**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, 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 domain of criminals and be regulated under a controlled system, where businesses will be licensed and taxed, and the tax revenue will be dedicated to improving the welfare of the community.

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 possess the right 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;

(f) Driving while impaired by marijuana will remain illegal; and

(g) 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 state of Arizona further finds and declares that hemp 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 the Arizona Department of Gaming.

4. “Industrial hemp” means the plant of the genus cannabis and any part of such plant, whether grown 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 section13-3401. “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 and to transport marijuana from a marijuana establishment to another marijuana establishment, but not to a consumer.

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, 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. “Unreasonably impracticable” means that the measures necessary to comply with the rules 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 or while within the passenger compartment of a motor vehicle other than the living quarters of a motor home as defined in section 28-4301, that is located on any public highway or right-or-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) Undertaking any task while impaired by marijuana that would constitute negligence or professional malpractice.

(h) Buying for resale, selling, or dealing in marijuana in this state without first having procured a license.

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 violate federal law or regulations or 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.

**36-2823.** 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 operation of 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;

(e) Procedures to track marijuana and marijuana products produced 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 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 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, the number of servings in the package, a list of ingredients, allergens, and solvents used in the manufacturing of the marijuana products, 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 public signage, marketing, display, and advertising of marijuana and marijuana accessories;

(l) Procedures and requirements for the collection of fees and penalties imposed by this chapter;

(m) 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; 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 36-2827 of this Act, procedures for suspending or terminating the license of a licensee, and procedures for the appeal of penalties and licensing actions.

2. The Department may adopt rules pursuant to title 41, chapter 6 necessary or convenient to minimize the unlawful market for marijuana in Arizona, including rules establishing limitations on the number of marijuana cultivators or on the amount of marijuana produced by marijuana cultivators.

(a) The Department shall create a statewide license class system for marijuana cultivators that includes at least one class of limited marijuana cultivator licenses and that:

(i) Limits the amount of marijuana each class of licensee may cultivate based on a reasonable metric or combination of metrics such as amount of marijuana sold by the facility, square footage of the facility, lights, lumens or wattage, lit canopy, or the number of plants.

(ii) Requires the holder of a limited 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 will qualify for a higher class of marijuana cultivator license or for an unlimited marijuana cultivator license.

(iii) Establishes a reduced annual license fee for each limited marijuana cultivation license that does not exceed one-third of the amount required by the Department for an unlimited marijuana cultivator license.

(b) A quota on marijuana cultivator licenses or a quota on marijuana production by marijuana cultivators may be imposed pursuant to subsection 2 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 the price of marijuana. Any limitation or quota imposed must be reconsidered quarterly.

3. 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.

4. The Department shall approve or deny applications for licenses and shall issue and renew licenses pursuant to this chapter. The Department shall begin accepting and processing applications for marijuana establishments no later than six months after the effective date of this Act.

5. 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.

6. 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.

7. 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.

8. 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.

9. To ensure that individual privacy is protected:

(a) The Department shall 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 36-2831.

10. The Department shall 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.

**36-2824.** 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 locality prohibits the operation of a type of marijuana establishment it may not prohibit a nonprofit medical marijuana dispensary within the locality registered pursuant to Chapter 28.1 and in good standing from obtaining a license to operate the prohibited type of marijuana establishment within the locality.

 (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 consumption, production, processing, manufacturing, and transportation of marijuana when it is injurious or obnoxious to health or the environment or otherwise is a nuisance to a considerable number of persons;

(d) Establishing civil penalties for the violation of an ordinance or regulation enacted pursuant to this subsection; and

(e) Limiting the use of land for marijuana establishments to specified areas in the manner provided in title 9, chapter 4, article 6.1 and title 11, chapter 6, article 2. Zoning shall not be a basis for protesting or denying a license under this chapter.

4. If the Department does not adopt rules in accordance with 36-2823 or accept or process applications in accordance with 36-2826:

(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.

**36-2825.** 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 36-2834.

**36-2826.** Licensing of marijuana establishments

1. Until July 1, 2019:

(a) The Department shall only accept applications for marijuana cultivator licenses or marijuana retailer licenses from applicants that include the majority of individual principal officers and board members of a nonprofit medical marijuana dispensary registered and in good standing pursuant to Chapter 28.1.

(b) Each individual principal officer and board member of a nonprofit medical marijuana dispensary registered pursuant to Chapter 28.1 may be a controlling person of only one marijuana cultivator and only one marijuana retailer.

(c) The Department shall accept all applications for marijuana product manufacturers, marijuana distributors, and marijuana testing facilities.

2. 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.

3. 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.

4. 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 36-2824 and in effect at the time of application.

(c) The locality has enacted a numerical limit on the number of marijuana establishments pursuant to section 36-2824, and the Department has already licensed the maximum number of marijuana establishments allowed in the locality for the category of license that is sought.

(d) The property, at the time the license application is received by the Department, is located within three hundred horizontal feet of a church, 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.

(e) 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.

(f) An individual who will be a controlling person of a proposed marijuana testing facility is also a controlling person of a marijuana cultivator, marijuana manufacturer, or marijuana retailer.

5. 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 36-2824, 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.

7. The rejection of a complete marijuana establishment application pursuant to paragraph 4 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.

**36-2826.01.** 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 cultivator $30,000

For a renewal license for a marijuana cultivator $10,000

For the initial issuance of a license for a marijuana product manufacturer $10,000

For a renewal license for a  marijuana product manufacturer $3,300

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 $15,000

For a renewal license for a marijuana testing facility $5,000

 3. When a license renewal application is filed less than 30 days before the expiration of a marijuana establishment license, the Department may require the payment of a late application fee of up to $500.

4. Every two years, the secretary of state shall modify the dollar values specified in this section to account for inflation.

**36-2826.02.** Expiration and renewal

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

2. The Department shall issue a renewal license within 30 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.

**36-2826.03.** Licensing by a locality

1. If the Department does not adopt rules as required by 36-2823 necessary to allow the application for and issuance of licenses to operate marijuana establishments or if the Department fails to comply with section 36-2826 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 36-2824, of the locality 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 36-2824 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 36-2826, 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.

**36-2827.** Marijuana establishment operating requirements

1. In addition to requirements established by rule pursuant to section 36-2823 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 a 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.

**36-2828.** 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, consume, 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, 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.

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, or transport industrial hemp.

4. 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.

**36-2829.** 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 36-2823, 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.

**36-2830.** 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.

**36-2831.** 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; or

(2) The recipient is permitted to possess the marijuana pursuant to title 36, chapter 28.1.

**36-2832.** 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.

**36-2833.** Penalties

1. Restrictions on personal cultivation.
2. Except as otherwise provided in title 36, chapter 28.1, any person who:

(i) Produces marijuana plants where they are subject to public view without the use of binoculars, aircraft, or other optical aids;

(ii) Produces marijuana plants outside of an enclosed area that is equipped with a lock or other security device; or

(iii) Produces marijuana 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 consumes 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 consuming 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 or to a person consuming marijuana on private property with permission of the owner or lessor.

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 class 1 misdemeanor.

 5. A person under twenty-one years of age who solicits another person to purchase marijuana contrary to the law is guilty of a class 3 misdemeanor.

 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 consumed is guilty of a class 2 misdemeanor.

 7. Notwithstanding any other law, possession 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 a petty offense punishable by a fine of not more than 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 36-2828, 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 guilty of a petty offense punishable by a fine of not more than three-hundred dollars.

**36-2834.** Marijuana fund

1. The Marijuana Fund is established consisting of all monies deposited therein pursuant to sections 36-2825 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 $xx from the Medical Marijuana Fund within 60 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 36-2825 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 remit one-half of the licensee fees collected from marijuana establishments in a locality to the locality in which the marijuana establishments are located.

5. 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. Any unused monies at the end of the fiscal year revert to the fund.

6. The Department shall distribute, every three months, all monies in excess of the amount needed to implement and enforce this Act as follows:

(a) xx percent to the Department of Education.

(b) xx percent to the.

 7. All monies deposited from the Marijuana Fund are intended to supplement monies that are appropriated by the legislature and shall not be used to supplant those appropriated monies.

 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.

**36-2835.** Enforcement of this Act; mandamus

1. If the Department fails to adopt rules necessary for the implementation of this chapter within six months of the effective date of this chapter, 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 36-2826, 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(17).

**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 36-2834.

3. After January 1, 2020, the rate of tax under this section may be adjusted every two years to further the purposes of minimizing the illegal market for marijuana in Arizona and discouraging the use of marijuana by persons under the age of twenty-one.

**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 36-2834.

**42-3404.** 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 Gaming 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.