

**AN INITIATIVE MEASURE**

**AMENDING TITLE 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY REPEALING A.R.S. § 13-3405, A.R.S. § 13-3401(19), AND A.R.S. § 13-3401(4); AMENDING TITLE 36, CHAPTER 27, ARIZONA REVISED STATUTES, BY REPEALING A.R.S. § 36-2501(A)(2) AND A.R.S. § 36-2512(A)(3)(W); AMENDING TITLE 42, CHAPTER 3, ARIZONA REVISED STATUTES BY ADDING ARTICLE 13; AMENDING TITLE 43, CHAPTER 11, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SUBSECTION 25 TO SECTION 43-1122; AND AMENDING TITLE 3, ARIZONA REVISED STATUTES BY ADDING CHAPTER 21**

**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 “Safer Arizona Cannabis Legalization Act”

**Section 2. FINDINGS**

- A. The people of the State of Arizona find and declare the following:
1. Marijuana and cannabis have been used safely for thousands of years for recreational, medical, religious and industrial purposes.
  2. The states of Colorado, Washington, Oregon, California, Maine, Massachusetts, Nevada, Alaska and Washington D.C. have all legalized adult use of marijuana and cannabis and have enjoyed a substantial increase in tax revenue as a result.
  3. In those states that have legalized, there has been no increase in teen use of marijuana and cannabis.
  4. In the largest meta-study to date, The National Highway Traffic Safety Administration concluded in 2015 that there is no correlation between cannabis use and automobile accidents.
  5. The Chief Administrative Law Judge of the US Drug Enforcement Administration (DEA), Francis Young, determined correctly that “Marijuana, in its natural form, is one of the safest therapeutically active substances known to man” (In the Matter of Marijuana Rescheduling).
  6. Monopolies and oligopolies of any industry in the State of Arizona are antithetical to the values of Arizonans and the cannabis industry and is no exception and commerce should be left to the free market and its production and sale ought to be regulated only to the extent as the production and sale of any other agricultural commodity.
  7. In the interest of the public health and public safety, to protect and maintain individual rights and the people’s freedom and to better focus state and local law enforcement resources on crimes involving violence and personal property, marijuana and cannabis should be removed from the Arizona Uniform Controlled Substances Act and the possession, use, production, and sale of marijuana and cannabis should be removed from Arizona’s criminal code and legalized for adults 21 years of age and older.
  8. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state of Arizona in violation of federal law.
  9. Therefore, the purpose of this Act is to legalize the use, production, manufacture and sale of cannabis for persons 21 years of age or older, to remove laws currently in existence that prohibit such activities, and to protect persons 21 years of age or older from arrest and prosecution, criminal and other penalties and property forfeiture if such persons engage in the possession, use, production, and sale of marijuana and cannabis pursuant to this Chapter.

**Section 3.** Title 3, Arizona Revised Statutes, is amended by adding chapter 21, to read:

**CHAPTER 21**

**SAFER ARIZONA CANNABIS LEGALIZATION ACT**

**3-3701. DEFINITIONS:**

**IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

- A. The term “cannabis” shall be defined to include the following:
1. All plants of the genus Cannabis or any part of such plant, whether growing or not, the seeds of such plant, and the resin extracted from any part of a plant of the genus Cannabis; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin, and any of its parts and components, and every compound, manufacture, salt, derivative, mixture or preparation of such resin; and
  2. Any cannabinoids derived from cannabis, including, but not limited to tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabigerol (CBG).
- B. The term “cannabis accessories” shall be defined as equipment, products and 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, weighing, measuring, analyzing, packaging, repackaging, storing, containing, concealing, converting, isomerization, transdermal delivery, ingesting, inhaling or otherwise introducing into the human or animal body.

- C. The term “cannabis product” shall be defined to include cannabis that is ready for use or to be further processed for use and any product containing cannabis whether intended to be used for recreational, medical, spiritual, nutritional, industrial or any other purpose. Cannabis products shall include, but not be limited to, the dried cannabis flower, hashish oil concentrates, food and drink, clothing, building materials, paper, fiber, fuel, hemp lime bio-composite material, lubricants, plastics, paint, seed for cultivation, animal feed, veterinary medicine, or any other product, and the use of such products.
- D. The term “personal use” shall be defined as but is not limited to the consumption of cannabis that has more than .3%THC by people 21 years of age or older for relaxation, meditative, religious, recreational, medical or any other purposes.
- E. The term “cannabis consumer” shall be defined as a person who is at least 21 years of age and who obtains, purchases, or possesses cannabis, cannabis plants or cannabis products for personal use or for use by other persons who are at least 21 years of age.
- F. The term “personal grow” shall be defined as any cultivation of cannabis by a person of at least 21 years of age of up to 48 cannabis plants for personal use or for use by other persons who are at least 21 years of age and that is not engaged in sales activity for either wholesale or retail. There shall be no numeric limit on the number of plants in a personal grow that are not yet in a state of efflorescence/ inflorescence.
- G. The terms “home gardens” and “gardens” shall be defined as commercial productions that that have no plant limit and are operated by producers 21 years of age and older, and are engaged in growing, manufacturing, sales and distribution of cannabis and cannabis food products.
- H. The term “cannabis plant” shall be defined as any plant of the genus Cannabis that is in a stage efflorescence/inflorescence with its root system attached.
- I. The term “commercial grow” shall be defined as any cultivation of cannabis plants for wholesale to another business authorized to sell retail items of any kind, subject to generally applicable Arizona agriculture laws and regulations pertaining to other agricultural commodities including, but not limited to, tomatoes, romaine lettuce and any other common produce.
- J. The term “commercial production” shall be defined as the manufacturing or processing of cannabis products for wholesale to another business authorized to sell retail items of any kind.
- K. The term “manufacture” shall be defined to include the compounding, blending, extracting, infusing, or otherwise to make or prepare a cannabis product.
- L. The term “producer” shall be defined as owners, proprietors or tenants of agricultural lands, orchards, farms, gardens, home gardens, commercial grows, and personal grows whereon food products are grown, raised or prepared for market.
- M. The term “food product” shall be defined as every cannabis product in its natural or manufactured state produced for human or animal consumption.

### **3-3702. LEGALIZATION OF CANNABIS**

Cannabis, cannabis products, and cannabis accessories are hereby legalized. The Cannabis plant is placed under the regulatory control of the Department of Agriculture as provided for in this Chapter, and the following Arizona Revised Statutes prohibiting and classifying cannabis are hereby repealed: A.R.S. § 13-3405; A.R.S. § 13-3401(19); A.R.S. § 13-3401(4); A.R.S. § 36-2501(A)(2); and A.R.S. § 36-2512(A)(3)(w).

### **3-3703. RESTRICTIONS ON GOVERNMENT ACTION**

- A. Except as provided for in this chapter the state of Arizona is prohibited from taxing or regulating the use of genus Cannabis for any purpose by individuals or entities. For the purposes of this subsection, use is defined as including, but not limited to the possession, consumption, purchase, cultivation, production, manufacture, sale, transportation, importation, exportation, storage and any other use for recreational, medical, spiritual, nutritional, commercial and/or industrial purposes.
- B. The state of Arizona shall not prohibit or restrict attorneys or other licensed professionals from advising, counseling or representing persons or entities in the cannabis industry, even where such advice, counsel and representation may cause the client to violate the federal law.
- C. The state of Arizona is prohibited from the following activities:
  1. Partnering, conspiring, administrating, facilitating, or participating, with any other government entities such as the federal government, local governments, international agencies and governing bodies, Native American tribes, other states, foreign governments, and private entities from enforcing any law, or treaty pertaining to cannabis prohibitions and/or restrictions whether covered or not covered in this Chapter.
  2. Using state or federal funds to enforce any federal, local, international, and tribal laws or treaties pertaining to cannabis prohibitions and restrictions that are different from the provisions in this Chapter.
  3. Denying any privilege, license, registration, or benefit to a person based on that persons use of cannabis pursuant to this Chapter;
  4. Discriminating in any way, whether in government employment or otherwise, against a person based on that person’s use of cannabis pursuant to this Chapter.

### **3-3704. DISCRIMINATION PROHIBITED**

- A. For the purposes of medical care, including organ transplants, a persons use of cannabis shall not disqualify a person from medical care.
- B. 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.

- C. No person may possess or use cannabis 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 the purpose of this paragraph, "school" means any public, charter, or private school where children attend classes in preschool programs, kindergarten programs or grades one through twelve only.

### **3-3705. LOCAL CONTROL**

- A. Local jurisdictions shall not pass any laws, ordinances or regulations that restrict or control the location or operation of a cannabis related business not provided for in this chapter. Nor may a local jurisdiction tax, regulate, control, or pass any laws or regulations governing the use, consumption, transdermal delivery, sale, transfer, growth, cultivation, manufacture, production, storage, possession, transportation, or importation of cannabis, or any of the chemicals in any cannabis plant
- B. Local governments shall not prohibit the operation of cannabis related businesses within their jurisdictions.
- C. Local governments shall not enact any zoning requirement that is discriminatory, prohibitive, or exclusive to cannabis related business. Nor shall local governments enact any licensing fee, or tax not provided for in this chapter. Cannabis related business shall only be zoned according to existing zoning ordinances pertaining to the type of commercial activity that the business is engaged in, including, but not limited to retail, wholesale, agriculture, manufacturing, processing, distributing and storage.
- D. Local governments shall not require anything more for the operation of a cannabis related business than a standard Transaction Privilege Tax license (TPT) issued by the Arizona Department of Revenue and any business/occupational license, or sales tax license issued by the locality in which the business is based and/or operates if applicable. It shall be the responsibility of the individual doing business to obtain a Federal Employee Identification Number for federal taxes if applicable. Cannabis related business may be required to undergo any inspections that are normally required for non-cannabis businesses of a similar type unless otherwise exempted in this chapter. The Department of Revenue and all localities shall issue TPT and business licenses and any other permits necessary to operate a cannabis business within thirty (30) days of application. No cannabis specific licenses, permit or fees shall be mandated or required, nor shall any license or TPT be denied to any cannabis related business.
- E. Localities shall not ban home cultivation or any other cultivation of cannabis.

### **3-3707. LICENSING**

- A. No permit, license, or tax shall be required for the manufacture, cultivation, transportation, distribution, sales, or consumption of cannabis for personal use.
- B. A person or entity operating a business for income from the resale of cannabis, and cannabis products shall be required to obtain a TPT and any standard local tax, and or business license that is generally applicable to the type of commercial activity the business is engaged in, and shall be subject to generally applicable agriculture laws and regulations.
  - 1. No cannabis specific licenses shall be mandated, enacted or required, and no cannabis specific license fees shall be levied, enacted, mandated or required. No cannabis specific taxes shall be levied, mandated or required.
- C. The producers of food products on agricultural lands, farms and gardens shall never under any pretext be denied or restricted the right to sell and dispose of their products, except in the manner and to the extent provided in this chapter, and subject to inspection by lawful authority when the inspection is uniform as to the same product and without cost to the producer. Gardens, Home Gardens, and personal grows shall be exempt from inspection.
- D. The right to sell and dispose of food products shall extend to the producer in person, members of his family, his agents and all persons in his service, when the products are sold or disposed of on his behalf and for his benefit. No tax, license or fee shall be imposed, levied upon, demanded or collected from a producer for a sale of a food product as defined in this article, and no penalty or punishment shall be imposed on account of the sale, except for violation of laws providing for inspection.
- E. A municipal ordinance which seeks to impose or subject a producer to a tax, license or fee shall be void. All such products in common with similar products offered for sale by persons not the producers thereof shall be subject to inspection. A municipal ordinance providing for inspection shall not be valid unless it applies in the same manner and terms to other persons offering similar products for sale.
- F. In addition to being subject to generally applicable agriculture laws and regulations, any cannabis product produced by a commercial grow that is intended for wholesale or retail sales shall be contained or packaged and labeled or have signage with the following information; a symbol or other mark indicating that the package contains cannabis; information indicating tetrahydrocannabinol, cannabidiol, and cannabigerol potency level; spore count level of any mold present; residual solvents used; terpenes; trace metals; pesticides; herbicides; fungicides; information on whether the cannabis has been genetically modified (GMO/GM), and additives before the point of sale. The label shall also indicate the strain name, batch number, origin, and weight of the cannabis.
- G. Religious ministries shall be exempt from inspections, tax and licensing from the sale, cultivation, manufacturing, processing, and any other regulations of cannabis and shall function as meets their tradition. Ministries may prepare food and drink according to their tradition such as Kosher, Halal, and any other, and shall not be penalized by the state of Arizona for, nor restricted from, recommending cannabis for Spiritual Care to its members who seek such help.

### **3-3708. EXEMPTIONS**

- A. Commerce in cannabis that has more than .3% THC shall be limited to adults 21 years of age and older.
- B. No person or entity shall knowingly sell, or transfer cannabis that has more than .3% THC to a person under 21 years of age.
- C. No person under the age of 21 shall knowingly or lawfully purchase, cultivate, sell, possess, or use any cannabis that has more than .3% THC but there shall be no age restriction for the possession or use of cannabis with less than .3% THC.
- D. The use of cannabis may only be prohibited in government transportation, government buildings, public preschools, public elementary schools, and public secondary schools.

### **3-3709. DRIVING UNDER THE INFLUENCE**

This chapter does not prevent the imposition of any civil, criminal, or other penalties for operating, navigating or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of cannabis except, notwithstanding any other provision of law, no person may be arrested, prosecuted, convicted or penalized in any manner, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau or be denied any right or privilege, for having cannabis or its components and metabolites in the person's body or breath or in the person's possession. This section prohibits, among other things, arrest, prosecution, conviction or penalty for a DUI per se offense, which is currently defined by A.R.S. 28-1381(A)(3);

- A. In a prosecution for driving under the influence, including under A.R.S. 28-1381(A)(1) and A.R.S. 28-1381(A)(3), the State shall not be permitted to enter into evidence any test or analysis of a person's body, breath, hair, or skin that indicates the presence of cannabis or its components or metabolites therein.
- B. No person may be subject to a revocation, suspension or cancellation of a drivers license based solely on the presence of cannabis or its metabolites in the persons body or breath or in the person's possession;
- C. No person may be required to install an ignition interlock device or any other similar device in the persons car, home, body or other property based solely on a finding that there was cannabis or its metabolites in the person's body or breath or in the person's possession.

### **3-3710. GUN RIGHTS**

A person's right to own and bear arms shall not be infringed upon, nor put into any report, written electronic, digital or other, by law enforcement, the state of Arizona based on a person's use, consumption, sale, manufacture, cultivation, production, purchase, possession, or transportation of cannabis or cannabis products or cannabis accessories.

### **3-3711. SEARCH AND SEIZURE**

- A. No search or arrest warrants shall be issued nor shall any property be seized or forfeited based upon a finding that cannabis is or was in the process of being possessed, used, cultivated, extracted, produced or manufactured.
- B. As a penalty, if a warrant is issued in violation of subsection "A", the law enforcement agency that obtained the warrant shall be subject to a civil penalty of \$50,000 payable to the person who was arrested or who owns the property that was searched or seized. A private cause of action for the recovery of this penalty shall be accepted by the superior court having geographic jurisdiction over the place where the violation occurred. The filing fee for such an action shall not exceed \$50. There shall be no immunity from this penalty by statute or otherwise, including based on a claim of acting in "good faith".
- C. Anything discovered during a search based on a warrant issued in violation of subsection "A" shall not be admissible as evidence in any criminal, civil, administrative or occupational licensing action or proceeding, regardless of whether the search or inspection wherein the evidence was discovered was of that person's property or of the property of another.

### **3-3712. POST CONVICTION RELIEF**

- A. Any person who was sentenced under this section prior to the effective date of this amendment, shall be eligible for re-sentencing as follows.
  1. Any person who was sentenced to incarceration or probation pursuant to A.R.S. 13-3405(B) or A.R.S. 13-3408(B) prior to the effective date of this Act, may file a Motion to Modify Sentence with the judge, commissioner, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, commissioner, justice of the peace or magistrate's successor in office.
  2. No later than thirty (30) days from the filing date of the Motion to Modify Sentence, the court shall either grant the Motion to Modify Sentence or, if the State objects, schedule a contested resentencing hearing.
  3. At the resentencing hearing, the court shall determine the following:
    - a. If currently serving a term of incarceration or probation, whether the person would have been sentenced to a shorter term or no term at all of incarceration or probation under this Act.

b.If the court determines that a shorter term or no term at all would have been imposed under this section as amended, it shall grant the Motion to Modify Sentence and order a modification of sentence that is consistent with this Act. Under no circumstances may a resentencing under this section result in the imposition of additional penalties.

4. The court shall either grant or deny the Motion to Modify Sentence no later than sixty (60) days from the date of the filing of the Motion to Modify Sentence.
- B. Upon completion of a defendant's sentence imposed pursuant to this section, the defendant may file a Petition to Expunge Conviction with the judge, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, justice of the peace or magistrate's successor in office.
1. Within sixty (60) days of the filing of a Petition to Expunge Conviction, if the court determines that the defendant's conduct would not have been a criminal offense under this section as amended, then the court shall order that all convictions under that case number which were entered pursuant this section be expunged and cleared from all court records, police records and any other records of any other agency relating to such conviction and shall cause a copy of such order to be delivered to all law enforcement agencies and courts.
  2. The court shall order that the conviction be permanently obliterated from all records whether electronic, digital, written or other and shall order that the conviction not be used against the defendant for any purpose, including in any civil, criminal or administrative proceeding.

### **3-3713. PENALTIES**

- A. Unless a person 20 years of age or younger has a recommendation for medical cannabis from a physician they shall be remanded forthwith by the arresting agency to the authority of their parents or legal guardians or their own authority for ages 18-20.
- B. Any person who is under 21 years of age that sells or transfers cannabis containing more than .3% THC to a person that he or she knows to be under 18 years of age is subject to a civil penalty not to exceed \$500 per violation.
- C. Any person who is 21 years of age and older that sells or transfers cannabis containing more than .3% THC to a person he or she knows to be under the age of 18 is subject to civil penalty not to exceed \$2,500 per violation.
- D. Unless otherwise stated in this chapter all violations of this chapter are subject to a civil penalty not to exceed \$300 per violation.
  1. The first violation is not to exceed \$50.
  2. The second violation is not to exceed \$150.
  3. The third and subsequent violations are not to exceed \$300.

### **3-3714. PRIVATE PROPERTY AND BUSINESS OWNER RIGHTS**

- A. This chapter does not require an employer to allow or accommodate the possession or consumption of cannabis or cannabis products in the work place and does not affect the ability of employers to enact and enforce workplace policies restricting the consumption of cannabis by employees.
- B. This chapter does not prohibit a person who owns, manages, or leases real, commercial public or personal property from prohibiting or otherwise regulating the possession, consumption, production, processing, manufacture or sale of cannabis and cannabis products on or in that property except that possession of cannabis in or on the following places shall not be prohibited: (A) on public property other than in or on a public building or means of transportation, and (B) on the property of any public university, college, community college or postsecondary educational institution.

### **3-3715 INTERPRETATION**

In any criminal, civil, or administrative matter, if a provision of this act or its application to any person or circumstance is found to be ambiguous or unclear, the court shall interpret the provision against the government and in the manner that is most favorable to the individual in any criminal, civil, or administrative proceeding.

### **3-3716 SEVERABILITY**

If any provision of this Chapter, or the application of any such provision to any person or circumstance is held invalid by any court, the remainder of this Chapter, to the extent it can be given effect, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Act are severable.

**Section 4.** Title 42, Chapter 3, Arizona Revised Statutes, is amended by adding Article 13 to read:

#### ARTICLE 13.

#### Cannabis and Cannabis Products

### **42-3601. LEVY AND RATES OF TAX**

There is levied and imposed and there shall be collected by the Department of Revenue a tax on all cannabis and cannabis products sold to any person by a retailer that shall not exceed the prevailing general retail sales tax. There shall be no tax levied, imposed or collected on cannabis or cannabis products that are sold by producers, farmers, growers, and gardeners. No cannabis specific taxes may be levied.

#### **42-3602. DISPOSITION OF REVENUE**

- A. The Department of Revenue shall transfer each quarter all monies exceeding the amount needed to implement and enforce this chapter in any fiscal year as follows:
  - 1. Forty percent to school districts and charter schools in proportion to each school's weighted student count for the fiscal year pursuant to section 15-943, paragraph 2, subdivision a, for education related expenses, including compensation of teachers, art programs, construction, maintenance and operation costs of any kindergarten program and grades one through twelve.
- B. All taxes collected pursuant to this article shall be deposited, pursuant to sections 35-146 and 35-147 and then transferred quarterly to the K-12 general education fund in Arizona.
- C. All monies collected from penalties in this chapter shall be placed in the general education fund to be used by the Arizona Department of Education solely for the funding of special education programs.