE ENFORCEMENT OF SAMPLING PROCEDURES TO ENSURE PATIENT SAFETY.

12 H. THE DEPARTMENT SHALL ADOPT RULES, BASED ON NATIONAL OR
13 INTERNATIONAL STANDARDS WHERE AVAILABLE, TO STANDARDIZE HOW INDEPENDENT
14 THIRD-PARTY LABORATORIES TEST SAMPLES OF MARIJUANA AND MARIJUANA PRODUCTS
15 TO ENSURE CONSISTENT, RELIABLE AND SCIENTIFICALLY VALID RESULTS.

16 I. THE DEPARTMENT SHALL DEVELOP A STANDARD FORM AND REQUIRE
17 INDEPENDENT THIRD-PARTY LABORATORIES TO SUBMIT THE STANDARD FORM AS A
18 COVER PAGE FOR ALL TEST RESULTS. THE STANDARD FORM COVER PAGE, AT A
19 MINIMUM, MUST CONTAIN A PASS OR FAIL DESIGNATION OF MANDATORY TESTING
20 REQUIREMENTS.

21 J. THE DEPARTMENT SHALL DEVELOP A STANDARD FORM AND REQUIRE
22 INDEPENDENT THIRD-PARTY LABORATORIES TO SUBMIT THE STANDARD FORM AS THE
23 FINAL CERTIFICATE OF ANALYSIS OF TEST RESULTS. THE STANDARD FORM MUST
24 CONTAIN THE MANDATORY TESTING REQUIREMENTS.

25 ~~F.~~ K. Nonprofit medical marijuana dispensaries shall:

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

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

31 ~~G.~~ L. The department shall adopt rules to certify and regulate
32 independent third-party laboratories that analyze marijuana cultivated for
33 medical use. The department shall establish certification fees for
34 laboratories pursuant to subsection A of this section. In order to be
35 certified as an independent third-party laboratory that is allowed to test
36 marijuana and marijuana products for medical use pursuant to this chapter,
37 an independent third-party laboratory:

38 1. Must meet requirements established by the department, including
39 reporting and health and safety requirements.

40 2. May not have any direct or indirect familial or financial
41 relationship with or interest in a nonprofit medical marijuana dispensary
42 or related medical marijuana business entity or management company, or any
43 direct or indirect familial or financial relationship with a designated
44 caregiver for whom the laboratory is testing marijuana and marijuana
45 products for medical use in this state.

1 3. Must have a quality assurance program and standards.
2 4. Must have an adequate chain of custody and sample requirement
3 policies.
4 5. Must have an adequate records retention process to preserve
5 records.
6 6. Must establish procedures to ensure that results are accurate,
7 precise and scientifically valid before reporting the results.
8 7. Must be accredited by a national or international accreditation
9 association or other similar accrediting entity, as determined by the
10 department.
11 8. Must establish policies and procedures for disposal and reverse
12 distribution of samples that are collected by the laboratory.
13 ~~H. M.~~ M. Through December 31, 2022, the department may conduct
14 proficiency testing and remediate problems with independent third-party
15 laboratories that are certified and regulated pursuant to this chapter and
16 marijuana testing facilities that are licensed and regulated pursuant to
17 chapter 28.2 of this title.
18 ~~I. N. Beginning January 1, 2023,~~ The department shall ~~conduct~~
19 ~~proficiency testing and remediate problems with~~ REQUIRE independent
20 third-party laboratories that are certified and regulated pursuant to this
21 chapter and marijuana testing facilities that are licensed and regulated
22 pursuant to chapter 28.2 of this title TO CONDUCT PROFICIENCY TESTING THAT
23 IS COMMERCIALY AVAILABLE BY CONTRACTING WITH A PROFICIENCY TESTING
24 PROVIDER THAT HAS NATIONAL OR INTERNATIONAL ACCREDITATION. The department
25 ~~may contract for proficiency testing with laboratories that have a~~
26 ~~national or international accreditation~~ SHALL SUPERVISE REMEDIATION AND
27 TAKE CORRECTIVE ACTION AS NEEDED.
28 ~~J. O.~~ O. For the purposes of subsections ~~H. M~~ M and ~~I. N~~ N of this
29 section, remediation may include assessing civil penalties and suspending
30 or revoking a laboratory's certification or a marijuana testing facility's
31 license.
32 ~~K. P.~~ P. The department shall adopt rules that prescribe reasonable
33 time frames for testing marijuana and marijuana products.
34 Sec. 2. Subject to the requirements of article IV, part 1,
35 section 1, Constitution of Arizona, section 36-2804.07, Arizona Revised
36 Statutes, is amended to read:
37 36-2804.07. Independent third-party laboratories;
38 certification; inspection; testing requirements
39 A. Independent third-party laboratories shall be certified by the
40 department.
41 B. After receiving an application for CERTIFICATION FROM an
42 independent third-party laboratory, the department shall certify the
43 independent third-party laboratory and issue a certificate and a random
44 twenty-digit alphanumeric identification number if:

- 1 1. The prospective independent third-party laboratory has submitted
2 all of the following:
- 3 (a) The application fee.
 - 4 (b) An application, that includes:
 - 5 (i) The legal name of the independent third-party laboratory.
 - 6 (ii) The physical address of the independent third-party
7 laboratory, which may not be within five hundred feet of a public or
8 private school existing before the date of the independent third-party
9 laboratory's application.
 - 10 (iii) The name, address and date of birth of the owner of the
11 independent third-party laboratory.
 - 12 (iv) The name, address and date of birth of each independent
13 third-party laboratory agent.
 - 14 (c) Policies and procedures consistent with department rules and
15 the requirements of section 36-2803.
 - 16 (d) If the city, town or county in which the independent
17 third-party laboratory would be located has enacted zoning restrictions, a
18 sworn statement certifying that the independent third-party laboratory is
19 in compliance with the restrictions.
- 20 2. The PROSPECTIVE independent third-party laboratory's owner and
21 agents have not been convicted of an excluded felony offense.
- 22 3. The PROSPECTIVE independent third-party laboratory's owner and
23 agents are at least twenty-one years of age.
- 24 C. Certified independent third-party laboratories are subject to
25 reasonable inspection by the department.
 - 26 D. The department may conduct a criminal records check in order to
27 carry out this section.
 - 28 E. BEGINNING DECEMBER 31, 2023, IN ORDER TO BE CERTIFIED BY THE
29 DEPARTMENT, AN INDEPENDENT THIRD-PARTY LABORATORY MUST BE APPROVED BY THE
30 DEPARTMENT TO CONDUCT TESTING FOR ALL OF THE CONTAMINANTS PRESCRIBED IN
31 SECTION 36-2803, SUBSECTION E. AN INDEPENDENT THIRD-PARTY LABORATORY MAY
32 CONTRACT WITH ANOTHER INDEPENDENT THIRD-PARTY LABORATORY FOR SPECIFIC
33 CONTAMINANT TESTING IF FINAL AND FULL TEST RESULTS ARE PROVIDED
34 INCLUSIVELY.
 - 35 F. BEGINNING JANUARY 1, 2024, AN INDEPENDENT THIRD-PARTY LABORATORY
36 THAT CONDUCTS TESTING IN ACCORDANCE WITH SUBSECTION E OF THIS SECTION
37 SHALL REPORT TO THE DEPARTMENT MONTHLY AGGREGATED DATA REGARDING TESTING
38 CONDUCTED DURING THE PREVIOUS MONTH. THE DEPARTMENT SHALL REVIEW THE
39 REPORTS TO EVALUATE TESTING AND RECOMMEND ANY CHANGES TO ENSURE CONSUMER
40 SAFETY. THE DEPARTMENT SHALL TAKE CORRECTIVE ACTION AS NEEDED. THE
41 DEPARTMENT SHALL ADOPT RULES REGARDING THE DATA TO BE INCLUDED IN THE
42 MONTHLY REPORT.
 - 43 G. BEGINNING DECEMBER 31, 2025, THE DEPARTMENT SHALL ESTABLISH A
44 LABORATORY TO PROVIDE TESTING FOR MEDICAL MARIJUANA, MARIJUANA AND
45 MARIJUANA PRODUCTS TO ENSURE COMPLIANCE AND SCIENTIFIC VALIDITY WITH THE

1 CERTIFIED INDEPENDENT THIRD-PARTY LABORATORIES AND MARIJUANA TESTING
2 FACILITIES, TO PROVIDE PROFICIENCY TESTING AND TO PROVIDE ANY OTHER
3 SERVICES DEEMED NECESSARY FOR CONSUMER SAFETY PURSUANT TO THIS CHAPTER AND
4 CHAPTER 28.2 OF THIS TITLE. THE DEPARTMENT IS EXEMPT FROM THE LICENSING
5 REQUIREMENTS OF TITLE 36, CHAPTERS 28.1 AND 28.2 REGARDING INDEPENDENT
6 THIRD-PARTY LABORATORIES AND MARIJUANA TESTING FACILITIES FOR THE
7 LABORATORY ESTABLISHED PURSUANT TO THIS SUBSECTION.

8 Sec. 3. Subject to the requirements of article IV, part 1,
9 section 1, Constitution of Arizona, section 36-2817, Arizona Revised
10 Statutes, is amended to read:

11
12 36-2817. Medical marijuana fund; private donations; fund
13 transfers; use of monies

14 A. The medical marijuana fund is established consisting of fees
15 collected, civil penalties imposed and private donations received under
16 this chapter. The department shall administer the fund. Monies in the
17 fund are continuously appropriated.

18 B. The director of the department may accept and spend private
19 grants, gifts, donations, contributions and devises to assist in carrying
20 out this chapter.

21 C. Monies in the medical marijuana fund may be used to provide
22 grants for marijuana clinical trials conducted pursuant to section
23 36-2822.

24 D. Monies in the medical marijuana fund do not revert to the state
25 general fund at the end of a fiscal year.

26 E. On November 30, 2020, the director of the department shall
27 transfer the following sums from the medical marijuana fund for the
28 following purposes:

29 1. \$15,000,000 to the Arizona teachers academy fund established by
30 section 15-1655.

31 2. \$10,000,000 to the department to fund the formation and
32 operation of councils, commissions and programs dedicated to improving
33 public health, including teen suicide prevention, the maternal mortality
34 review program, improving youth health, substance abuse prevention,
35 addressing adverse childhood experiences, the Arizona poison control
36 system established pursuant to section 36-1161, the Arizona health
37 improvement plan, the child fatality review team established pursuant to
38 section 36-3501 and the chronic pain self management program.

39 3. \$10,000,000 to the governor's office of highway safety to
40 distribute grants for the following purposes:

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

44 (b) Equipment, training and personnel costs for dedicated traffic
45 enforcement.

1 4. \$2,000,000 to the department to implement, carry out and enforce
2 chapter 28.2 of this title.

3 5. \$4,000,000 to the department to distribute grants to qualified
4 nonprofit entities that will provide outreach to individuals who may be
5 eligible to file petitions for expungement pursuant to section 36-2862 and
6 will assist with the expungement petition process. The department shall
7 distribute grants pursuant to this paragraph on or before June 30, 2021.

8 6. \$2,000,000 to the department of health services to develop and
9 implement, in conjunction with the department of economic security and
10 other state agencies, a social equity ownership program to promote the
11 ownership and operation of marijuana establishments and marijuana testing
12 facilities by individuals from communities disproportionately impacted by
13 the enforcement of previous marijuana laws. For the purposes of this
14 paragraph, "marijuana establishment" and "marijuana testing facility" have
15 the same meanings prescribed in section 36-2850.

16 7. \$1,000,000 to the department to fund programs and grants to
17 qualified nonprofit organizations for education and community outreach
18 related to chapter 28.2 of this title.

19 8. \$1,000,000 to the smart and safe Arizona fund established by
20 section 36-2856.

21 F. After all costs incurred to implement, carry out and enforce
22 this chapter and the rules adopted pursuant to this chapter are paid for
23 fiscal year 2021-2022, the department shall transfer from the medical
24 marijuana fund the following sums for the following purposes:

25 1. \$1,250,000 to the department for suicide prevention.

26 2. \$1,250,000 to the Arizona health care cost containment system
27 for suicide prevention.

28 3. \$2,000,000 to the institute for mental health research for
29 research to improve mental health services, research and education in this
30 state.

31 4. \$2,000,000 to the department for the primary care provider loan
32 repayment program and the rural private primary care provider loan
33 repayment program established by chapter 21 of this title. The department
34 shall prioritize rural providers in the areas of mental health care and
35 behavioral health care if feasible and appropriate.

36 5. \$2,000,000 to the board of medical student loans for the
37 purposes of title 15, chapter 13, article 7. The board shall prioritize
38 students who intend to practice in the area of psychiatry or other areas
39 of practice that treat mental illness if feasible and appropriate.

40 6. \$5,000,000 to county public health departments, in proportion to
41 the population of each county, for the purposes of addressing important
42 public health issues and communities affected by drug addiction and
43 incarceration.

44 7. \$1,000,000 to the department for the health care directives
45 registry established pursuant to section 36-3291.

1 G. Monies transferred pursuant to subsection F of this section do
2 not revert to the state general fund.

3 H. The director shall make a onetime transfer of \$250,000 from the
4 medical marijuana fund to the department to provide grants for marijuana
5 research studies pursuant to section 36-2812.

6 I. The director may use monies in the medical marijuana fund to
7 contract with laboratories pursuant to section 36-2803, subsection ~~†~~ N to
8 comply with the proficiency testing requirements of this chapter for
9 independent third-party laboratories and marijuana testing facilities. On
10 or before July 1 of each year, the department shall report to the joint
11 legislative budget committee expenditures made pursuant to this subsection
12 for the preceding fiscal year.

13 Sec. 4. Repeal

14 Section 36-2821, Arizona Revised Statutes, is repealed.

15 Sec. 5. Legislative intent

16 It is this legislature's intent that the department of health
17 services meet quarterly to review and take input regarding the testing of
18 medical marijuana, marijuana and marijuana products in this state. The
19 meetings shall be open to the public and the public may provide testimony
20 and give input to the department regarding the policy, operations and
21 administrative issues relating to testing medical marijuana, marijuana and
22 marijuana products in this state.

23 Sec. 6. Requirements for enactment; three-fourths vote

24 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
25 sections 36-2803, 36-2804.07 and 36-2817, Arizona Revised Statutes, as
26 amended by this act, are effective only on the affirmative vote of at
27 least three-fourths of the members of each house of the legislature.