

# OFFICIAL TITLE AN INITIATIVE MEASURE AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 28.2; AMENDING TITLE 42, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING TITLE 43, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 43- 108; RELATING TO THE REGULATION AND TAXATION OF MARIJUANA.

## TEXT OF PROPOSED AMENDMENT

Be it enacted by the people of the state of Arizona:

Section 1. Title.

This Act may be cited as the “Regulation and Taxation of Marijuana Act.”

Sec. 2. Findings.

1. In the interest of the public health and public safety, to protect and maintain individual rights and the people’s freedom, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Arizona find and declare that the use of marijuana should be legal for persons twenty-one years of age or older.
2. The People of the State of Arizona declare that the distribution of marijuana should be taken from the illicit market and be regulated under a system where businesses will be licensed, regulated and taxed, and the tax revenue will be dedicated to public education.
3. The People of the State of Arizona proclaim that marijuana should be regulated in a manner similar to alcohol so that:
  - (a) Marijuana may only be purchased legally from a business that is licensed and regulated;
  - (b) Cultivation, manufacturing, testing, transporting, and selling marijuana will be controlled through licensing and regulation;
  - (c) Individuals will be allowed to produce a limited amount of marijuana for personal use;
  - (d) Selling or giving marijuana to persons under twenty-one years of age shall remain illegal;
  - (e) Driving while impaired by marijuana will remain illegal; and
  - (f) Marijuana sold in the state at licensed retail facilities will be tested, labeled, and packaged securely.
4. In the interest of enacting rational policies for the treatment of all variations of the cannabis plant, the people of the State of Arizona further find and declare that hemp should be legal and should be regulated separately from the strains of cannabis with higher delta-9 tetrahydrocannabinol concentrations.

Sec. 3. Title 36, Arizona Revised Statutes, is amended by adding Chapter 28.2 to read:

## CHAPTER 28.2

### REGULATION AND TAXATION OF MARIJUANA ACT

#### 36-2821. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. “Consumer” means a person who is at least twenty-one years of age and who possesses marijuana or marijuana products for personal use or use by persons who are at least twenty-one years of age, but not

for resale.

2. "Controlling person" means a person who has the power to direct or cause the direction of the management and policies of a marijuana establishment, whether through the ownership of voting securities or a partnership interest, by agreement or otherwise. A controlling person does not include a bank or licensed lending institution.

3. "Department" means:

(a) Until July 1, 2018, the Arizona Department of Health Services.

(b) From and after July 1, 2018, the Department of Marijuana Licenses and Control.

4. "Industrial hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis of any part of the plant cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant cannabis regardless of moisture content.

5. "Locality" means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.

6. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

7. "Marijuana" means all parts of any plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" includes cannabis as defined in section 13-3401. "Marijuana" does not include:

(a) Industrial hemp;

(b) The mature stems and roots of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin and powder extracted therefrom) or the sterilized seed of the plant which is incapable of germination;

(c) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

8. "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

9. "Marijuana cultivator" means an entity licensed by the Department to produce, process, transport, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to other marijuana establishments, but not to consumers.

10. "Marijuana distributor" means an entity licensed by the Department to store marijuana at a location not licensed for the production, manufacture, or retail sale of marijuana and to transport marijuana from a marijuana establishment to another marijuana establishment, but not to a consumer. A marijuana distributor may not sell marijuana to consumers, produce or process marijuana, or manufacture marijuana products. A marijuana distributor license is not required to transport marijuana.

11. "Marijuana establishment" means a marijuana cultivator, marijuana distributor, marijuana testing facility, marijuana product manufacturer, or marijuana retailer.

12. "Marijuana product manufacturer" means an entity licensed by the Department to purchase marijuana,

manufacture, process, transport, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana establishments, but not to consumers.

13. "Marijuana products" means products that are manufactured and that contain marijuana or an extract from marijuana, including products that are comprised of marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, concentrated marijuana products, and tinctures.

14. "Marijuana retailer" means an entity licensed by the Department to purchase and transport marijuana and marijuana products from marijuana establishments and to sell marijuana and marijuana products to marijuana establishments and to consumers.

15. "Marijuana testing facility" means an entity licensed by the Department to test marijuana and marijuana products, including for potency and harmful contaminants.

16. "Process" means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.

17. "Reorganized marijuana business" means an applicant that is nominated by a nonprofit medical marijuana dispensary registered and in good standing pursuant to Chapter 28.1. Each nonprofit medical marijuana dispensary may nominate one applicant for a marijuana cultivator license and one applicant for a marijuana retailer license. A reorganized marijuana business may only operate in the locality in which the nonprofit medical marijuana dispensary that nominated the applicant operates.

18. "Unreasonably impracticable" means that the measures necessary to comply with rules, ordinances or regulations adopted pursuant to this Act require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worth being carried out in practice by a reasonably prudent businessperson.

### 36-2822. Limitations

1. This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for:

(a) Operating, navigating, or being in actual physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport or machinery while impaired by marijuana.

(b) Consuming marijuana while operating a motor vehicle, train, aircraft, motorboat or other motorized form of transport or machinery or consuming marijuana while within a passenger compartment that is not isolated from the operator of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport or machinery that is located on any public highway or right-of-way of a public highway in this state.

(c) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under twenty-one years of age.

(d) Buying for resale, selling, or dealing in marijuana in Arizona without first having procured a license to operate a marijuana establishment.

(e) Possessing or using marijuana or marijuana accessories on the grounds of or within any correctional facility.

(f) Possessing or using marijuana on school grounds, inside school buildings, in school parking lots or playing fields, in school buses or vehicles or at off-campus school sponsored events. For purposes of this subsection, "school" means any public, charter, or private school where children attend classes in preschool programs, kindergarten programs, or grades one through twelve.

(g) Performing any task while impaired by marijuana that would constitute negligence or professional malpractice.

2. This chapter does not require an employer to permit or accommodate the possession or consumption of marijuana in the workplace and does not affect the ability of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.

3. This chapter does not prohibit a person who owns, occupies, manages, or controls a property from prohibiting or otherwise regulating the smoking, production, processing, manufacture, or sale of marijuana on or in that property.

4. This chapter does not prohibit a person from prohibiting or otherwise regulating the possession or consumption of marijuana in property the person owns, occupies, manages, or controls if:

(a) The subject property is a public building that is held or owned by this state or any political subdivision of this state; or

(b) Failing to prohibit marijuana possession or consumption would cause the person who owns, occupies, manages or controls the property to lose a monetary or licensing-related benefit under federal law or regulations.

5. Nothing in this chapter shall be construed as in any manner affecting the provisions of title 36, chapter 28.1 relating to the medical use of marijuana.

6. Nothing in this chapter shall be construed to prohibit the Arizona State Legislature from providing for the regulation or taxation of industrial hemp.

#### 36-2823. Department of Marijuana Licenses and Control

1. From and after January 1, 2018, the Department of marijuana licenses and control is established consisting of the marijuana commission and the office of director of the department.

2. The Governor shall appoint a director pursuant to section 38-211 who shall be qualified by successful experience in administration in business or in government and by xx. The Governor may remove the director for cause. Except as provided in subsection 4 of this section, the director shall administer this chapter. The director may, subject to chapter 4, article 4, employ, determine conditions of employment, and specify the duties of employees, and contract to have the services of such advisors or consultants as are reasonably necessary to adequately perform it's duties.

3. The Marijuana Commission shall consist of seven members appointed by the governor pursuant to section 38-211. Appointive members shall be selected because of their knowledge in xx. Five members of the marijuana commission shall not be financially interested directly or indirectly in business licensed to deal in marijuana. Two members shall currently be engaged in business to deal in marijuana. No more than four members may be of the same political party. Persons eligible for appointment shall have a continuous recorded registration pursuant to title 16, chapter 1 with the same political party or as an independent for at least two years immediately preceding appointment. No more than two members may be appointed from the same county. The term of members is three years. Members' terms expire on the third Monday in January of the appropriate year. The governor may remove any member for cause.

4. The Marijuana Commission shall:

- (a) Adopt rules for the conduct of its meetings;
- (b) Annually elect from its membership a chairman and may elect from within its membership other officers for such terms as they deem necessary or desirable;
- (b) Keep records of all proceedings;
- (c) Approve and deny applications; and
- (d) Hold hearings as provided for by law.

5. A majority of the marijuana commission constitutes a quorum, and a concurrence of a majority of a quorum is sufficient for taking any action. If there are unfilled positions on the marijuana commission, a majority of those persons appointed and serving on the marijuana commission constitutes a quorum.

6. The chairman may designate panels of not less than three members. A panel may take any action that the marijuana commission is authorized to take pursuant to this title. Such action includes the ability to hold hearings and hear appeals of administrative disciplinary proceedings or licenses issued pursuant to this chapter. A panel shall not, however, adopt rules. The chairman may from time to time add additional members or remove members from a panel. A majority of a panel may upon the concurrence of a majority of the members of the panel take final action on hearings and appeals of administrative disciplinary proceedings concerning licenses issued pursuant to this chapter.

7. The compensation of the director and of all workers and employees of the Department of Marijuana Licenses and Control shall be determined pursuant to section 38-611. Members of the marijuana commission are entitled to receive compensation at the rate of fifty dollars per day while engaged in the business of the board.

8. Except for a member designated by the governor to be appointed from the industry, no member of the marijuana commission, any employee of the Department of Marijuana Licenses and Control, or the director shall be financially interested directly or indirectly in any business licensed to deal in

marijuana. Violation of this section by any member of the marijuana commission shall be deemed a resignation by such person and a violation by any employee of the Department of Marijuana Licenses and Control shall result in his immediate dismissal.

#### 36-2825. Power and duties of the Department

1. The Department shall adopt rules pursuant to title 41, chapter 6, consistent with the section 36-2826, and necessary or convenient to carry out the provisions this chapter.
2. The Department shall approve or deny applications for licenses and shall issue and renew licenses pursuant to this chapter.
  - (a) The Department shall begin accepting and processing applications for marijuana establishments by July 1, 2017. Because it is in the best interest of the community to ensure a slow and measured transition between the illicit market for marijuana and a legal and regulated market for marijuana, until December 1, 2018, the Department shall only accept applications for marijuana cultivator licenses or marijuana retailer licenses from reorganized marijuana businesses.
  - (b) On and after December 1, 2018, the Department shall accept applications for marijuana cultivator licenses or marijuana retailer licenses from any applicant.
  - (c) On and after July 1, 2017, the Department shall accept all applications for marijuana product manufacturers, marijuana distributors, and marijuana testing facilities.
3. The Department shall conduct hearings pursuant to title 41, chapter 6, article 10 as necessary or convenient to license and regulate marijuana establishments and may accept relevant and material evidence and testimony, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses, cause depositions to be taken, and require by subpoena duces tecum the production of books, papers, and other documents that are necessary for the enforcement of this title.
4. The Department shall enforce the laws and rules relating to the production, manufacture, transportation, sale, and testing of marijuana and marijuana products and shall conduct investigations of compliance with this chapter including the inspection of marijuana establishments and the examination of books, records, and papers of a marijuana establishment as necessary to enforce this chapter or the rules adopted pursuant to this section.
5. After notice and hearing, the Department may suspend, revoke, or refuse to renew any license issued pursuant to this chapter and fine a licensee for the violation of this chapter and any rule adopted pursuant to this chapter or any condition imposed on the licensee by the license. An action taken by the Department pursuant to this subsection is a final decision of the Department subject to judicial review pursuant to Title 12, chapter 7, article 6. Jurisdiction and venue are vested in the superior court.

6. After notice, the Department may temporarily suspend any license issued pursuant to this chapter when there is clear and convincing evidence that the licensee has committed a deliberate and willful violation of any applicable law or rule or that the public health, safety, or welfare imperatively requires emergency action. The Department must provide an opportunity for a hearing pursuant to title 41, chapter 6, article 10 within 14 calendar days from a suspension pursuant to this subsection.

7. The Department shall keep records of all proceedings and annual records of the department.

#### 36-2824. Transfer of Authority

1. On and after July 1, 2018, all authority the Arizona Department of Health Services may have to administer this chapter is hereby transferred to the Department of Marijuana Licenses and Control. All rules adopted pursuant to this Act by the Arizona Department of Health Services shall be enforced by the Department of Marijuana Licenses and Control until they are amended pursuant to title 41, chapter 6.

2. On and after January 1, 2018, the Department shall advise, assist, and cooperate with the Department of Marijuana Licenses and Control to ensure a smooth transfer of authority to administer this chapter.

3. In order to prepare to administer this chapter, on and after January 1, 2018 the Department of Marijuana Licenses and Control may begin to engage in a rulemaking pursuant to title 41, chapter 6, consistent with section 36-2826, and necessary or convenient to carry out the provisions of this chapter by July 1, 2018.

#### 36-2826. Rulemaking

1. Not later than six months after the effective date of this Act, the Department shall adopt rules pursuant to title 41, chapter 6 necessary or convenient to carry out the provisions this chapter. The rules shall include:

(a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

(b) Qualifications for licensure and minimum standards for employment that are directly and demonstrably related to the person's fitness to operate a marijuana establishment;

(c) Requirements for the security of marijuana establishments operating both indoors and outdoors, including lighting, physical security, video and alarm requirements, and requirements for the secure transportation and storage of marijuana and marijuana products.

(d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under twenty-one years of age, including a specification of the acceptable forms of identification that a marijuana establishment may accept when verifying the age of a consumer that are similar to requirements for verifying the age of a person who purchases alcohol;

- (e) Procedures to track marijuana and marijuana products produced, processed, manufactured, and sold by marijuana establishments to ensure that marijuana produced by marijuana establishments is not sold or otherwise transferred except by a marijuana establishment to another marijuana establishment or by a marijuana retailer to a consumer and to ensure that all marijuana sold by marijuana retailers was produced by marijuana establishments;
- (f) Health and safety standards for the cultivation, manufacture, and distribution of marijuana and marijuana products, including rules regarding the use of pesticides and restrictions on additives to marijuana products that are addictive or injurious to health;
- (g) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging similar to the federal "Poison Prevention Packaging Act of 1970," 15 U.S.C. sec. 1471 et seq. and requirements for dividing or scoring a marijuana product into a standardized serving size;
- (h) Requirements for the labeling of marijuana products sold by marijuana establishments, including a symbol or other mark indicating that the package contains marijuana, the amount of THC and CBD in the package and in each serving of the marijuana product, the number of servings in the package, a list of ingredients, allergens, and solvents used in the manufacturing of the marijuana product, and warning labels required by the Department;
- (i) Requirements for the testing of marijuana and marijuana products to ensure that products sold for human consumption do not contain contaminants that are injurious to health;
- (j) Requirements for record keeping by marijuana establishments;
- (k) Reasonable restrictions on marketing, display, and advertising of marijuana and marijuana accessories, including marketing or advertising that appeals to children;
- (l) Procedures and requirements to enable the transfer or sale of a license for a marijuana establishment to another qualified person or group of persons or to another suitable location;
- (m) A statewide-tiered system for the licensure of marijuana cultivators that shall:
  - (i) Establish a limit on the amount of marijuana a marijuana cultivator within each license tier may produce based on the size of the cultivation area. A higher tier license shall permit the production of a larger amount of marijuana than a lower tier license.
  - (ii) Require the holder of a lower tier marijuana cultivator license to demonstrate to the Department that the licensee has consistently sold more than eighty-five percent of the marijuana the licensee has produced to marijuana establishments before the marijuana cultivator may qualify for a higher tier marijuana cultivator license.
  - (iii) Provide for the issuance of only the highest tier of marijuana cultivator license before October 1, 2018; and

(n) Procedures for enforcing this Act, including civil penalties for the failure to comply with any rule adopted pursuant to this section or for any violation of the provisions of section 36-2830 of this Act, procedures for the collection of fees and penalties imposed by this chapter, procedures for suspending or terminating the license of a licensee, and procedures providing for a hearing on the record for the appeal of penalties and licensing actions.

2. In order to minimize illicit markets for marijuana in Arizona and to help ensure that the supply and demand for marijuana remain in relative stasis, until January 1, 2022, the rules may include a quota on the number of marijuana cultivator licenses that are issued or on the total amount of marijuana that is produced by marijuana cultivators in Arizona. A quota may be imposed pursuant to this paragraph only after considering the current and anticipated demand for marijuana and marijuana products and the reasonable availability of new licenses and must not be used by the Department to control or influence the price of marijuana. Any limitation or quota imposed must be reconsidered quarterly.

3. The Department may require each prospective controlling person of a marijuana establishment license applicant to furnish background information and to submit a full set of fingerprints to the Department for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and public law 92-544. The Department of Public Safety may exchange this fingerprint data with the Federal Bureau of Investigation without disclosing that the records check is related to this Act or acts permitted by it. The Department shall destroy each set of fingerprints after the criminal records check is complete.

4. Rules adopted by the Department must not prohibit the operation of marijuana establishments, either expressly or through rules that make their operation unreasonably impracticable, and may not impose any restriction on the ownership of multiple types of marijuana establishment licenses by a person or group of persons.

5. To ensure that individual privacy is protected:

(a) The Department may not require a consumer to provide a marijuana retailer with identifying information other than identification to determine the consumer's age; and

(b) A marijuana retailer must not be required to acquire or record personal information about consumers other than information typically acquired in a retail transaction or information acquired or recorded and retained to document the age of a recipient of marijuana pursuant to section 36-2834.

#### 36-2827. Local control

1. Through enactment of a referendum or initiative conducted in the manner provided for in title 19, chapter 1, article 4 and that appears on a general election ballot, a locality may:

(a) Prohibit the operation of one or more of the types of marijuana establishments within the locality, except that if a locality prohibits the operation of a marijuana retailer or a marijuana cultivator it may not prohibit a reorganized marijuana business that has been nominated by a nonprofit medical marijuana dispensary registered pursuant to Chapter 28.1, in good standing, and operating within the

locality from obtaining a license to operate the prohibited type of marijuana establishment within the locality in any area that is zoned for the operation of a nonprofit medical marijuana dispensary. (b) Authorize or refuse to authorize within the locality the sale of marijuana to be consumed on the premises where sold.

2. Localities may enact ordinances or regulations that are not unreasonably impracticable and are not in conflict with this Act or with rules enacted pursuant to this Act:

- (a) Governing the time, place, and manner of marijuana establishment operations;
- (b) Limiting the number of marijuana establishment operations within the locality;
- (c) Restricting the smoking, production, processing, and manufacturing of marijuana when it is injurious to the environment or otherwise is a nuisance to a considerable number of persons;
- (d) Limiting the use of land for marijuana establishments and for business dealing in marijuana accessories to specified areas in the manner provided in title 9, chapter 4, article 6.1 and title 11, chapter 6, article 2., except that zoning shall not prohibit a marijuana establishment for operating in an area that is zoned for the operation of a nonprofit medical marijuana dispensary and zoning may not be a basis for protesting or denying a license under this chapter
- (e) Establishing reasonable restrictions on public signage; and
- (d) Establishing civil penalties for the violation of an ordinance or regulation enacted pursuant to this subsection.

3. If the Department does not adopt rules in accordance with 36-2826 or accept or process applications in accordance with 36-2824(2) or 36-2829:

- (a) A locality may designate a local regulatory authority that is responsible for processing applications submitted for a license to operate a marijuana establishment within the locality;
- (b) The locality may issue an annual license to operate a marijuana establishment within the locality, may suspend or revoke a license it has issued, and may establish a schedule of application fees and licensing fees for marijuana establishments licensed by the local regulatory authority; and
- (c) A locality may adopt ordinances or regulations necessary or convenient for the licensing and regulating of marijuana establishments that do not make the operation of marijuana establishments unreasonably impracticable.

#### 36-2828. Disposition of fees and penalties

All license, registration, and other fees and all penalties collected pursuant to this title shall be deposited, pursuant to sections 35-146 and 35-147, in the marijuana fund established by section 36-2838.

#### 36-2829. Licensing of marijuana establishments

1. Upon receipt of a complete marijuana establishment license application, the Department shall forward a copy of the application to the locality in which the proposed licensed premises will be located. The locality may hold a public hearing for consideration of applications for licenses.

2. Upon receipt of a complete marijuana establishment license application, the Department shall, within 60 to 90 days:

(a) Issue the appropriate license if the license application is approved; or

(b) Send a notice of rejection setting forth specific reasons why the Department did not approve the license application.

3. The Department shall approve a license application and issue or renew a license unless:

(a) The prospective marijuana establishment has not submitted an application in compliance with rules adopted by the Department, the applicant does not meet the requirements established by the Department, or the applicant is not in compliance with this chapter or the rules adopted pursuant to it.

(b) The Department is notified by the locality in which the proposed marijuana establishment will be located that the proposed marijuana establishment is not in compliance with ordinances or regulations adopted by the locality pursuant to 36-2827 and in effect at the time of application.

(c) The property, at the time the license application is received by the Department, is located within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to a school building. This section does not prohibit the renewal of a valid license issued pursuant to this chapter.

(d) An individual who will be a controlling person of the proposed marijuana establishment has been convicted of a felony, or convicted of an offense in another state that would be a felony in this state, within five years before application.

4. When a greater number of applications to operate marijuana establishments in a locality are received by the Department from qualified applicants than are allowed under the limits enacted by the locality pursuant to section 36-2827, the Department shall:

(a) Solicit and consider input from the locality as to the applicants' compliance with local ordinances and the reasons for the locality's preference or preferences for licensure, if any.

(b) Give preference to an applicant who has prior experience producing or distributing marijuana pursuant to title 36, chapter 28.1 in the locality in which the applicant seeks to operate a marijuana establishment and has complied consistently with title 36, chapter 28.1 and the rules adopted pursuant to it.

(c) Not grant a license for a marijuana establishment to a licensee who has already received a license to operate the same type of marijuana establishment if doing so would prevent another qualified applicant who has applied from receiving a license.

(d) Award each license pursuant to a competitive process intended to select applicants who are best suited to meet the demand for marijuana and marijuana products in Arizona, operate in compliance with this chapter and the rules adopted pursuant to it, and minimize the unlawful market for marijuana in Arizona.

5. The rejection of a complete marijuana establishment application pursuant to paragraph 2 is considered a final decision of the Department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue for judicial review are vested in the superior court.

### 36-2829. Licensing of marijuana establishments

1. Upon receipt of a complete marijuana establishment license application, the Department shall forward a copy of the application to the locality in which the proposed licensed premises will be located. The locality may hold a public hearing for consideration of applications for licenses.

2. Upon receipt of a complete marijuana establishment license application, the Department shall, within 60 to 90 days:

(a) Issue the appropriate license if the license application is approved; or

(b) Send a notice of rejection setting forth specific reasons why the Department did not approve the license application.

3. The Department shall approve a license application and issue or renew a license unless:

(a) The prospective marijuana establishment has not submitted an application in compliance with rules adopted by the Department, the applicant does not meet the requirements established by the Department, or the applicant is not in compliance with this chapter or the rules adopted pursuant to it.

(b) The Department is notified by the locality in which the proposed marijuana establishment will be located that the proposed marijuana establishment is not in compliance with ordinances or regulations adopted by the locality pursuant to 36-2827 and in effect at the time of application.

(c) The property, at the time the license application is received by the Department, is located within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to a school building. This section does not prohibit the renewal of a valid license issued pursuant to this chapter.

(d) An individual who will be a controlling person of the proposed marijuana establishment has been convicted of a felony, or convicted of an offense in another state that would be a felony in this state, within five years before application.

4. When a greater number of applications to operate marijuana establishments in a locality are received by the Department from qualified applicants than are allowed under the limits enacted by the locality pursuant to section 36-2827, the Department shall:

- (a) Solicit and consider input from the locality as to the applicants' compliance with local ordinances and the reasons for the locality's preference or preferences for licensure, if any.
- (b) Give preference to an applicant who has prior experience producing or distributing marijuana pursuant to title 36, chapter 28.1 in the locality in which the applicant seeks to operate a marijuana establishment and has complied consistently with title 36, chapter 28.1 and the rules adopted pursuant to it.
- (c) Not grant a license for a marijuana establishment to a licensee who has already received a license to operate the same type of marijuana establishment if doing so would prevent another qualified applicant who has applied from receiving a license.
- (d) Award each license pursuant to a competitive process intended to select applicants who are best suited to meet the demand for marijuana and marijuana products in Arizona, operate in compliance with this chapter and the rules adopted pursuant to it, and minimize the unlawful market for marijuana in Arizona.

5. The rejection of a complete marijuana establishment application pursuant to paragraph 2 is considered a final decision of the Department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue for judicial review are vested in the superior court.

#### 36-2829.01. Fee schedule

1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of \$5,000.

2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a marijuana retailer \$20,000

For a renewal license for a marijuana retailer \$6,600

For the initial issuance of a license for a marijuana product manufacturer \$15,000

For a renewal license for a marijuana product manufacturer \$5,000

For the initial issuance of a license for a marijuana distributor \$15,000

For a renewal license for a marijuana distributor \$5,000

For the initial issuance of a license for a marijuana testing facility \$10,000

For a renewal license for a marijuana testing facility \$3,300

3. The department shall establish a tiered schedule of annual licensing fees for marijuana cultivators with fee amounts relative to the size of the licensed cultivation area. The department may require payment of an annual licensing fee not to exceed \$30,000 for the initial issuance of a license for a marijuana cultivator or \$10,000 for a renewal license for a marijuana cultivator. The maximum fee amount for the lowest tier specified in the schedule shall be no more than one-third of the annual licensing fee for the highest tier specified in the schedule.

4. When a license renewal application is filed later than thirty days before the expiration of a marijuana establishment license, the Department may require the payment of a late application fee of up to \$500.

5. Every two years, the department shall modify the dollar values specified in this section to account for inflation.

#### 36-2829.02. Expiration and renewal

1. All licenses expire one year after the date of issue.

2. The Department shall issue a renewal license within thirty days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment.

3. A licensee whose license has not been expired for more than sixty days, whose license is not under suspension and has not been revoked, and who has filed a renewal application and paid any required late fee may continue to operate until the Department takes final action to approve or deny the renewal application.

#### 36-2829.03. Licensing by a locality

1. If the Department does not adopt timely rules as required by 36-2826 or accept or process applications in accordance with 36-2824(2) 36-2829 by issuing a license or sending a notice of rejection, the applicant may submit its application directly to a local regulatory authority designated by the locality pursuant to 36-2827 where the marijuana establishment will be located.

2. If an application is submitted to a local regulatory authority under this subsection:

(a) Upon request of the locality, the Department shall forward to the locality the application fee, if any, paid by the applicant to the Department.

(b) The local regulatory authority shall issue a license to an applicant within 90 days of receipt of the application unless the locality finds and notifies the applicant that the applicant is not in compliance with an ordinance or regulation made pursuant to section 36-2827 and in effect at the time of application.

3. If a local regulatory authority issues a license pursuant to this subsection, the locality shall notify the Department that the license has been issued.

4. If a local regulatory authority issues a license pursuant to this section, the license shall have the same force and effect as a license issued by the Department in accordance with section 36-2829, and the holder of the license is not subject to regulation or enforcement by the Department during the license term but is, instead, subject to regulation by the locality.

#### 36-2830. Marijuana establishment operating requirements

1. In addition to requirements established by rule pursuant to section 36-2826 of this chapter, marijuana establishments shall:

(a) Secure every entrance to areas containing marijuana so that access is restricted to persons permitted by the marijuana establishment to access the area;

(b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana from the premises or while in transit to or from the premises of a marijuana establishment;

(c) Prevent any person who is not twenty-one years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, testing, storage, or manufacture of marijuana must take place at the physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons permitted by the marijuana establishment to access the area. The area may include a greenhouse and may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least eight feet high.

3. All cultivation, processing, manufacture, sale, and display of marijuana must not be visible from a public place without the use of binoculars, aircraft, or other optical aids.

4. A marijuana establishment is subject to reasonable inspection by the Department.

5. A marijuana establishment may not obtain marijuana or marijuana products from anyone other than a licensed marijuana establishment, except that a marijuana cultivator may receive marijuana seeds and immature marijuana plants from a person who is twenty-one years of age or older.

#### 36-2831. Personal use and cultivation of marijuana

1. Notwithstanding any other law, except as otherwise provided in this chapter, it is lawful in this state, and must not be used as the basis for prosecution, penalty or seizure, or forfeiture of assets for persons twenty-one years of age or older to:

(a) Possess, use, purchase, obtain, process, manufacture, or transport marijuana accessories or one ounce or less of marijuana, except that only five grams of the marijuana may be in the form of concentrated marijuana;

(b) Possess, produce, process, or transport not more than six marijuana plants at the person's place of residence for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that no more than 12 plants are produced on the premises at one time; or

(c) Give or otherwise transfer without remuneration or offer to transfer without remuneration, one ounce or less of marijuana, except that only 5 grams of the marijuana may be in the form of concentrated marijuana, to a person twenty-one years of age or older provided that the transaction is not advertised or promoted to the public.

(d) Assist another person who is 21 years of age or older in any of the acts described in this section.

2. A person shall not be penalized solely because of the presence of metabolites or components of marijuana within the person's body or within the urine, blood, saliva, hair, or other tissue or fluid of the person's body.

3. Notwithstanding any other law, it is lawful in this state and must not be used as the basis for prosecution, penalty or seizure, or forfeiture of assets for persons to possess, produce, process, manufacturer, purchase, obtain, sell or otherwise transfer, or transport industrial hemp.

4. No person may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

5. For purposes of this section, "concentrated marijuana" means the resin extracted from any part of a plant of the genus cannabis and every compound, manufacture, salt, derivative, mixture, or preparation of such resin or tetrahydrocannabinol. It does not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other products.

#### 36-2832. Marijuana accessories authorized

1. Notwithstanding any other law, except as otherwise provided in this chapter or the rules adopted pursuant to this Act, it is lawful in this state and must not be used as the basis for prosecution, penalty, or seizure or forfeiture of assets for persons twenty-one years of age or older to possess, use, transport, deliver, manufacture, or purchase marijuana accessories, or to distribute or sell marijuana accessories to a person who is twenty-one years of age or older.

2. Notwithstanding 13-3415(c), and subject to any rules imposed by the Department pursuant to 36-2826, it is not unlawful and shall not be an offense or a basis for seizure or forfeiture of assets to place an advertisement for marijuana accessories.

#### 36-2833. Lawful operation of marijuana establishments

Notwithstanding any other law, except as otherwise provided in this chapter or the rules adopted pursuant to this Act, it is lawful in this state and must not be used as the basis for prosecution, penalty, or seizure or forfeiture of assets for:

1. A marijuana retailer or an agent acting on behalf of a marijuana retailer to possess marijuana and marijuana products, purchase, sell, or transport marijuana and marijuana products to or from a marijuana establishment, or sell marijuana and marijuana products to consumers.
2. A marijuana cultivator or an agent acting on behalf of a marijuana cultivator to produce, harvest, process, or package marijuana; possess, sell, purchase, or transport marijuana and marijuana products to or from a marijuana establishment; or receive marijuana seeds and immature marijuana plants from a person who is at least twenty-one years of age.
3. A marijuana product manufacturer or an agent acting on behalf of a marijuana product manufacturer to package, process, manufacture, store, or possess marijuana and marijuana products and transport, sell, and purchase marijuana and marijuana products to or from a marijuana establishment.
4. A marijuana distributor or an agent acting on behalf of a marijuana distributor to possess and store marijuana and marijuana products and transport, sell, or purchase marijuana and marijuana products to or from a marijuana establishment.
5. A marijuana testing facility to possess, process, repackage, store, transport, or test marijuana and marijuana products.
6. A person to lease or otherwise allow property owned, occupied, or controlled by the person to be used for any of the activities conducted lawfully in accordance with this section.

#### 36-2834. Identification of underage persons

Notwithstanding any other law, except as otherwise provided in this chapter or the rules adopted pursuant to this Act, a person acting in the person's capacity as an agent of a marijuana establishment who delivers, gives, sells, administers, or offers to sell, administer, give, or deliver marijuana to a person under twenty-one years of age, shall not be subject to prosecution, penalty, or seizure or forfeiture of assets if:

- (1) The person demanded identification from the recipient; examined the identification to determine that the identification reasonably appeared to be a valid, unaltered identification that had not been defaced; examined the photograph in the identification and determined that the recipient reasonably appeared to be the same person in the identification; determined that the date of birth in the identification indicated the recipient was not under twenty-one years of age; and recorded and retained a record of the recipient's identification in compliance with rules adopted pursuant to this Act; or
- (2) The recipient is permitted to possess the marijuana pursuant to title 36, chapter 28.1.

### 36-2835. Contracts pertaining to marijuana enforceable

It is the public policy of the People of the State of Arizona that contracts related to the operation of marijuana establishments under this chapter should be enforceable, and no contract entered into by a licensee or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

### 36-2836. Provision of legal services

An attorney may not be subject to disciplinary action by the state bar association or other professional licensing association for providing legal assistance to prospective or licensed marijuana establishments or others related to activity that is no longer subject to criminal penalties under state law.

### 36-2837. Penalties

1. Restrictions on personal cultivation.

(a) Except as otherwise provided in title 36, chapter 28.1, any person who:

(i) Produces not more than six marijuana plants where they are subject to public view without the use of binoculars, aircraft, or other optical aids;

(ii) Produces not more than six marijuana plants outside of an enclosed area that is equipped with a lock or other security device; or

(iii) Produces not more than six marijuana plants on property not in the cultivator's lawful possession

(b) Is guilty of:

(i) For a first violation, a petty offense punishable by a fine of not more than three hundred dollars.

(ii) For a second violation, a class 3 misdemeanor.

(iii) For a third, or subsequent, violation, a class 2 misdemeanor.

2. A person who smokes or otherwise uses marijuana in a public place is guilty of a petty offense punishable by a fine of not more than three-hundred dollars. This paragraph does not apply to a person using marijuana on the premises of a marijuana retailer in a locality where the sale of marijuana to be consumed on the premises has been authorized.

3. A person who manufactures marijuana by chemical extraction, unless done pursuant to a marijuana product manufacturing license issued by the Department, is guilty of a class 6 felony.

4. A person under twenty-one years of age who misrepresents his or her age to any person by means of a written instrument of identification or who uses a fraudulent or false written instrument of identification with the intent to induce a person to sell or otherwise transfer marijuana or to gain access to a marijuana establishment is guilty of a petty offense punishable by a fine of not more than three hundred dollars.

5. A person under twenty-one years of age who solicits another person to purchase marijuana contrary to the law is guilty of a petty offense punishable by a fine of not more than three hundred dollars.

6. A person acting in the person's capacity as an agent of a marijuana establishment who knowingly allows a person under twenty-one years of age who is not authorized to possess marijuana pursuant to title 36, chapter 28.1 to remain in a secured area on the licensed premises where marijuana is produced, processed, manufactured, sold, or used is guilty of a petty offense punishable by a fine of not more than three hundred dollars.

7. Notwithstanding section 13-3405, possession or use of one ounce or less of marijuana by a person under twenty-one years of age, or the transfer of marijuana without remuneration from a person under twenty-one years of age to someone who is within two years of age of the transferor is only guilty of a petty offense that shall be punished by no more than a fine of three hundred dollars, forfeiture of the marijuana, and performance of up to twenty-four hours of community restitution.

8. Notwithstanding section 13-3405 and except as provided in 36-2831, a person twenty-one years of age or older who possesses an amount of marijuana having a weight of more than one ounce but not more than two-and-one-half ounces is only guilty of a petty offense punishable by a fine of not more than three-hundred dollars.

9. The legislature may further reduce penalties in the future.

#### 36-2838. Marijuana fund

1. The Marijuana Fund is established consisting of all monies deposited therein pursuant to sections 36-2828 and 42-3404, and interest earned on those monies. The state treasurer shall deposit all monies received under 42-3404 into this fund. The Department shall administer the fund. Monies in the fund are continuously appropriated. Monies in the fund may not be transferred to any other fund except as provided in this section.

2. The Arizona Department of Health Services shall appropriate monies from the Medical Marijuana Fund within sixty days of the effective date of this Act to the Department to be deposited into the Marijuana Fund and expended to pay the costs incurred by the Department or by the Department of Revenue before monies are deposited pursuant to sections 36-2828 and 42-3404.

3. All monies in the Marijuana Fund must first be expended to pay the costs incurred by the Department in carrying out this chapter and the rules adopted pursuant thereto.

4. The Department shall appropriate monies from the Marijuana Fund to the Department of Revenue for the reasonable administration and enforcement costs incurred by the Department of Revenue in administering the levy of taxes that are dedicated to the fund under 42-3404.
5. The Department shall appropriate monies from the Marijuana Fund to the Department of Marijuana Licenses and Control for the reasonable administration and enforcement costs incurred by the Department of Marijuana Licenses and Control before July 1, 2018.
6. The Department shall remit one-half of the licensee fees collected from marijuana establishments in a locality to the locality in which the marijuana establishments are located.
7. The Department shall distribute, every three months, all monies in excess of the amount needed to implement and enforce this Act to the Department of Education for the maintenance and operation of Kindergarden through grade twelve schools. The monies distributed pursuant to this subsection are in addition to any other appropriation, transfer, or other allocation of public or private monies from any other source and shall not supplant, replace or cause a reduction in other school funding sources.
8. In no event shall any monies in the fund or its accounts revert to the State General Fund. Monies in the fund and its accounts are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

#### 36-2839. Enforcement of this Act; mandamus

1. If the Department fails to adopt rules necessary for the implementation of this chapter by July 1, 2017 or if the department fails to begin accepting applications as provided in 26-2825, any citizen may commence a mandamus action in superior court to compel the Department to perform the actions mandated under this chapter.
2. If the Department fails to issue a license or send a notice of rejection within ninety days of the receipt of a complete marijuana establishment application pursuant to 36-2829, the applicant may commence a mandamus action in superior court to compel the Department to perform the actions mandated under this chapter.

Sec. 4. Title 42, Chapter 3, Arizona Revised Statutes, is amended by adding Article 10 to read:

#### TITLE 10

#### MARIJUANA AND MARIJUANA PRODUCTS

#### 42-3401. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "Department" shall have the same meaning as set forth in subsection (3) of section 42-1001 of chapter 1.

2. "Marijuana" shall have the same meaning as set forth in 36-2821(7).
3. "Marijuana retailer" shall have the same meaning as set forth in 36-2821(14).
4. "Unreasonably Impracticable" shall have the same meaning as set forth in 36-2821(18).

#### 42-3402. Levy and rates of tax

1. In addition to all other taxes, there is levied and imposed and there shall be collected by the Department a tax on all marijuana sold to any person other than a marijuana establishment by a marijuana retailer at a rate of fifteen percent of the price of the marijuana sold.
2. Notwithstanding section 42-3102, the Department shall deposit, pursuant to sections 35-146 and 35-147, monies levied and collected pursuant to this section in the marijuana fund established by section 36-2838.

#### 42-3403. Return and payment by marijuana retailer

1. Every marijuana retailer within the state shall pay the tax due under this Article to the Department monthly and shall prepare a sworn return for each month in which the tax accrues on the form prescribed by the Department.
3. Any taxpayer who fails to pay the tax within ten days from the date upon which the payment becomes due shall be subject to and shall pay a penalty determined under section 42-1125, plus interest at the rate determined pursuant to section 42-1123 from the time the tax was due and payable until paid. The Department may waive any penalty or interest if it determines that the marijuana retailer has made a good faith attempt to comply with the requirements of this article.

#### 42-3404. Disposition of revenue

All taxes and penalties collected pursuant to this article shall be deposited, pursuant to sections 35-146 and 35-147, in the Marijuana Fund established by section 36-2838.

#### 42-3405. Rules

Not later than 6 months after the effective date of this Act, the Department shall adopt rules, not in conflict with title 36, chapter 28.2 and pursuant to title 41, chapter 6, necessary or convenient for the enforcement of this article, including, but not limited to, establishing a process for the payment, collection, and enforcement of the tax levied under this Article. The rules must not prohibit the operation of marijuana establishments, either expressly or through rules that make their operation unreasonably impracticable.

Sec. 5. Title 43, Chapter 1, Arizona Revised Statutes, is amended by adding section 43-108 to read:

43-108. Subtraction from gross income for ordinary and necessary expenses of a marijuana establishment

Notwithstanding any law to the contrary, in computing Arizona adjusted gross income, all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business as a marijuana establishment shall be subtracted from Arizona gross income.

#### Sec. 6. Exemption from rule making

For the purposes of this Act, the Arizona Department of Health Services and the Department of Revenue are exempt from the rule making requirements of Title 41, Chapter 6, Arizona Revised Statutes, for one year after the effective date of this Act except that the Department shall provide the public with an opportunity to comment on proposed rules and shall publish otherwise exempted rules.

#### Sec. 7. Severability

If a provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.