

1 Brett W. Johnson (ASB #021527)
2 Sara J. Agne (ASB #026950)
3 SNELL & WILMER L.L.P.
4 One Arizona Center
5 400 E. Van Buren, Suite 1900
6 Phoenix, Arizona 85004-2202
7 Telephone: 602.382.6000
8 bwjohnson@swlaw.com
9 sagne@swlaw.com
10 Attorneys for Plaintiffs

COPY

JUL 11 2016



MICHAEL K. JEANES, CLERK
J. CAROENAS
DEPUTY CLERK

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

No. CV2016-009546

VERIFIED COMPLAINT

(A.R.S. §§ 19-122(A), (C) Challenge to Sufficiency of Initiative Petition)

(Entitled to Immediate Trial Under A.R.S. §§ 19-122(A), (C))

11 SETH LEIBSOHN, a qualified elector and
12 taxpayer of the State of Arizona, SHEILA
13 POLK, a qualified elector and taxpayer of
14 the State of Arizona, BILL
15 MONTGOMERY, a qualified elector and
16 taxpayer of the State of Arizona, THE
17 ARIZONA CHAMBER OF COMMERCE
18 AND INDUSTRY, an Arizona non-profit
19 corporation, SALLY SCHINDEL, a
20 qualified elector and taxpayer of the State
21 of Arizona, MOSES SANCHEZ, a
22 qualified elector and taxpayer of the State
23 of Arizona, PAUL BOYER, a qualified
24 elector and taxpayer of the State of Arizona,
25 PAUL SMITH, a qualified elector and
26 taxpayer of the State of Arizona, MERILEE
27 FOWLER, a qualified elector and taxpayer
28 of the State of Arizona, MICHELLE
MOWREY, a qualified elector and taxpayer
of the State of Arizona, IVAN
ANDERSON, a qualified elector and
taxpayer of the State of Arizona, DALE
GUTHRIE, M.D., a qualified elector and
taxpayer in the State of Arizona, TODD
GRIFFITH, a qualified elector and taxpayer
in the State of Arizona,

Plaintiffs,

v.

MICHELE REAGAN, in her official
capacity as Secretary of State for the State
of Arizona,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant,
and
CAMPAIGN TO REGULATE
MARIJUANA LIKE ALCOHOL,
SPONSORED BY THE MARIJUANA
POLICY PROJECT, YES ON I-08-2016,
an incorporated Arizona political
committee,
Real Party in Interest.

For their Verified Complaint, Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. This is a challenge to the legal sufficiency of an initiative measure titled “Regulation and Taxation of Marijuana Act” (the “Initiative”) with the serial number I-08-2016 by Defendant Arizona Secretary of State, the application for which was filed on May 11, 2015. An accurate copy of the Initiative is attached as Exhibit A.

2. The Initiative’s stated purpose is to regulate marijuana “in a manner similar to alcohol” by making “the use of marijuana . . . legal for persons who are at least twenty-one years of age.” Initiative § 2(C). The Initiative contains numerous operative provisions covering multiple statutory titles, including:

- a. the addition of Chapter 28.2 to Title 36 of the Arizona Revised Statutes, which would add 21 wide-ranging statutes to Arizona law, Initiative § 3;
- b. the addition of Article 10 to Title 42 of the Arizona Revised Statutes, which would add five statutes to Arizona law, Initiative § 4;
- c. the addition of a new statute to Title 43, Chapter 1, Article 1, Initiative § 5; and
- d. the creation of a seven-member “Marijuana Commission,” Initiative §§ 3, 6.

3. As set forth in this Verified Complaint, the Initiative circulated among the electorate to gain support from voters was circulated under false pretenses. Namely, the title of the initiative and the summary that the Real Party in Interest provided to voters

1 were incomplete and materially misleading such that they created a substantial danger of
2 fraud, confusion, and unfairness. The Initiative's title is included in Exhibit A, and an
3 accurate copy of the Initiative summary is included on the Application for Initiative or
4 Referendum Petition Serial Number, which is attached as Exhibit B.

5 4. The title of the Initiative failed to indicate the sheer volume of different
6 subjects embraced or impacted by the Initiative's text, thereby so misleading voters as to
7 cause a fraud on the electorate.

8 5. The Initiative also violated the Revenue Source Rule in the Arizona
9 Constitution (ARIZ. CONST. art. IX, § 23) by diverting funds from other sources to
10 immediately fund the Initiative. Initiative § 3 (proposed A.R.S. § 36-2867(B)).

11 PARTIES

12 6. Plaintiff Seth Leibsohn is a qualified elector and taxpayer in the State of
13 Arizona. He is also the Chairman of Arizonans for Responsible Drug Policy ("ARDP"), a
14 registered political committee with the Arizona Secretary of State that both opposes the
15 legalization of recreational marijuana and that raises awareness about the dangers of
16 marijuana legalization, and the Chairman of the Board for notMYkid, one of the most
17 well-known substance abuse prevention organizations in Arizona. Plaintiff Leibsohn, a
18 nationally recognized expert on drug policy, regularly studies, opines, and is cited on
19 national marijuana policy and is concerned about the misleading and confusing way that
20 the Initiative's title and "summary" do not reasonably convey what the Initiative would do
21 if it passed. Plaintiff Leibsohn is also concerned about the potential fraud on the electorate
22 that would result if the Initiative were placed on the ballot, stemming from the
23 misstatements and falsehoods contained in the Initiative's "summary."

24 7. Plaintiff Sheila Polk is a qualified elector and taxpayer in the State of
25 Arizona. She is also the Yavapai County Attorney, and was previously a Deputy County
26 Attorney as well as an Assistant Attorney General. Plaintiff Polk is also the Vice Chair of
27 ARDP, and she is a co-chair of MATFORCE, a non-profit that seeks to reduce substance
28 abuse in Yavapai County. Plaintiff Polk closely follows marijuana legalization efforts

1 throughout the country and is very concerned by the Initiative's confusing and misleading
2 language. Plaintiff Polk brings this action in her individual capacity only.

3 8. Plaintiff Bill Montgomery is a qualified elector and taxpayer in the State of
4 Arizona. He is also the Maricopa County Attorney, and he is on the Board of Directors
5 for notMYkid. Plaintiff Montgomery is concerned about the fraud on the electorate that
6 would occur if the Initiative were placed on the ballot, due to the misleading way that the
7 Initiative's title and "summary" either misrepresent what the Initiative actually does or
8 obscure important consequences that Arizona voters would want to know before casting a
9 vote or signing a petition. Plaintiff Montgomery brings this action in his individual
10 capacity only.

11 9. Plaintiff Arizona Chamber of Commerce and Industry (the "Chamber") is
12 concerned that the Initiative's significant impact on employer rights is not addressed in
13 the "summary," and the technical and misleading phrasing of the Initiative's title, text, and
14 "summary" will prevent voters from understanding the true meaning of the Initiative. The
15 Chamber's members will be affected by the Initiative's substantial changes to state laws
16 regarding workplace drug policies, employment law, and landlord rights.

17 10. Plaintiff Sally Schindel is a qualified elector and taxpayer in the State of
18 Arizona. She is a volunteer with MATFORCE, and gives educational presentations across
19 the country regarding marijuana addiction. Plaintiff Schindel's son died by suicide when
20 he could not end his marijuana addiction. She fears that other families will face similar
21 tragedies if recreational use of marijuana is legalized in Arizona. Plaintiff Schindel is
22 concerned that the title and summary of the Initiative are misleading, as they do not
23 convey the actual scope of the Initiative's changes to state law and the likely impact of the
24 Initiative on Arizona families. Plaintiff Schindel is suing in her own capacity only.

25 11. Plaintiff Moses Sanchez is a qualified elector and taxpayer in the State of
26 Arizona. He is a member of the Tempe Union High School District Governing Board, an
27 adjunct professor at South Mountain Community College, a United States Navy Reservist,
28 and a small business owner. Plaintiff Sanchez is concerned about the purposefully

1 misleading “summary” that purports to describe the principal provisions of the Initiative
2 and the immense harm that the Initiative’s proposed language would have on Arizona
3 students, their schools, his fellow educators, and his colleagues in the United States
4 military, including citizen reservist and national guard members. He is also concerned that
5 the Initiative amounts to an unfunded mandate that is being purposefully misrepresented
6 to Arizona voters while failing to provide for the exorbitant costs that multiple state
7 agencies would incur to align their policies and procedures with the proposed Initiative.
8 Plaintiff Sanchez is suing in his personal capacity only.

9 12. Plaintiff Paul Boyer is a qualified elector and taxpayer in the State of
10 Arizona. He is a local high school teacher and a member of the Arizona House of
11 Representatives. Representative Boyer is the Chairman of the House Education
12 Committee and a member of the House Health and County and Municipal Affairs
13 Committees. He is concerned about the failure of the Initiative’s title or “summary” to
14 accurately capture the Initiative’s broad scope of statutory changes, particularly as the
15 Legislature will not be able to modify these changes, even if appropriate, under the current
16 voter initiative laws. Plaintiff Boyer is also concerned that the Initiative text does not
17 include the required funding plan to cover the increased costs resulting from the
18 Initiative’s changes. Plaintiff Boyer is suing in his own capacity only.

19 13. Plaintiff Paul Smith is a qualified elector and taxpayer in the State of
20 Arizona. Plaintiff Smith is the Practice Administrator for the Crisis Stabilization Unit and
21 Director of Pharmacy Operations for a community mental health services clinic. As a
22 medical professional, Plaintiff Smith is aware of the negative effects of marijuana usage
23 on substance abuse and mental health issues, and the potential interactions with other legal
24 pharmaceutical drugs. He is concerned the Initiative’s text and summary are convoluted
25 and deceptive to voters, because they do not explain the Initiative’s significant changes to
26 state drug laws. Plaintiff Smith will be impacted by the Initiative’s effects on his work
27 providing mental health services and legal pharmaceutical drugs to the clinic’s patients.
28

1 14. Plaintiff Merilee Fowler is a qualified elector and taxpayer in the State of
2 Arizona. Plaintiff Fowler is the Executive Director of MATFORCE and the Secretary and
3 Treasurer for Arizonans for Responsible Drug Policy. As a substance abuse education
4 provider, Plaintiff Fowler is familiar with the data regarding marijuana use in Arizona and
5 legalization efforts and effects nationwide. Plaintiff Fowler is concerned the Initiative's
6 title and summary do not communicate the impact of the Initiative to voters, as neither
7 explains that there will not be limits on the amount of THC legally allowed in marijuana,
8 addresses the exceptions to municipal regulation of recreational marijuana stores, or
9 describes the statutory changes to employment law. Plaintiff Fowler is suing in her
10 personal capacity only.

11 15. Plaintiff Michelle Mowrey is a qualified elector and taxpayer in the State of
12 Arizona. She was the co-founder of Drug Free AZ and serves as the Director of
13 Prevention Works Arizona, a substance abuse prevention education organization. She is
14 concerned the Initiative's title falsely indicates that it will regulate marijuana like alcohol,
15 but the Initiative text actually imposes fewer legal restrictions on marijuana use or
16 possession. Plaintiff Mowrey has recognized that the Initiative's summary fraudulently
17 ignores the Initiative's limitations on municipal regulation of marijuana retail stores and
18 does not describe how organizations should remain in compliance with both federal and
19 the revised state drug laws. Plaintiff Mowrey is suing in her personal capacity only.

20 16. Plaintiff Ivan Anderson is a qualified elector and a taxpayer in the State of
21 Arizona. He is also a firefighter paramedic in Arizona's Verde Valley District, and a
22 volunteer with MATFORCE, where he educates youth and adults across Yavapai County
23 on the medical dangers of substance abuse. Plaintiff Anderson is concerned that the
24 purposefully misleading "summary" paints an innocuous picture of the Initiative that
25 appears fraudulent when compared to the actual text of the Initiative. He is also concerned
26 that the expansive, confusing Initiative would greatly harm public safety in Arizona while
27 making it more challenging for firefighters and public safety personnel to do their jobs,
28 including providing effective medical treatment for the public.

1 17. Plaintiff Dale Guthrie, M.D. is a qualified elector and taxpayer in the State
2 of Arizona. Plaintiff Guthrie is a practicing and licensed pediatrician who operates his
3 own medical office and medical staff, several of whom are also licensed practitioners. He
4 is also the past-President of the Arizona Chapter of the American Academy of Pediatrics.
5 As a physician, Dr. Guthrie is aware of the implications and detrimental effects of drug
6 policy on public health. Dr. Guthrie has recognized that the Initiative and its “summary”
7 are misleading and will lead to voter confusion. He has also recognized that the
8 Initiative’s “summary” and title conceal the full effect of the Initiative. Plaintiff Guthrie
9 will be impacted by the Initiative’s effects in his role as a physician supervising other
10 licensed practitioners responsible for dealing with the health and well-being of young
11 people in the State of Arizona.

12 18. Plaintiff Todd Griffith is a qualified elector and taxpayer in the State of
13 Arizona. Plaintiff Griffith has been a forensic scientist for 47 years, 43 of which he spent
14 at the Department of Public Safety, and the last 20 of which he served as the director of
15 DPS’s crime laboratories, which conducts the majority of drug and other testing for most
16 law enforcement agencies in Arizona. Plaintiff Griffith also assisted in the drafting of
17 many of Arizona’s drug-related statutes, including Arizona’s impaired driving statutes. As
18 a forensic scientist, Plaintiff Griffith is concerned about the failure of the Initiative’s title
19 and “summary” to inform the electorate about the Initiative’s alteration of impaired-
20 driving statutes he helped draft. Plaintiff Griffith is also concerned about the misleading
21 and fraudulent way that the Initiative falsely implies it will prevent dangerous chemical
22 extraction operations out of people’s homes and the Initiative’s failure to regulate
23 marijuana like alcohol, despite the Initiative’s claim that it will.

24 19. Each of these Plaintiffs has a strong interest in maintaining the integrity of
25 the electoral process and demanding ballot initiatives that are not misleading and that
26 conform to constitutional and statutory requirements. Each Plaintiff and the Arizona
27 electorate as a whole will suffer irreparable injury if the Initiative appears on the ballot in
28 its misleading and unconstitutional form.

1 health and education; (2) allows adults twenty-one years of age and older to
2 possess and to privately consume and grow limited amounts of marijuana;
3 (3) creates a system in which licensed businesses can produce and sell
4 marijuana; (4) establishes a Department of Marijuana Licenses and Control
5 to regulate the cultivation, manufacturing, testing, transportation, and sale of
6 marijuana; and (5) provides local governments with the authority to regulate
7 and limit marijuana businesses. [Exhibit B]

8 36. The Petition Summary fails to address or mention many of the Initiative's
9 substantive provisions or the direct or indirect impact on other existing Arizona laws.

10 37. The Initiative claims that it will result in regulating marijuana "in a manner
11 similar to alcohol." Initiative § 2(B).

12 38. To accomplish this claim, the Initiative seeks to add a host of statutes that
13 impact many areas of law in a way unfamiliar to the regulation of alcohol.

14 39. As set forth above, and in more detail below, the Initiative's operative
15 provisions embrace far too many subjects than allowed for a single ballot initiative, and
16 the Initiative's simple title and Petition Summary are misleading when compared to what
17 the Initiative actually accomplishes.

18 40. The Initiative is so confusing and misleading that even those within Yes on
19 I-08-2016 disagree about what the Initiative's operative provisions mean, with Yes on I-
20 08-2016's attorney stating that the Initiative does not allow cities to ban citizens from
21 growing marijuana in their homes, while Yes on I-08-2016's political director says the
22 Initiative does allow cities to ban home growing. *See Ray Stern, Arizona Marijuana-*
23 *Legalization Initiative Doesn't Let Cities Ban Home Cultivation, Campaign Insists,*
24 *Phoenix New Times, Feb. 25, 2016, [http://www.phoenixnewtimes.com/news/arizona-](http://www.phoenixnewtimes.com/news/arizona-marijuana-legalization-initiative-doesnt-let-cities-ban-home-cultivation-campaign-insists-8080560)*
[marijuana-legalization-initiative-doesnt-let-cities-ban-home-cultivation-campaign-insists-](http://www.phoenixnewtimes.com/news/arizona-marijuana-legalization-initiative-doesnt-let-cities-ban-home-cultivation-campaign-insists-8080560)
[8080560](http://www.phoenixnewtimes.com/news/arizona-marijuana-legalization-initiative-doesnt-let-cities-ban-home-cultivation-campaign-insists-8080560).

25 41. The Initiative's language is so confusing and misleading, the business
26 community is greatly concerned about the intended, yet unstated, consequences of the
27 Initiative, with Plaintiff Arizona Chamber of Commerce and Industry opposing the
28 Initiative due to the many direct and indirect negative impacts in the workplace, despite

1 the Initiative's provision that purports to permit employers to disallow consumption and
2 possession of marijuana "in the workplace." Initiative § 3 (proposed A.R.S. § 36-
3 2852(B)); Mike Sunnucks, *Powerful Business Group Opposes Arizona Marijuana*
4 *Legalization*, Phoenix Business Journal, June 12, 2015,
5 [http://www.bizjournals.com/phoenix/news/2015/06/12/powerful-business-group-opposes-](http://www.bizjournals.com/phoenix/news/2015/06/12/powerful-business-group-opposes-arizona-marijuana.html)
6 [arizona-marijuana.html](http://www.bizjournals.com/phoenix/news/2015/06/12/powerful-business-group-opposes-arizona-marijuana.html).

7 42. The Initiative also violates the Revenue Source Rule in Arizona's
8 Constitution. *See* ARIZ. CONST. art. IX, § 23.

9 **The Initiative significantly impacts public safety laws.**

10 43. The Initiative allegedly protects marijuana users twenty-one years and older
11 from "prosecution [or] penalty" for using marijuana, "notwithstanding" any other law.
12 Initiative § 3 (proposed A.R.S. § 36-2860(A)).

13 44. The Initiative further protects a person from being penalized "solely because
14 of the presence of metabolites or components of marijuana in the person's body."
15 Initiative § 3 (proposed A.R.S. § 36-2860(B)).

16 45. Although silent in the Initiative summary, the Initiative conflicts with, and
17 seeks to invalidate, Arizona's *per se* Driving Under the Influence of Drugs ("DUID") law,
18 which allows a person to be penalized solely for the presence of active marijuana
19 metabolites or components in the person's body under A.R.S. § 28-1381(A)(3).

20 46. Because the Arizona Constitution prohibits the Legislature from repealing
21 voter-approved initiatives, ARIZ. CONST. art. 4 § 1(6), the Initiative would also prohibit
22 the Legislature from *ever* creating any *per se* DUID law in the future based on the
23 presence of a certain amount of marijuana metabolites or components in a person's body.
24 Initiative § 3 (proposed A.R.S. § 36-2860(B)).

25 47. Contrary to the Initiative's proposed regulation of marijuana, Arizona law
26 regulates alcohol by including a *per se* DUI law based on the mere presence of certain
27 amounts of alcohol in a person's body under A.R.S. § 28-1384(A)(2).

1 to effectuate policies relating to workplace sites and times to using, as discussed below, a
2 higher potency of marijuana than is referenced in current law.

3 54. Furthermore, the Initiative places a very high burden of proof on an
4 employer to prove an employee is marijuana-impaired before the employer may take
5 action against the employee. Initiative § 3 (proposed ARS § 36-2852(A)(7) & § 36-
6 2852(B)). Specifically, proposed ARS §36-2852(A)(7) states that the Initiative “does not
7 prevent the imposition of any . . . penalty on a person for . . . performing any task while
8 impaired by marijuana . . . that would constitute negligence or professional malpractice.”

9 55. The Initiative fails to define “negligence,” “professional malpractice,” or,
10 for the safety of the community and other employees, “impairment.”

11 56. The Initiative, therefore, seeks to prohibit an employer from terminating or
12 possibly even hiring an employee solely because the employee’s drug test reveals the
13 presence of a marijuana metabolite or components of marijuana in the person’s body,
14 contrary to what is currently allowed under A.R.S. §§ 23-493 *et seq.* Presumably, a
15 litigable act of negligence or malpractice (that includes an existing duty, a breach of that
16 duty, which breach caused some damage) would have to first take place.

17 57. The Initiative includes no exceptions for those that employ first responders
18 or teachers, which means that in most instances, an employer would not be able take
19 action against those categories of employees until the employee first *actually* commits
20 negligence or professional malpractice, despite actually being impaired. And the Initiative
21 flatly forbids the State from penalizing public employees based on a positive drug test for
22 marijuana. Initiative § 3 (proposed A.R.S. § 36-2860(B)).

23 58. Unlike the Medical Marijuana Act, A.R.S. § 36-2813(B), the Initiative does
24 not contain any exemptions for employers, such as governmental agencies, federal
25 government contractors, construction, or transportation companies, that are subject to
26 federal laws that conflict with the Initiatives provisions, thereby putting employers in the
27 position of having to choose whether to comply with Arizona law or federal law.
28

1 59. The Initiative also creates a statutory right to possess “marijuana
2 accessories” such as pipes and bongs. Initiative §3 (proposed A.R.S. §§ 36-2851(8) & 36-
3 2861).

4 60. The Initiative does not allow employers to limit or otherwise regulate an
5 employee’s possession of “marijuana accessories,” which significantly hinders employers
6 of the ability to control its marketing brand, infringe upon religious freedoms, and which
7 could lead to serious safety issues in multiple industries, including health and construction
8 industries.

9 61. Nothing in the Initiative’s title or Petition Summary indicates that the
10 Initiative will have these effects on Arizona’s employment laws.

11 62. Moreover, there is dissonance between what the Initiative’s language does
12 and what Yes on I-08-2016 says the Initiative does, with Yes on I-08-2016’s spokesman
13 stating that the Initiative has no effect whatsoever on employers’ existing drug policies,
14 when the Initiative itself only allows employers to ban marijuana use that would occur “in
15 the workplace.” Initiative § 3 (proposed A.R.S. § 36-2852(B)); *Chamber Hears Debate*
16 *Over Marijuana Legalization*, THE FOUNTAIN HILLS TIMES, Oct. 1, 2015 (quoting Yes on
17 I-08-2016’s spokesman). Additionally, the Initiative *does* change current workplace drug
18 testing policies by requiring an actual act of negligence or malpractice before discipline
19 can take place.

20
21
22
23
24
25
26
27
28

The Initiative impacts public benefits laws.

63. Public benefits in Arizona like the Cash Assistance program include a drug testing component, and a person that tests positive for an “illegal drug” is ineligible to receive Cash Assistance for at least twelve months. 2015 Ariz. Sess. Laws Ch. 18, § 5.

64. Marijuana is an “illegal drug” for purposes of determining eligibility for public benefits like the Cash Assistance program. 2015 Ariz. Sess. Laws Ch. 18, § 5; 21 U.S.C. § 812(c).

65. The Initiative seeks to invalidate Arizona’s current drug testing laws for Cash Assistance recipients by precluding the state from penalizing a person because of the person’s use of marijuana or solely because the person tests positive for a marijuana component or metabolite. Initiative § 3 (proposed A.R.S. §§ 36-2860(A) & (B)).

66. Arizona law also does not allow a person to receive Unemployment Insurance if the person “refuse[s] an offer of suitable work,” and a person is considered to refuse an offer of suitable work if the person receives a job offer that is later withdrawn because the person tests positive for drugs, including marijuana. A.R.S. § 23-776(D).

67. The Initiative seeks to invalidate Arizona’s current Unemployment Insurance drug testing laws as related to marijuana by precluding the state from penalizing a person by denying Unemployment Insurance based on the person’s use of marijuana or solely because the person tested positive for a marijuana component or metabolite. Initiative § 3 (proposed A.R.S. §§ 36-2860(A) & (B)).

68. Nothing in the Initiative’s title or Petition Summary indicates that the Initiative will have these effects on Arizona’s public benefits laws.

The Initiative impacts rights for landlords and homeowners’ associations, as well as properties more generally.

69. Under current Arizona law, a landlord has the right to prohibit a tenant from “using or storing” marijuana on the landlord’s property. A.R.S. § 33-1368(A).

70. The Initiative only allows a landlord to prohibit “the smoking, production, processing, manufacture or sale of marijuana and marijuana products on or in” the

1 landlord's property, but not the possession of marijuana or use of marijuana through
2 means other than smoking. Initiative § 3 (proposed A.R.S. §§ 36-2852(C)).

3 71. Currently, no Arizona law would prohibit a homeowners' association
4 ("HOA") from banning marijuana possession or growth on or in its members' properties,
5 but under the Initiative, an HOA would no longer be able ban its members from
6 possessing, consuming, or growing marijuana. Initiative § 3 (proposed A.R.S. §§ 36-
7 2860(A))

8 72. The Initiative also creates the possibility that single properties could become
9 coordinated, large scale drug grow operations, because the Initiative allows a person to
10 grow up to six plants at the person's "residence," and a single building can comprise
11 multiple "residences," such as dormitories, halfway houses, condominiums, and apartment
12 complexes, thereby allowing much more than just six plants to be grown on a single
13 property. Initiative § 3 (proposed A.R.S. § 36-2860(A)(2)).

14 73. The Initiative is entirely unclear on how it impacts a homeowners'
15 association or landlord under proposed A.R.S. § 36-2866(F), which makes it a crime for
16 "any unlicensed person [to] produce[] marijuana plants pursuant to section 36-2860 where
17 they are subject to public view without the use of binoculars, aircraft or other optical aids,
18 where production is prohibited by a person who owns, manages or leases the property
19 where the marijuana is produced, in any outdoor area or outside of an enclosed area that is
20 equipped with a lock or other security device." Initiative § 3 (proposed A.R.S. § 36-
21 2860(F)).

22 a. Although this provision appears to regulate where "any unlicensed
23 person" may produce marijuana, in reality this provision is subject to at least three
24 interpretations: (1) because there is no disjunctive "or" before "where production is
25 prohibited," homegrown marijuana plants cannot be banned on any property in Arizona
26 unless the landlord prohibits such growth; (2) likewise, growing marijuana plants in plain
27 sight is restricted only where a landlord has banned production; and (3) a person can
28

1 home-grow marijuana in the person’s front or back yard in plain sight, so long as the yard
2 is fenced and has a “lock or other security device.”

3 b. Colorado’s recreational marijuana law includes a provision that
4 expressly requires “growing” marijuana at home to “take place in an enclosed, locked
5 space [that] is not conducted openly or publicly.” The Marijuana Policy Project chose not
6 to draft the Initiative with the same, clear language, which supports the three
7 interpretations above that the Initiative does not require home-grow operations to occur in
8 “an enclosed, locked space,” unless the person doing the growing is a tenant and the
9 landlord has forbidden home-growing.

10 c. The Initiative also creates a statutory right to “possess, use, purchase,
11 obtain, process, [and] manufacture” marijuana, which further bolsters the interpretations
12 above that, outside the landlord–tenant context, a person has a right to grow marijuana at
13 his residence in plain sight.

14 74. Nothing in the Initiative’s title or Petition Summary indicates that the
15 Initiative will have these effects on the rights of Arizona’s landlords.

16 **The Initiative impacts Arizona’s family laws.**

17 75. Under current Arizona law, when a court makes a decision about custody
18 and parenting time for a minor child, the court makes its decision based on what is in “the
19 best interests of the child.” A.R.S. § 25-403(A).

20 76. Determining the best interests of the child usually includes considering a
21 parent’s drug and alcohol use, regardless of the parent’s behavior while using those
22 substances. *See Montoya v. Superior Ct. in & for Cty. Of Maricopa*, 173 Ariz. 129, 131
23 (App. 1992) (“[W]hether the father used drugs may be relevant in determining his parental
24 fitness”); *Elaine C. v. Robert C.*, No. 1 CA-JV 13-0103, 2013 WL 6095823, at *3–4
25 (Ariz. App. Nov. 19, 2013) (“[M]other’s continued alcohol abuse . . . supported the trial
26 court’s finding that there was substantial likelihood mother would be unable to parent the
27 children effectively in the near future.”).

28

1 77. The Initiative seeks to change Arizona's current family laws by precluding a
2 court from denying a person "custody of or visitation or parenting time with a minor . . .
3 solely for conduct that is allowed under [the Initiative], unless the person's *behavior* is
4 contrary to the best interest of the child." Initiative § 3 (proposed A.R.S. § 36-2860(D)(1)
5 (emphasis added)).

6 78. If the Initiative became law, it would regulate marijuana more favorably
7 than alcohol because courts would still be allowed to deny custody or parenting time
8 solely for a parent's alcohol use but not solely for a person's marijuana use or home
9 growth, unless that use and growth was also accompanied by separate "behavior" that is
10 against the child's best interest. The fact of child access or proximity to marijuana use or
11 growth or drug paraphernalia alone would not be enough to protect a child's welfare.

12 79. Nothing in the Initiative's title or Petition Summary indicates that the
13 Initiative will have this effect on Arizona's family law, or that the Initiative will regulate
14 marijuana *more favorably* than alcohol.

15 **The Initiative impacts military personnel.**

16 80. The Department of Defense ("DoD") currently requires all service members
17 to be tested for marijuana, among other drugs. Department of Defense Instruction Number
18 1010.01, *Military Personnel Drug Abuse Testing Program* (Sept. 13, 2012), available at
19 <http://www.dtic.mil/whs/directives/corres/pdf/101001p.pdf>. The Arizona National Guard
20 and Arizona military reservists are subject to these regulations to ensure consistency and
21 cohesiveness in the nation's military force.

22 81. Service members that violate the DoD's mandate and use or possess
23 marijuana are subject to punishment by court-martial. 10 U.S.C. § 912a. Service members
24 that lawfully drink alcohol are not subject to such punishment.

25 82. The Initiative purports to make marijuana "legal" in Arizona, but does not
26 indicate that, for Arizona military service members, use of marijuana remains illegal and
27 subjects them to serious punishment.

1 83. Nothing in the Initiative's title or Petition Summary indicates that the
2 Initiative will create this conflict for Arizona service members.

3 **The Initiative does not provide most local governments with the authority**
4 **to limit marijuana businesses.**

5 84. The Petition Summary states that "[t]he Regulation and Taxation of
6 Marijuana Act . . . provides local governments with the authority to regulate and limit
7 marijuana businesses." (Exhibit B.)

8 85. In fact, the language of the Initiative operates such that most local
9 governments will actually *not* be able to limit marijuana businesses to the extent a medical
10 marijuana business is operational in that locality when the Initiative becomes law.
11 Proposed A.R.S. §§ 36-2856(A) and (B)(2) explicitly state that localities "may not
12 prohibit a reorganized marijuana business established by a nonprofit medical marijuana
13 dispensary operating within the locality from operating the prohibited type of marijuana
14 establishment within the locality in any area that is zoned to allow the operation of a
15 nonprofit medical marijuana dispensary." Importantly, "locality" can mean "a county."
16 Initiative § 3 (proposed A.R.S. § 36-2851(5)).

17 86. Given the many medical businesses throughout the state, it is false and
18 misleading to state that the Initiative provides local governments the authority to regulate
19 and limit marijuana businesses.

20 87. The Initiative also contains no qualified immunity for government officials
21 who face conflicting state and federal laws, thereby potentially putting public servants in
22 the position of facing potential liability for choosing to comply with either state or federal
23 law in the execution of their duties. The Initiative's title and Petition Summary fail to
24 indicate that the Initiative will have this impact on government employees.

25 **The Initiative impacts and redefines existing drug laws.**

26 88. Arizona law currently defines "marijuana" to exclude the resin extracted
27 from a marijuana plant, which is considered the narcotic drug "cannabis." A.R.S. §§ 13-
28 3401(4), (19), (20)(w).

1 89. Under current Arizona law, the penalties for possessing or producing
2 marijuana are different than the possession or production of cannabis. *Compare* A.R.S.
3 § 13-3405 (marijuana penalties), *with* A.R.S. § 13-3408 (narcotic penalties) *and* A.R.S.
4 § 13-3401(20)(w) (defining cannabis as a narcotic drug).

5 90. The Initiative redefines marijuana to include the resin extracted from
6 marijuana, contrary to current Arizona law. Initiative § 3 (proposed A.R.S. § 36-
7 2851(7)(A)).

8 91. The Initiative, therefore, seeks to legalize not only marijuana, as the
9 Initiative's title and Petition Summary suggests, but also hashish, marijuana concentrate,
10 and edible marijuana food products.

11 92. Nothing in the Initiative's title or Petition Summary indicates that the
12 Initiative will redefine and alter Arizona's existing drug laws in this way and allow the
13 possession and use of what is colloquially known as hashish.

14 **The Initiative's text is internally inconsistent.**

15 93. On the one hand, the Initiative only allows a person to "possess . . . one
16 ounce or less of marijuana." Initiative § 3 (proposed A.R.S. § 36-2860(A)(1)). But on the
17 other hand, the Initiative allows a person to "possess . . . not more than six marijuana
18 plants . . . at the person's place of residence . . . and *possess the marijuana produced by*
19 *the plants on the premises.*" Initiative § 3 (proposed A.R.S. § 36-2860(A)(2)).

20 94. Six marijuana plants yields more than one ounce of marijuana.

21 95. The Initiative's own text, therefore, contradictorily prohibits a person from
22 possessing more than one ounce of marijuana, while at the same time allowing a person to
23 possess much more than one ounce of marijuana.

24 96. This constitutes a fraud on voters who cannot know what they are voting to
25 legalize when the Initiative both prohibits and allows the same conduct.

26
27
28

The Initiative does not regulate marijuana like alcohol.

1
2 97. Despite its stated purpose of regulating marijuana “in a manner similar to
3 alcohol,” the Initiative regulates marijuana in several respects far differently and often far
4 less restrictively than alcohol.

5 98. Under the Initiative, marijuana would be legal under state law despite its
6 continuing illegality under federal law, unlike alcohol, which does not share a similar
7 inconsistency with federal law.

8 99. Under the Initiative, marijuana use is protected from forming the basis of a
9 *per se* DUID law, unlike alcohol. Initiative § 3 (proposed A.R.S. § 36-2860(A) & (B)).

10 100. Under the Initiative, punishments for underage marijuana use are far more
11 lenient than alcohol. *Compare* Initiative § 3 (proposed A.R.S. § 36-2866) (making
12 underage use and possession of marijuana, as well as using a fake ID to obtain marijuana,
13 a “petty offense” usually punishable by a fine of \$300 or less), *with* A.R.S. §§ 4-244(9), -
14 246(B) (making underage use of alcohol a class 1 misdemeanor) *and* A.R.S. § 4-241(N), -
15 246(F) (making use of a fake ID to obtain alcohol a class 1 misdemeanor that carries a
16 mandatory fine of at least \$250). Class 1 misdemeanors carry a possible sentence of up to
17 6 months in jail and a fine up to \$2,500. A.R.S. §§ 13-307(A), 13-802(A).

18 101. The Initiative only legalizes the possession of certain amounts of marijuana,
19 concentrated marijuana, and marijuana plants, while no analogous limit exists for alcohol.
20 Initiative § 3 (proposed A.R.S. § 36-2860(A)).

21 102. The Initiative creates a statutory right to marijuana that does not exist for
22 alcohol. Initiative § 3 (proposed A.R.S. § 36-2866(A)).

23 103. The Initiative creates a statutory right to possess marijuana accessories, even
24 in the workplace, whereas there is no similar statutory right to carry and possess alcohol
25 accessories.

26 104. The Initiative only authorizes the sale of marijuana at certain licensed
27 facilities, whereas alcohol may be sold at grocery and convenience stores. And, the
28 Initiative creates a lucrative oligopoly for the first few years following legalization by

1 only allowing a small group of preexisting medical marijuana retailers to obtain
2 recreational marijuana licenses, and then only allowing a total number of marijuana
3 licenses equal to 10% of issued liquor licenses until 2021. Initiative § 3 (proposed A.R.S.
4 §§ 36-2851(18) & 36-2854(B)). Alcohol does not have a similar monopolistic scheme.

5 105. Initiative sponsors continually promote that marijuana retail stores would be
6 limited in Arizona, unlike in Colorado (See Press Conference of June 30, 2016,
7 <https://www.facebook.com/yvonneewingettsanchezjournalist/videos>), but such limits—
8 equivalent to 10% of issued liquor licenses—are nullified three years after dispensaries
9 are allowed to commence operations. This is monumentally unclear to Arizona voters
10 from the Initiative and contrary to the public statements of the Initiative’s proponents in
11 their publicity campaign.

12 **The Initiative fails to fund itself as required.**

13 106. The Arizona Medical Marijuana Act provided for its own funding by
14 establishing the Medical Marijuana Fund. A.R.S. § 36-2817(A).

15 107. The Initiative’s funding provisions seek to order the Department of Health
16 Services to take money from the Medical Marijuana Fund and put that money into the
17 Initiative’s own fund, called the Marijuana Fund. Initiative § 3 (proposed A.R.S. § 36-
18 2867(B)).

19 108. The Initiative states that the money from the newly established Marijuana
20 Fund will eventually repay the Medical Marijuana Fund, “at such time as funds are
21 available.” Initiative § 3 (proposed A.R.S. § 36-2867(B)).

22 **FIRST CLAIM FOR RELIEF**

23 **Invalid Signature Petition Sheets (violation of A.R.S. § 19-102(A))**

24 109. Plaintiffs incorporate the allegations set forth above as if fully set forth
25 herein.

26 110. A.R.S. § 19-102(A) requires that initiative petition signature sheets contain
27 a description of the proposed initiative “of no more than one hundred words of the
28 principal provisions of the proposed measure.”

1 111. As described throughout this Verified Complaint, the description on the
2 signature sheets was materially misleading because it does not mention either the
3 existence of the many Arizona laws already covering the Initiative's operative provisions
4 or the Initiative's impact on those laws.

5 112. The description on the signature sheets was so misleading that it amounted
6 to fraud and creates a significant danger of electorate confusion and unfairness.

7 113. Under A.R.S. § 19-121(A)(1), when initiative petition signature sheets
8 contain an improper description of the proposed initiative, all signatures on the
9 accompanying signature sheets are invalid.

10 114. Upon information and belief, all the petition signature sheets in support of
11 the Initiative contained the offending language, and therefore all signatures on those
12 petitions are invalid.

13 SECOND CLAIM FOR RELIEF

14 Inadequate Title and Text (violation of ARIZ. CONST. art. 4, pt. 1, § 1(9))

15 115. Plaintiffs incorporate the allegations set forth above as if fully set forth
16 herein.

17 116. The Title and Text Rule in Article 4, Part 1, § 1(9) of the Arizona
18 Constitution provides that, "Each sheet containing petitioners' signatures shall be attached
19 to a full and correct copy of the title and text of the measure so proposed to be initiated or
20 referred to the people."

21 117. The Title and Text Rule is also codified at A.R.S. § 19-121(A)(3).

22 118. The Title and Text Rule requires that an initiative have "*some* title and *some*
23 text," *Iman v. Bolin*, 98 Ariz. 358, 365 (1965), and initiatives must strictly comply with
24 this requirement. A.R.S. § 19-101.01. (While the statute refers directly to the
25 "referendum," it is in the chapter of the Arizona Revised Statutes applicable to both
26 initiatives and referenda and the same principles directly apply here, in that the Initiative,
27 if passed, "may overrule the results of determinations made by representatives of the
28 people" See A.R.S. § 19-101.01.)

1 C. A declaration that the Initiative violates Article 9 § 23 of the Arizona
2 Constitution.

3 D. An injunction under 19-122(A) and (C) prohibiting Defendant Arizona
4 Secretary of State from certifying and placing the Initiative on the ballot for the
5 forthcoming general election in the State of Arizona for the year 2016 because (1) the
6 petition sheets containing the Petition Summary described herein are invalid as
7 incomplete and misleading under A.R.S. §§ 19-102(A) and 19-121(A)(1); (2) the
8 Initiative violates Article 4, Part 1, § 1(9) of the Arizona Constitution; and (3) the
9 Initiative violates Article 9 § 23 of the Arizona Constitution.

10 E. In the alterative, should this case not be resolved prior to the 2016 general
11 election ballot printing deadline, an injunction prohibiting Defendant Secretary of State
12 from counting and canvassing the votes cast on the Initiative.

13 F. An order awarding Plaintiffs' attorney's fees and nontaxable expenses
14 incurred in this action under:

15 1. the private attorney general doctrine as established in *Arnold v. Ariz.*
16 *Dep't of Health Servs.*, 160 Ariz. 593 (1989), because the rights sought to be vindicated
17 here benefit a large number of people, require private enforcement, and are of societal
18 importance; and

19 2. any other applicable law authorizing the award of attorney's fees and
20 nontaxable expenses to Plaintiffs.

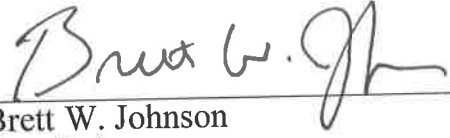
21 G. An order awarding Plaintiffs their taxable costs and such other and further
22 relief as may be appropriate.

23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 11th day of July, 2016.

SNELL & WILMER L.L.P.

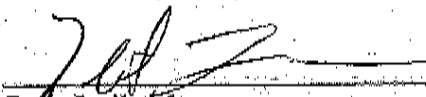
By: 

Brett W. Johnson
Sara J. Agne
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
Telephone: 602.382.6000
Facsimile: 602.382.6070
Attorneys for Plaintiffs

VERIFICATION

I, Seth Leibsohn, a Plaintiff in this action, have reviewed the foregoing Verified Complaint and verify under penalty of perjury that it is true and correct.

Dated: July 10, 2016


Seth Leibsohn

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2183
602.382.6000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

24228547

EXHIBIT A

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, ARTICLE 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.

A. The People of the State of Arizona find and declare that the distribution of marijuana should be removed from the illicit market and be controlled under a system that licenses, regulates and taxes the businesses involved and allocates the tax revenue to public education and public health.

B. The People of the State of Arizona proclaim that marijuana should be regulated in a manner similar to alcohol so that:

1. Marijuana may be purchased legally only from a business that is licensed and regulated.
2. Cultivating, manufacturing, testing, transporting and selling marijuana are controlled through licensing, regulation and enforcement.

3. Individuals are allowed to produce a limited amount of marijuana for personal use.
 4. Selling or giving marijuana to persons under the legal age remains illegal.
 5. Driving while impaired by marijuana remains illegal.
 6. Marijuana sold in this state at licensed retail facilities is tested, labeled and packaged securely.
- C. 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, the people of the State of Arizona find and declare that the use of marijuana should be legal for persons who are at least twenty-one years of age.

D. 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

36-2851. 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 OBTAINS OR POSSESSES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE OR FOR USE BY PERSONS WHO ARE AT LEAST TWENTY-ONE YEARS OF AGE, BUT NOT FOR RESALE.
2. "CONTROLLING PERSON" MEANS A PRINCIPAL OFFICER, DIRECTOR, BOARD MEMBER, OR AN INDIVIDUAL WHO HAS A FINANCIAL OR VOTING INTEREST OF TEN PERCENT OR GREATER IN A MARIJUANA ESTABLISHMENT.
3. "DEPARTMENT" MEANS THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL.
4. "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS CANNABIS AND ANY PART OF THAT 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

2015 MAY 11 PM 2:55
SECRETARY OF STATE

OF MARIJUANA PRODUCT, OR THE COMBINED PERCENTAGE 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"

(A) 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 OR ITS SEEDS OR RESIN.

(B) INCLUDES CANNABIS AS DEFINED IN SECTION 13-3401.

(C) DOES NOT INCLUDE:

(i) INDUSTRIAL HEMP.

(ii) 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 FROM THE MATURE STEMS, OR THE STERILIZED SEED OF THE PLANT THAT IS INCAPABLE OF GERMINATION.

(iii) 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, PRODUCT OR MATERIAL OF ANY KIND THAT IS USED, INTENDED FOR USE OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, TRANSPORTING OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.

9. "MARIJUANA CULTIVATOR" MEANS AN ENTITY THAT IS LICENSED BY THE DEPARTMENT THAT MAY 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 THAT IS LICENSED BY THE DEPARTMENT THAT MAY STORE MARIJUANA AND MARIJUANA PRODUCTS AT A LOCATION THAT IS NOT LICENSED FOR THE PRODUCTION, MANUFACTURE OR RETAIL SALE OF MARIJUANA AND MARIJUANA PRODUCTS AND TO TRANSPORT MARIJUANA AND MARIJUANA PRODUCTS FROM A MARIJUANA ESTABLISHMENT TO ANOTHER MARIJUANA ESTABLISHMENT, BUT NOT TO A CONSUMER.

11. "MARIJUANA ESTABLISHMENT" MEANS ANY ENTITY THAT IS A MARIJUANA CULTIVATOR, MARIJUANA DISTRIBUTOR, MARIJUANA TESTING FACILITY, MARIJUANA PRODUCT MANUFACTURER OR MARIJUANA RETAILER.

12. "MARIJUANA PRODUCT MANUFACTURER" MEANS AN ENTITY THAT IS LICENSED BY THE DEPARTMENT TO PURCHASE, MANUFACTURE, PROCESS, TRANSPORT AND PACKAGE MARIJUANA AND MARIJUANA PRODUCTS AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS TO OTHER MARIJUANA ESTABLISHMENTS, BUT NOT TO CONSUMERS.

13. "MARIJUANA PRODUCTS" MEANS PRODUCTS THAT HAVE BEEN SUBJECT TO MANUFACTURE AND THAT CONTAIN MARIJUANA OR AN EXTRACT FROM MARIJUANA, INCLUDING PRODUCTS COMPRISING MARIJUANA AND OTHER INGREDIENTS THAT ARE INTENDED FOR HUMAN USE OR CONSUMPTION, AND INCLUDES EDIBLE PRODUCTS, OINTMENTS, CONCENTRATED MARIJUANA PRODUCTS AND TINCTURES.

14. "MARIJUANA RETAILER" MEANS AN ENTITY THAT IS LICENSED BY THE DEPARTMENT TO PURCHASE MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA

ESTABLISHMENTS, TO TRANSPORT MARIJUANA AND MARIJUANA PRODUCTS TO OR FROM MARIJUANA ESTABLISHMENTS AND TO PACKAGE AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO MARIJUANA ESTABLISHMENTS AND TO CONSUMERS.

15. "MARIJUANA TESTING FACILITY" MEANS AN ENTITY THAT IS LICENSED BY THE DEPARTMENT TO TEST AND TRANSPORT MARIJUANA AND MARIJUANA PRODUCTS, INCLUDING TESTING 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, INCLUDING SIEVING OR ICE WATER SEPARATION, BUT EXCLUDING CHEMICAL EXTRACTION OR CHEMICAL SYNTHESIS.

17. "REORGANIZED MARIJUANA BUSINESS" MEANS AN ENTITY THAT IS ESTABLISHED TO OPERATE A MARIJUANA ESTABLISHMENT BY THE UNANIMOUS CONSENT OF ALL OF THE PRINCIPAL OFFICERS OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS REGISTERED AND IN GOOD STANDING PURSUANT TO CHAPTER 28.1 OF THIS TITLE.

18. "UNREASONABLY IMPRACTICABLE" MEANS THAT THE MEASURES NECESSARY TO COMPLY WITH RULES OR ORDINANCES ADOPTED PURSUANT TO THIS CHAPTER SUBJECT LICENSEES TO UNREASONABLE FINANCIAL OR OTHER RISK OR REQUIRE SUCH A SIGNIFICANT INVESTMENT OF MONEY, TIME OR ANY OTHER RESOURCE OR ASSET THAT THE OPERATION OR ACQUISITION OF A MARIJUANA ESTABLISHMENT IS NOT WORTH BEING CARRIED OUT BY A REASONABLY PRUDENT BUSINESSPERSON.

36-2852. Applicability of chapter

A. THIS CHAPTER DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN AND DOES NOT PREVENT THE IMPOSITION OF ANY CIVIL, CRIMINAL OR OTHER PENALTY ON A PERSON FOR:

1. 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 OR A MARIJUANA PRODUCT.

2. INHALING OR CONSUMING MARIJUANA OR A MARIJUANA PRODUCT WHILE OPERATING A MOTOR VEHICLE, TRAIN, AIRCRAFT, MOTORBOAT OR OTHER MOTORIZED FORM OF TRANSPORT OR MACHINERY OR WHILE IN 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.

3. KNOWINGLY DELIVERING, GIVING, SELLING, ADMINISTERING OR OFFERING TO SELL, ADMINISTER, GIVE OR DELIVER MARIJUANA OR A MARIJUANA PRODUCT TO A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE.

4. BUYING FOR RESALE, SELLING OR DEALING IN MARIJUANA OR MARIJUANA PRODUCTS IN THIS STATE WITHOUT PROCURING THE APPROPRIATE LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT.

5. POSSESSING OR USING MARIJUANA OR MARIJUANA ACCESSORIES ON THE GROUNDS OF OR WITHIN ANY CORRECTIONAL FACILITY.

6. POSSESSING OR USING MARIJUANA OR A MARIJUANA PRODUCT 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 PURPOSES 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.

7. PERFORMING ANY TASK WHILE IMPAIRED BY MARIJUANA OR A MARIJUANA PRODUCT THAT WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE.

B. THIS CHAPTER DOES NOT REQUIRE AN EMPLOYER TO ALLOW OR ACCOMMODATE THE POSSESSION OR CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS IN THE WORKPLACE AND DOES NOT AFFECT THE ABILITY OF EMPLOYERS TO ENACT AND ENFORCE WORKPLACE POLICIES RESTRICTING THE CONSUMPTION OF MARIJUANA AND MARIJUANA PRODUCTS BY EMPLOYEES.

C. THIS CHAPTER DOES NOT PROHIBIT A PERSON WHO OWNS, MANAGES OR LEASES

SECRETARY OF STATE
2015 MAY 11 PM 2:55

A PROPERTY FROM PROHIBITING OR OTHERWISE REGULATING THE SMOKING, PRODUCTION, PROCESSING, MANUFACTURE OR SALE OF MARIJUANA AND MARIJUANA PRODUCTS ON OR IN THAT PROPERTY.

D. THIS CHAPTER DOES NOT PROHIBIT A PERSON FROM PROHIBITING OR OTHERWISE REGULATING THE POSSESSION OR CONSUMPTION OF MARIJUANA AND MARIJUANA PRODUCTS ON OR IN PROPERTY THE PERSON OWNS, MANAGES OR LEASES IF EITHER:

1. THE PROPERTY IS A PUBLIC BUILDING THAT IS HELD OR OWNED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

2. FAILING TO PROHIBIT THE POSSESSION OR CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS WOULD CAUSE THE PERSON WHO OWNS, MANAGES OR LEASES THE PROPERTY TO LOSE A MONETARY OR LICENSING-RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS.

E. EXCEPT AS PROVIDED IN SECTION 36-2854, SUBSECTION C, SECTION 36-2862 AND IN SECTION 36-2868, SUBSECTION C, THIS CHAPTER DOES NOT AFFECT ANY PROVISIONS OF TITLE 36, CHAPTER 28.1 OF THIS TITLE RELATING TO THE USE OF MEDICAL MARIJUANA.

F. THIS CHAPTER DOES NOT PROHIBIT THE LEGISLATURE FROM PROVIDING FOR THE REGULATION OR TAXATION OF INDUSTRIAL HEMP.

36-2853. Department of marijuana licenses and control

A. THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL IS ESTABLISHED CONSISTING OF THE MARIJUANA COMMISSION AND THE OFFICE OF DIRECTOR OF THE DEPARTMENT.

B. THE GOVERNOR SHALL APPOINT A DIRECTOR OF THE DEPARTMENT PURSUANT TO SECTION 38-211 WHO IS QUALIFIED BY SUCCESSFUL EXPERIENCE IN BUSINESS ADMINISTRATION OR IN GOVERNMENT. THE GOVERNOR MAY REMOVE THE DIRECTOR FOR CAUSE. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, THE DIRECTOR SHALL ADMINISTER THIS CHAPTER. SUBJECT TO TITLE 41, CHAPTER 4, ARTICLE 4, THE DIRECTOR MAY EMPLOY, DETERMINE THE CONDITIONS OF EMPLOYMENT OF AND SPECIFY THE DUTIES OF EMPLOYEES AND CONTRACT TO HAVE THE SERVICES OF SUCH ADVISORS OR CONSULTANTS AS ARE REASONABLY NECESSARY TO ADEQUATELY PERFORM THE DEPARTMENT'S DUTIES. THE DIRECTOR MAY DELEGATE TO EMPLOYEES OF THE DEPARTMENT AUTHORITY TO EXERCISE POWERS OF THE DIRECTOR.

C. THE MARIJUANA COMMISSION CONSISTS OF SEVEN MEMBERS WHO ARE APPOINTED BY THE GOVERNOR PURSUANT TO SECTION 38-211, FOUR OF WHOM DO NOT HAVE ANY FINANCIAL INTEREST, DIRECTLY OR INDIRECTLY, IN ANY MARIJUANA ESTABLISHMENT AND THREE OF WHOM ARE AT ALL TIMES WHILE SERVING ON THE MARIJUANA COMMISSION AND FOR AT LEAST ONE YEAR BEFORE SERVING ON THE MARIJUANA COMMISSION, CONTROLLING PERSONS OF A MARIJUANA ESTABLISHMENT. NOT MORE THAN FOUR MEMBERS MAY BE OF THE SAME POLITICAL PARTY, NOT MORE THAN TWO OF THE MEMBERS WHO ARE NOT CONTROLLING PERSONS MAY BE OF THE SAME POLITICAL PARTY AND AT LEAST ONE MEMBER WHO IS NOT A CONTROLLING PERSON MUST BE FROM THE POLITICAL PARTY ASSOCIATED WITH THE GUBERNATORIAL CANDIDATE WHO RECEIVED THE SECOND LARGEST NUMBER OF VOTES AT THE LAST GUBERNATORIAL ELECTION. TO BE ELIGIBLE FOR APPOINTMENT A PERSON 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. NOT MORE THAN TWO MEMBERS MAY BE APPOINTED FROM THE SAME COUNTY. THE TERM OF APPOINTMENT IS THREE YEARS AND TERMS EXPIRE ON THE THIRD MONDAY IN JANUARY OF THE APPROPRIATE YEAR.

D. THE MARIJUANA COMMISSION SHALL:

1. ADOPT RULES FOR THE CONDUCT OF ITS MEETINGS.

2. ANNUALLY ELECT FROM ITS MEMBERSHIP A CHAIRPERSON AND MAY ELECT FROM ITS MEMBERSHIP OTHER OFFICERS FOR SUCH TERMS AS THE MEMBERS DEEM NECESSARY OR DESIRABLE.

- 3. KEEP RECORDS OF ALL OF ITS PROCEEDINGS.
- 4. APPROVE AND DENY APPLICATIONS FOR LICENSURE.
- 5. HOLD HEARINGS AS PROVIDED FOR BY LAW.
- E. A MAJORITY OF THE MEMBERS OF THE MARIJUANA COMMISSION CONSTITUTE

QUORUM. THE CONCURRENCE OF A MAJORITY OF A QUORUM IS SUFFICIENT FOR TAKING ANY ACTION.

F. THE COMPENSATION OF THE DIRECTOR AND EMPLOYEES OF THE DEPARTMENT SHALL BE DETERMINED PURSUANT TO SECTION 38-611. NOTWITHSTANDING SECTION 38-611, SUBSECTION C, 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 MARIJUANA COMMISSION.

G. EXCEPT FOR A MEMBER OF THE MARIJUANA COMMISSION WHO IS APPOINTED BY THE GOVERNOR IN THE CAPACITY OF A CONTROLLING PERSON, MEMBERS OF THE MARIJUANA COMMISSION, EMPLOYEES OF THE DEPARTMENT AND THE DIRECTOR MAY NOT HAVE ANY FINANCIAL INTEREST, DIRECT OR INDIRECT, IN ANY MARIJUANA ESTABLISHMENT. A VIOLATION OF THIS SUBSECTION BY ANY MEMBER OF THE MARIJUANA COMMISSION CONSTITUTES A RESIGNATION BY THAT PERSON, AND A VIOLATION BY ANY EMPLOYEE OF THE DEPARTMENT OR THE DIRECTOR SHALL RESULT IN IMMEDIATE DISMISSAL.

36-2854. Power and duties of the Department

A. THE DEPARTMENT SHALL ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 THAT ARE NECESSARY OR CONVENIENT TO CARRY OUT THIS CHAPTER.

1. THE DEPARTMENT MAY ADOPT AND ENFORCE RULES TO REGULATE ANY PRODUCT SOLD BY A MARIJUANA RETAILER THAT WAS PRODUCED BY A MARIJUANA ESTABLISHMENT, INCLUDING PRODUCTS MADE FROM INDUSTRIAL HEMP.

2. UNTIL JANUARY 1, 2020, THE DEPARTMENT MAY NOT ADOPT ANY RULE THAT ALLOWS FOR THE DELIVERY OF MARIJUANA TO A CONSUMER BY A MARIJUANA RETAILER AT ANY LOCATION OUTSIDE OF THE MARIJUANA RETAILER'S LICENSED PREMISES.

3. UNTIL A MARIJUANA TESTING FACILITY HAS BEEN LICENSED BY THE DEPARTMENT FOR AT LEAST NINETY DAYS, THE DEPARTMENT MAY NOT ADOPT ANY RULE THAT REQUIRES THE TESTING OF MARIJUANA BY A MARIJUANA TESTING FACILITY.

4. UNTIL JANUARY 1, 2020, THE DEPARTMENT MAY NOT ADOPT ANY RULE THAT ALLOWS FOR THE CONSUMPTION OF MARIJUANA ON THE PREMISES WHERE SOLD. AFTER JANUARY 1, 2020, THE DEPARTMENT MAY ADOPT AND ENFORCE RULES TO ALLOW FOR THE ISSUANCE OF LICENSES TO PERMIT THE CONSUMPTION OF MARIJUANA WITHIN A SPECIFIED AREA OF A MARIJUANA RETAILER, INCLUDING A MARIJUANA RETAILER LOCATED AT THE SAME LOCATION AS A NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTERED PURSUANT TO CHAPTER 28.1, OR THE ISSUANCE OF LICENSES TO PERMIT CONSUMPTION OF MARIJUANA WITHIN A SPECIFIED AREA OF THE LICENSEE, BUT NOT SALE OR TRANSFER FOR REMUNERATION OF ANY KIND.

5. RULES ADOPTED BY THE DEPARTMENT PURSUANT TO THIS CHAPTER AND PURSUANT TO CHAPTER 28.1 MAY PROVIDE FOR DIFFERENT REQUIREMENTS AND STANDARDS FOR MARIJUANA THAT IS INTENDED FOR MEDICAL USE. RULES ADOPTED OR ENFORCED BY THE DEPARTMENT MAY NOT CONFLICT IN A WAY THAT WOULD PREVENT A NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTERED PURSUANT TO CHAPTER 28.1 AND A REORGANIZED MARIJUANA BUSINESS FROM OPERATING COOPERATIVELY AT A SHARED LOCATION.

B. THE DEPARTMENT SHALL APPROVE OR DENY APPLICATIONS FOR LICENSES AND SHALL ISSUE AND RENEW LICENSES PURSUANT TO THIS CHAPTER, AS FOLLOWS:

1. THE DEPARTMENT SHALL BEGIN ACCEPTING AND PROCESSING APPLICATIONS FOR UP TO ONE OF EACH TYPE OF MARIJUANA ESTABLISHMENT FROM EACH REORGANIZED MARIJUANA BUSINESS ON OR BEFORE SEPTEMBER 1, 2017. THE DEPARTMENT SHALL ACCEPT AN APPLICATION FOR UP TO ONE OF EACH TYPE OF MARIJUANA ESTABLISHMENT FOR EACH DISPENSARY REGISTRATION CERTIFICATE HELD BY SUCH NONPROFIT MEDICAL MARIJUANA

DISPENSARY. THE DEPARTMENT SHALL BEGIN ACCEPTING AND PROCESSING APPLICATIONS FOR MARIJUANA ESTABLISHMENTS FROM ALL OTHER APPLICANTS ON AND AFTER DECEMBER 1, 2017.

2. ON OR BEFORE DECEMBER 1, 2017, THE DEPARTMENT SHALL ISSUE LICENSES TO EACH QUALIFIED REORGANIZED MARIJUANA BUSINESS.

3. UNTIL SEPTEMBER 1, 2021, THE DEPARTMENT MAY NOT ISSUE MORE MARIJUANA RETAILER LICENSES THAN TEN PERCENT OF THE TOTAL NUMBER OF SERIES 9 LIQUOR LICENSES ISSUED BY THE ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL.

4. ON AND AFTER SEPTEMBER 1, 2021, THE DEPARTMENT MAY ISSUE ADDITIONAL MARIJUANA RETAILER LICENSES IF THE DEPARTMENT DETERMINES THAT ADDITIONAL LICENSES ARE DESIRABLE TO MINIMIZE THE ILLEGAL MARKET FOR MARIJUANA IN THIS STATE, TO EFFICIENTLY MEET THE DEMAND FOR MARIJUANA OR TO PROVIDE FOR REASONABLE ACCESS TO MARIJUANA RETAILERS IN RURAL AREAS.

C. NOTWITHSTANDING CHAPTER 28.1 OF THIS TITLE, BEGINNING SEPTEMBER 1, 2017, ALL AUTHORITY THE DEPARTMENT OF HEALTH SERVICES MAY HAVE TO ADMINISTER AND ENFORCE CHAPTER 28.1 OF THIS TITLE IS TRANSFERRED TO THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL. ALL RULES ADOPTED PURSUANT TO CHAPTER 28.1 OF THIS TITLE BY THE DEPARTMENT OF HEALTH SERVICES SHALL BE ENFORCED BY THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL UNTIL THEY ARE AMENDED BY THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL PURSUANT TO TITLE 41, CHAPTER 6. EACH REGISTRATION CERTIFICATE ISSUED BY THE DEPARTMENT OF HEALTH SERVICES PURSUANT TO CHAPTER 28.1 OF THIS TITLE BEFORE SEPTEMBER 1, 2017 SHALL REMAIN VALID AS PROVIDED IN CHAPTER 28.1 OF THIS TITLE UNTIL THE REGISTRATION CERTIFICATE EXPIRES. THE DEPARTMENT OF HEALTH SERVICES SHALL ADVISE, ASSIST AND COOPERATE WITH THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL TO ENSURE A SMOOTH TRANSFER OF AUTHORITY TO ADMINISTER AND ENFORCE CHAPTER 28.1 OF THIS TITLE.

D. 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 CHAPTER.

E. THE DEPARTMENT SHALL ENFORCE THE LAWS AND RULES RELATING TO THE PRODUCTION, MANUFACTURE, TRANSPORTATION, SALE, STORAGE, DISTRIBUTION 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 ANY MARIJUANA ESTABLISHMENT AS NECESSARY TO ENFORCE THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER. ANY ENFORCEMENT OFFICER WITHIN THE DEPARTMENT WHO IS DESIGNATED BY THE DIRECTOR SHALL, FOR IDENTIFICATION PURPOSES, HAVE CREDENTIALS SIGNED BY THE DIRECTOR AND COUNTERSIGNED BY THE GOVERNOR AND, WHEN BEARING THESE CREDENTIALS, HAS THE POWER AND DUTIES OF A PEACE OFFICER. THE DEPARTMENT SHALL TAKE STEPS NECESSARY TO MAINTAIN EFFECTIVE LIAISON WITH THE DEPARTMENT OF PUBLIC SAFETY AND ALL LOCAL ENFORCEMENT AGENCIES IN THE ENFORCEMENT OF THIS CHAPTER.

F. THE DIRECTOR SHALL ESTABLISH WITHIN THE DEPARTMENT AN INVESTIGATIONS UNIT WHICH HAS AS ITS RESPONSIBILITY THE INVESTIGATION OF COMPLIANCE WITH THIS CHAPTER INCLUDING THE INVESTIGATION OF LICENSEES ALLEGED TO HAVE SOLD OR DISTRIBUTED MARIJUANA OR MARIJUANA PRODUCTS TO A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE AND INVESTIGATIONS OF UNLICENSED PERSONS WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON SOLD OR OTHERWISE TRANSFERRED MARIJUANA OR

MARIJUANA PRODUCTS IN EXCHANGE FOR ANYTHING OF VALUE, ADVERTISED OR PROMOTED THE SALE OR TRANSFER OF MARIJUANA OR MARIJUANA PRODUCTS OR SOLD OR OTHERWISE TRANSFERRED MARIJUANA OR MARIJUANA PRODUCTS WHERE THE TRANSACTION IS SUBJECT TO PUBLIC VIEW WITHOUT THE USE OF BINOCULARS, AIRCRAFT OR OTHER OPTICAL AIDS. INVESTIGATIONS CONDUCTED BY THIS UNIT MAY INCLUDE COVERT UNDERCOVER INVESTIGATIONS.

G. AFTER NOTICE AND A HEARING, THE DEPARTMENT MAY SUSPEND, REVOKE OR REFUSE TO RENEW ANY LICENSE ISSUED PURSUANT TO THIS CHAPTER AND IMPOSE A CIVIL PENALTY ON A LICENSEE FOR A VIOLATION OF THIS CHAPTER, 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.

H. AFTER NOTICE, THE DEPARTMENT MAY TEMPORARILY SUSPEND ANY LICENSE ISSUED PURSUANT TO THIS CHAPTER IF 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 REQUIRES EMERGENCY ACTION. THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 WITHIN FOURTEEN CALENDAR DAYS AFTER A SUSPENSION PURSUANT TO THIS SUBSECTION.

I. THE DEPARTMENT SHALL KEEP RECORDS OF ALL OF ITS PROCEEDINGS.

36-2855. Rulemaking

A. ON OR BEFORE SEPTEMBER 1, 2017, THE DEPARTMENT SHALL ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 THAT ARE NECESSARY OR CONVENIENT TO CARRY OUT THIS CHAPTER, INCLUDING:

1. PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, RELOCATION AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT.
2. QUALIFICATIONS FOR LICENSURE AND MINIMUM STANDARDS FOR EMPLOYMENT THAT ARE DIRECTLY AND DEMONSTRABLY RELATED TO A PERSON'S FITNESS TO OPERATE A MARIJUANA ESTABLISHMENT.
3. REQUIREMENTS FOR THE INDOOR AND OUTDOOR SECURITY OF MARIJUANA ESTABLISHMENTS, INCLUDING LIGHTING, PHYSICAL SECURITY AND VIDEO AND ALARM REQUIREMENTS AND REQUIREMENTS FOR THE SECURE TRANSPORTATION AND STORAGE OF MARIJUANA AND MARIJUANA PRODUCTS.
4. REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA PRODUCTS TO PERSONS WHO ARE 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.
5. TRACKING PROCEDURES TO ENSURE THAT MARIJUANA AND MARIJUANA PRODUCTS PRODUCED, PROCESSED, MANUFACTURED, TRANSPORTED AND SOLD BY ANY MARIJUANA ESTABLISHMENT ARE NOT SOLD OR OTHERWISE TRANSFERRED EXCEPT BY A MARIJUANA ESTABLISHMENT OR A NONPROFIT MEDICAL MARIJUANA DISPENSARY TO ANOTHER MARIJUANA ESTABLISHMENT OR BY A MARIJUANA RETAILER TO A CONSUMER AND TO ENSURE THAT ALL MARIJUANA AND MARIJUANA PRODUCTS THAT ARE SOLD BY A MARIJUANA RETAILER WERE PRODUCED BY A MARIJUANA ESTABLISHMENT OR A NONPROFIT MEDICAL MARIJUANA DISPENSARY.
6. HEALTH AND SAFETY STANDARDS FOR THE CULTIVATION, PROCESSING, MANUFACTURE AND DISTRIBUTION OF MARIJUANA AND MARIJUANA PRODUCTS, INCLUDING RULES REGARDING THE USE OF PESTICIDES AND RESTRICTIONS ON ADDITIVES TO MARIJUANA PRODUCTS THAT WOULD MAKE THE MARIJUANA PRODUCTS ADDICTIVE OR INJURIOUS TO HEALTH.

SECRETARY OF STATE
MAY 11 PM 2:55

7. REQUIREMENTS FOR THE PACKAGING OF MARIJUANA AND MARIJUANA PRODUCTS, INCLUDING REQUIREMENTS FOR CHILD-RESISTANT PACKAGING SIMILAR TO THE POISON PREVENTION PACKAGING ACT OF 1970 (P.L. 91-601; 84 STAT. 1670; 15 UNITED STATES CODE SECTIONS 1471 THROUGH 1477) AND FOR DIVIDING OR SCORING A MARIJUANA PRODUCT INTO A STANDARDIZED SERVING SIZE.

8. REQUIREMENTS FOR THE LABELING OF MARIJUANA PRODUCTS SOLD BY MARIJUANA ESTABLISHMENTS, INCLUDING ALL OF THE FOLLOWING:

(a) A SYMBOL OR OTHER MARK INDICATING THAT THE PACKAGE CONTAINS MARIJUANA.

(b) THE AMOUNT OF TETRAHYDROCANNABINOL AND CANNABIDIOL IN THE PACKAGE AND IN EACH SERVING OF THE MARIJUANA PRODUCT.

(c) THE NUMBER OF SERVINGS IN THE PACKAGE.

(d) A LIST OF INGREDIENTS, ALLERGENS AND SOLVENTS USED IN THE MANUFACTURE OF THE MARIJUANA PRODUCT.

(e) WARNING LABELS.

9. REQUIREMENTS FOR THE TESTING OF MARIJUANA AND MARIJUANA PRODUCTS TO MEASURE POTENCY AND TO ENSURE THAT PRODUCTS SOLD FOR HUMAN CONSUMPTION DO NOT CONTAIN CONTAMINANTS THAT ARE INJURIOUS TO HEALTH.

10. REQUIREMENTS FOR THE MARKETING, DISPLAY AND ADVERTISING OF MARIJUANA, MARIJUANA PRODUCTS AND MARIJUANA ACCESSORIES, INCLUDING RESTRICTING MARKETING OR ADVERTISING THAT APPEALS TO CHILDREN.

12. PROCEDURES AND REQUIREMENTS TO ENABLE THE TRANSFER OR SALE OF A LICENSE FROM A MARIJUANA ESTABLISHMENT TO ANOTHER QUALIFIED PERSON OR GROUP OF PERSONS OR TO ANOTHER SUITABLE LOCATION.

13. A STATEWIDE TIERED SYSTEM FOR THE LICENSURE OF MARIJUANA CULTIVATORS THAT:

(a) ESTABLISH AT LEAST THREE DIFFERENT LICENSING CLASS TIERS.

(b) ESTABLISH A LIMIT ON THE AMOUNT OF MARIJUANA THAT A MARIJUANA CULTIVATOR WITHIN EACH LICENSING CLASS TIER MAY PRODUCE BASED ON THE SIZE OF THE CULTIVATION AREA, EXCEPT THAT THE HIGHEST TIER SHALL PERMIT THE PRODUCTION OF AN UNLIMITED AMOUNT OF MARIJUANA.

(c) UNLESS THE LICENSEE IS A REORGANIZED MARIJUANA BUSINESS, ISSUE ONLY THE SMALLEST LICENSING CLASS TIER MARIJUANA CULTIVATOR LICENSE TO A LICENSEE UNTIL THE LICENSEE DEMONSTRATES TO THE DEPARTMENT THAT THE LICENSEE HAS SOLD MORE THAN EIGHTY-FIVE PERCENT OF THE MARIJUANA THE LICENSEE HAS PRODUCED TO MARIJUANA ESTABLISHMENTS WITHOUT ENGAGING IN ANY TRANSACTION AT A PRICE WHICH IS LESS THAN THE MARIJUANA CULTIVATOR'S COST TO PRODUCE THE MARIJUANA SOLD IN THE TRANSACTION.

(d) PROVIDES FOR THE ISSUANCE OF THE HIGHEST TIER MARIJUANA CULTIVATOR LICENSE TO A REORGANIZED MARIJUANA BUSINESS.

14. PROCEDURES AND REQUIREMENTS TO ENABLE A NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTERED AND IN GOOD STANDING PURSUANT TO CHAPTER 28.1 OF THIS TITLE AND A REORGANIZED MARIJUANA BUSINESS LICENSED TO ENGAGE IN THE SAME TYPE OF CONDUCT AS THE NONPROFIT MEDICAL MARIJUANA DISPENSARY TO OPERATE AT THE SAME LOCATION.

15. PROCEDURES FOR ENFORCING THIS CHAPTER, INCLUDING PROCEDURES FOR IMPOSING CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH ANY RULE ADOPTED PURSUANT TO THIS CHAPTER OR FOR ANY VIOLATION OF SECTION 36-2859, PROCEDURES FOR COLLECTING FEES AND CIVIL PENALTIES IMPOSED BY THIS CHAPTER, PROCEDURES FOR SUSPENDING OR TERMINATING A LICENSE ISSUED UNDER THIS CHAPTER AND PROCEDURES PROVIDING FOR A HEARING FOR THE APPEAL OF PENALTIES AND LICENSING ACTIONS UNDER THIS CHAPTER.

B. THE DEPARTMENT MAY REQUIRE EACH CONTROLLING PERSON OF A MARIJUANA

ESTABLISHMENT LICENSE APPLICANT TO FURNISH BACKGROUND INFORMATION AND TO SUBMIT A FULL SET OF FINGERPRINTS TO THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL 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 CHAPTER. THE DEPARTMENT SHALL DESTROY EACH SET OF FINGERPRINTS AFTER THE CRIMINAL RECORDS CHECK IS COMPLETE.

C. RULES ADOPTED BY THE DEPARTMENT MAY NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REQUIREMENTS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE.

D. TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED:

1. THE DEPARTMENT MAY NOT REQUIRE A CONSUMER TO PROVIDE A MARIJUANA RETAILER WITH PERSONAL IDENTIFYING INFORMATION OTHER THAN IDENTIFICATION TO DETERMINE THE CONSUMER'S AGE.

2. A MARIJUANA RETAILER SHALL NOT BE REQUIRED TO ACQUIRE OR RECORD PERSONAL IDENTIFYING INFORMATION ABOUT A CONSUMER OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A RETAIL TRANSACTION.

36-2856. Localities; Control of marijuana and marijuana products

A. THROUGH ENACTMENT OF A REFERENDUM OR INITIATIVE THAT IS CONDUCTED PURSUANT TO TITLE 19, CHAPTER 1, ARTICLE 4 AND THAT APPEARS ON A GENERAL ELECTION BALLOT, A LOCALITY MAY 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, A MARIJUANA PRODUCT MANUFACTURER, OR A MARIJUANA CULTIVATOR, IT MAY NOT PROHIBIT A REORGANIZED MARIJUANA BUSINESS ESTABLISHED BY A NONPROFIT MEDICAL MARIJUANA DISPENSARY OPERATING WITHIN THE LOCALITY FROM OPERATING THE PROHIBITED TYPE OF MARIJUANA ESTABLISHMENT WITHIN THE LOCALITY IN ANY AREA THAT IS ZONED TO ALLOW THE OPERATION OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY.

B. LOCALITIES MAY ENACT REASONABLE ORDINANCES OR RULES THAT ARE NOT IN CONFLICT WITH THIS ACT OR WITH RULES ENACTED PURSUANT TO THIS CHAPTER THAT:

1. GOVERN THE TIME, PLACE AND MANNER OF MARIJUANA ESTABLISHMENT OPERATIONS.

2. LIMIT THE NUMBER OF MARIJUANA ESTABLISHMENTS WITHIN THE LOCALITY, EXCEPT THAT THE LOCALITY MAY NOT LIMIT THE NUMBER OF MARIJUANA RETAILERS, MARIJUANA PRODUCT MANUFACTURERS, OR MARIJUANA CULTIVATORS TO A NUMBER THAT IS LESS THAN THE NUMBER OF LOCATIONS WHERE NONPROFIT MEDICAL MARIJUANA DISPENSARIES ARE ENGAGED IN THE SAME TYPE OF CONDUCT IN THE LOCALITY ON THE EFFECTIVE DATE OF THIS CHAPTER.

3. RESTRICT THE SMOKING, PRODUCTION, PROCESSING OR MANUFACTURE OF MARIJUANA AND MARIJUANA PRODUCTS WHEN IT IS INJURIOUS TO THE ENVIRONMENT OR OTHERWISE IS A NUISANCE TO A CONSIDERABLE NUMBER OF PERSONS.

4. LIMIT THE USE OF LAND FOR MARIJUANA ESTABLISHMENTS AND FOR BUSINESSES 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 MAY NOT PROHIBIT A MARIJUANA ESTABLISHMENT FROM OPERATING IN AN AREA THAT IS ZONED FOR THE OPERATION OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY OR A MEDICAL MARIJUANA CULTIVATION FACILITY AND MAY NOT BE A BASIS FOR DENYING A LICENSE UNDER THIS CHAPTER.

5. ESTABLISH REASONABLE RESTRICTIONS ON PUBLIC SIGNAGE REGARDING MARIJUANA, MARIJUANA PRODUCTS, MARIJUANA ESTABLISHMENTS AND MARIJUANA ACCESSORIES.

6. ESTABLISH CIVIL PENALTIES FOR THE VIOLATION OF AN ORDINANCE OR RULE ADOPTED PURSUANT TO THIS SECTION.

C. IF THE DEPARTMENT DOES NOT ADOPT RULES IN ACCORDANCE WITH SECTION 36-2855 OR ACCEPT OR PROCESS APPLICATIONS IN ACCORDANCE WITH SECTION 36-2854, SUBSECTION B OR SECTION 36-2858 A LOCALITY MAY:

1. DESIGNATE A LOCAL REGULATORY AUTHORITY THAT IS RESPONSIBLE FOR PROCESSING APPLICATIONS SUBMITTED FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT WITHIN THE LOCALITY.

2. ISSUE AN ANNUAL LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT WITHIN THE LOCALITY, SUSPEND OR REVOKE A LICENSE IT HAS ISSUED FOR CAUSE AND ESTABLISH A SCHEDULE OF APPLICATION AND LICENSING FEES FOR MARIJUANA ESTABLISHMENTS LICENSED BY THE LOCAL REGULATORY AUTHORITY.

3. ADOPT REASONABLE ORDINANCES OR RULES NECESSARY OR CONVENIENT FOR THE LICENSING AND REGULATING OF MARIJUANA ESTABLISHMENTS.

36-2857. Disposition of fees and penalties

ALL APPLICATION, LICENSING AND OTHER FEES AND ALL FINES AND CIVIL PENALTIES COLLECTED PURSUANT TO THIS CHAPTER SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE MARIJUANA FUND ESTABLISHED BY SECTION 36-2867.

36-2858. Licensing of marijuana establishments

A. ON 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.

B. ON RECEIPT OF A COMPLETE MARIJUANA ESTABLISHMENT LICENSE APPLICATION, THE DEPARTMENT, WITHIN SIXTY TO NINETY DAYS, MUST EITHER:

1. ISSUE THE APPROPRIATE LICENSE IF THE LICENSE APPLICATION IS APPROVED.

2. SEND A NOTICE OF DENIAL SETTING FORTH SPECIFIC REASONS WHY THE DEPARTMENT DID NOT APPROVE THE LICENSE APPLICATION.

C. THE DEPARTMENT SHALL APPROVE A LICENSE APPLICATION AND ISSUE OR RENEW A LICENSE UNLESS ANY OF THE FOLLOWING APPLIES:

1. THE APPLICANT FOR A MARIJUANA ESTABLISHMENT HAS NOT SUBMITTED AN APPLICATION IN COMPLIANCE WITH RULES ADOPTED BY THE DEPARTMENT, DOES NOT MEET THE REQUIREMENTS ESTABLISHED BY THE DEPARTMENT OR IS NOT IN COMPLIANCE WITH THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.

2. THE LOCALITY IN WHICH THE PROPOSED MARIJUANA ESTABLISHMENT WILL BE LOCATED NOTIFIES THE DEPARTMENT THAT THE PROPOSED MARIJUANA ESTABLISHMENT IS NOT IN COMPLIANCE WITH ORDINANCES OR RULES THAT ARE ADOPTED BY THE LOCALITY PURSUANT TO SECTION 36-2856 AND IN EFFECT AT THE TIME OF APPLICATION.

3. THE PROPERTY, AT THE TIME THE LICENSE APPLICATION IS RECEIVED BY THE DEPARTMENT, IS LOCATED WITHIN FIVE HUNDRED HORIZONTAL FEET OF A BUILDING IN WHICH A PUBLIC OR PRIVATE SCHOOL OPERATES A KINDERGARTEN PROGRAM OR ANY OF GRADES ONE THROUGH TWELVE OR WITHIN FIVE HUNDRED HORIZONTAL FEET OF A FENCED RECREATIONAL AREA ADJACENT TO A PUBLIC OR PRIVATE SCHOOL BUILDING. THIS PARAGRAPH DOES NOT PROHIBIT THE RENEWAL OF A VALID LICENSE ISSUED PURSUANT TO THIS CHAPTER.

4. 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.

5. ISSUANCE OF THE LICENSE WOULD EXCEED A NUMERICAL LIMIT IMPOSED BY SECTION 36-2854, SUBSECTION B, OR ENACTED BY A LOCALITY PURSUANT TO SECTION 36-2856.

D. IF THE NUMBER OF APPLICATIONS TO OPERATE MARIJUANA ESTABLISHMENTS RECEIVED BY THE DEPARTMENT FROM QUALIFIED APPLICANTS IS GREATER THAN THAT ALLOWED UNDER THE LIMITS IMPOSED BY SECTION 36-2854, SUBSECTION B, OR ENACTED BY A

LOCALITY PURSUANT TO SECTION 36-2856, THE DEPARTMENT SHALL:

1. SELECT THE APPLICATION OF A REORGANIZED MARIJUANA BUSINESS THAT HAS PRIOR EXPERIENCE PRODUCING OR DISTRIBUTING MARIJUANA PURSUANT TO CHAPTER 28.1 OF THIS TITLE IN THE LOCALITY IN WHICH THE APPLICANT SEEKS TO OPERATE A MARIJUANA ESTABLISHMENT AND THAT IS IN GOOD STANDING PURSUANT TO CHAPTER 28.1 OF THIS TITLE AND THE RULES ADOPTED PURSUANT TO CHAPTER 28.1 OF THIS TITLE OVER ANY COMPETING APPLICATION FROM AN APPLICANT WHO IS NOT A REORGANIZED MARIJUANA BUSINESS.

2. 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 THIS STATE, OPERATE IN COMPLIANCE WITH THIS CHAPTER AND THE RULES ADOPTED PURSUANT TO THIS CHAPTER AND MINIMIZE THE UNLAWFUL MARKET FOR MARIJUANA IN THIS STATE.

3. 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, EXCEPT THAT THIS PARAGRAPH SHALL NOT PREVENT EACH INDIVIDUAL NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS REGISTERED PURSUANT TO CHAPTER 28.1 OF THIS TITLE FROM ESTABLISHING A REORGANIZED MARIJUANA BUSINESS TO OPERATE EACH TYPE OF MARIJUANA ESTABLISHMENT.

4. 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.

E. THE DENIAL OF A COMPLETE MARIJUANA ESTABLISHMENT APPLICATION PURSUANT TO SUBSECTION B OF THIS SECTION 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.

36-2858.01. Fee schedule

A. THE DEPARTMENT SHALL REQUIRE EACH APPLICANT FOR A MARIJUANA ESTABLISHMENT LICENSE TO PAY A ONE-TIME APPLICATION FEE OF \$5,000.

B. THE DEPARTMENT MAY REQUIRE PAYMENT OF AN ANNUAL LICENSING FEE OF NOT MORE THAN:

| | |
|--|----------|
| 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 |

C. 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 OF NOT MORE THAN \$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 MAY NOT BE MORE THAN ONE-QUARTER OF THE ANNUAL LICENSING FEE FOR THE HIGHEST TIER SPECIFIED IN THE SCHEDULE.

D. IF A LICENSE RENEWAL APPLICATION IS FILED LATER THAN THIRTY DAYS BEFORE THE EXPIRATION OF THE LICENSE, THE DEPARTMENT MAY REQUIRE THE PAYMENT OF A LATE APPLICATION FEE OF UP TO \$500.

E. TO ACCOUNT FOR INFLATION, THE DEPARTMENT SHALL ADJUST TO THE NEAREST DOLLAR THE AMOUNTS SPECIFIED IN THIS SECTION EVERY TWO YEARS BY THE PERCENTAGE

2015 MAR 11 9:56 AM
SECRETARY OF STATE

CHANGE IN THE CONSUMER PRICE INDEX AND PUBLISH THE NEW AMOUNTS. FOR THE PURPOSES OF THIS SUBSECTION, "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS, UNITED STATES CITY AVERAGE, OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, OR ITS SUCCESSOR AGENCY.

36-2858.02. Licenses; expiration; renewal

- A. ALL LICENSES ISSUED PURSUANT TO THIS CHAPTER EXPIRE ONE YEAR AFTER THE DATE OF ISSUANCE.
- B. THE DEPARTMENT SHALL ISSUE A RENEWAL LICENSE WITHIN THIRTY DAYS AFTER RECEIPT OF A COMPLETE APPLICATION AND THE RENEWAL FEE FROM A MARIJUANA ESTABLISHMENT. THE DEPARTMENT MAY NOT RENEW ANY LICENSE ISSUED BY A LOCALITY.
- C. A LICENSEE WHOSE LICENSE HAS NOT BEEN EXPIRED FOR MORE THAN SIXTY DAYS, WHOSE LICENSE HAS NOT BEEN SUSPENDED OR REVOKED AND WHO HAS FILED A RENEWAL APPLICATION AND PAID THE RENEWAL FEE AND ANY REQUIRED LATE FEE MAY CONTINUE TO OPERATE UNTIL THE DEPARTMENT TAKES FINAL ACTION TO APPROVE OR DENY THE RENEWAL APPLICATION.

36-2858.03. Licensing by a locality

- A. IF THE DEPARTMENT DOES NOT TIMELY ADOPT RULES AS REQUIRED BY SECTION 36-2855 OR ACCEPT OR PROCESS APPLICATIONS IN ACCORDANCE WITH SECTION 36-2854, SUBSECTION B, AFTER MARCH 1, 2018, AN APPLICANT FOR A MARIJUANA ESTABLISHMENT WHO IS A REORGANIZED MARIJUANA BUSINESS MAY SUBMIT ITS APPLICATION DIRECTLY TO A LOCAL REGULATORY AUTHORITY DESIGNATED PURSUANT TO SECTION 36-2856 BY THE LOCALITY WHERE THE MARIJUANA ESTABLISHMENT WILL BE LOCATED.
- B. IF A MARIJUANA ESTABLISHMENT SUBMITS AN APPLICATION TO A LOCAL REGULATORY AUTHORITY UNDER THIS SECTION:
 1. ON REQUEST OF THE LOCALITY, THE DEPARTMENT SHALL FORWARD TO THE LOCALITY THE AMOUNT OF THE APPLICATION FEE, IF ANY, PAID BY THE APPLICANT TO THE DEPARTMENT.
 2. THE LOCAL REGULATORY AUTHORITY SHALL ISSUE A LICENSE TO THE APPLICANT WITHIN NINETY DAYS AFTER RECEIPT OF THE APPLICATION UNLESS THE LOCALITY FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH AN ORDINANCE OR RULE ADOPTED PURSUANT TO SECTION 36-2856 AND IN EFFECT AT THE TIME OF APPLICATION.
- C. IF A LOCAL REGULATORY AUTHORITY ISSUES A LICENSE PURSUANT TO THIS SECTION:
 1. THE LOCALITY SHALL NOTIFY THE DEPARTMENT THAT THE LICENSE HAS BEEN ISSUED.
 2. THE LICENSE HAS THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT PURSUANT TO SECTION 36-2858.
 3. THE HOLDER OF THE LICENSE IS NOT SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE LICENSE TERM BUT IS SUBJECT TO REGULATION BY THE LOCALITY.

36-2859. Marijuana establishments; operating requirements; security; inspection

- A. IN ADDITION TO REQUIREMENTS ESTABLISHED BY RULE PURSUANT TO SECTION 36-2855, A MARIJUANA ESTABLISHMENT SHALL DO ALL OF THE FOLLOWING:
 1. SECURE EVERY ENTRANCE TO AREAS CONTAINING MARIJUANA AND MARIJUANA PRODUCTS SO THAT ACCESS IS RESTRICTED TO PERSONS WHO ARE LEGALLY PERMITTED BY THE MARIJUANA ESTABLISHMENT TO ACCESS THE AREA.
 2. SECURE THE INVENTORY AND EQUIPMENT OF THE MARIJUANA ESTABLISHMENT DURING AND AFTER OPERATING HOURS TO DETER AND PREVENT THEFT OF MARIJUANA AND

MARIJUANA PRODUCTS FROM THE PREMISES OR WHILE IN TRANSIT TO OR FROM THE PREMISES OF A MARIJUANA ESTABLISHMENT.

3. PREVENT ANY PERSON WHO IS NOT AT LEAST TWENTY-ONE YEARS OF AGE FROM WORKING OR VOLUNTEERING FOR THE MARIJUANA ESTABLISHMENT.

B. THE CULTIVATION, PROCESSING, TESTING, STORAGE, MANUFACTURE OR SALE OF MARIJUANA AND MARIJUANA PRODUCTS SHALL 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 WHO ARE LEGALLY PERMITTED BY THE MARIJUANA ESTABLISHMENT TO ACCESS THE AREA. THE AREA MAY INCLUDE A GREENHOUSE AND MAY BE UNCOVERED ONLY IF THE AREA IS ENCLOSED WITH SECURITY FENCING THAT IS DESIGNED TO PREVENT UNAUTHORIZED ENTRY AND THAT IS AT LEAST EIGHT FEET HIGH.

C. THE CULTIVATION, PROCESSING, MANUFACTURE, SALE AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS MAY NOT BE VISIBLE FROM A PUBLIC PLACE WITHOUT THE USE OF BINOCULARS, AIRCRAFT OR OTHER OPTICAL AIDS.

D. A MARIJUANA ESTABLISHMENT IS SUBJECT TO REASONABLE INSPECTION BY THE DEPARTMENT.

E. A MARIJUANA DISTRIBUTOR LICENSE IS NOT REQUIRED FOR A MARIJUANA ESTABLISHMENT TO TRANSPORT MARIJUANA TO ANOTHER MARIJUANA ESTABLISHMENT.

F. A MARIJUANA RETAILER MAY NOT SELL OR OTHERWISE TRANSFER MARIJUANA TO A CONSUMER BEFORE MARCH 1, 2018.

36-2860. Possession, personal use and production of marijuana, marijuana products, marijuana accessories and industrial hemp; definition

A. NOTWITHSTANDING ANY OTHER LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, IT IS LAWFUL IN THIS STATE AND MAY NOT BE USED AS THE BASIS FOR PROSECUTION, PENALTY OR SEIZURE OR FORFEITURE OF ASSETS FOR A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE TO:

1. POSSESS, USE, PURCHASE, OBTAIN, PROCESS, MANUFACTURE OR TRANSPORT MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA, EXCEPT THAT NOT MORE THAN FIVE GRAMS OF MARIJUANA MAY BE IN THE FORM OF CONCENTRATED MARIJUANA.

2. POSSESS OR TRANSPORT NOT MORE THAN SIX MARIJUANA PLANTS AND POSSESS, PRODUCE OR PROCESS 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 IF NO MORE THAN TWELVE PLANTS ARE PRODUCED ON THE PREMISES AT ONE TIME.

3. GIVE OR OTHERWISE TRANSFER WITHOUT REMUNERATION ONE OUNCE OR LESS OF MARIJUANA, EXCEPT THAT NOT MORE THAN FIVE GRAMS OF MARIJUANA MAY BE IN THE FORM OF CONCENTRATED MARIJUANA, TO A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE IF THE TRANSFER IS NOT ADVERTISED OR PROMOTED TO THE PUBLIC.

4. ASSIST ANOTHER PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE IN ANY OF THE ACTS DESCRIBED IN THIS SECTION.

B. A PERSON MAY NOT BE PENALIZED BY THIS STATE FOR AN ACTION TAKEN WHILE UNDER THE INFLUENCE OF MARIJUANA OR A MARIJUANA PRODUCT SOLELY BECAUSE OF THE PRESENCE OF METABOLITES OR COMPONENTS OF MARIJUANA IN THE PERSON'S BODY OR IN THE URINE, BLOOD, SALIVA, HAIR OR OTHER TISSUE OR FLUID OF THE PERSON'S BODY.

C. NOTWITHSTANDING ANY OTHER LAW, IT IS LAWFUL IN THIS STATE AND MAY NOT BE USED AS THE BASIS FOR PROSECUTION, PENALTY OR SEIZURE OR FORFEITURE OF ASSETS FOR A PERSON TO POSSESS, PRODUCE, PROCESS, MANUFACTURE, PURCHASE, OBTAIN, SELL OR OTHERWISE TRANSFER OR TRANSPORT INDUSTRIAL HEMP.

D. A PERSON MAY NOT BE DENIED CUSTODY OF OR VISITATION OR PARENTING TIME WITH A MINOR AND MAY NOT BE PRESUMED GUILTY OF NEGLECT OR CHILD ENDANGERMENT SOLELY FOR CONDUCT THAT IS ALLOWED UNDER THIS CHAPTER, UNLESS THE PERSON'S BEHAVIOR IS CONTRARY TO THE BEST INTEREST OF THE CHILD AS SET OUT IN SECTION 25-403.

2015 MAY 11 PM 2:56

SECRETARY OF STATE

E. FOR THE 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 THAT RESIN OR TETRAHYDROCANNABINOL. CONCENTRATED MARIJUANA DOES NOT INCLUDE THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH CANNABIS TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK OR OTHER PRODUCTS.

36-2861. Marijuana accessories authorized

A. NOTWITHSTANDING ANY OTHER LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER, A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE IS AUTHORIZED AND IT IS LAWFUL IN THIS STATE AND MAY NOT BE USED AS THE BASIS FOR PROSECUTION, PENALTY OR SEIZURE OR FORFEITURE OF ASSETS, TO POSSESS, USE, TRANSPORT, DELIVER, MANUFACTURE OR PURCHASE MARIJUANA ACCESSORIES OR DISTRIBUTE OR SELL MARIJUANA ACCESSORIES TO A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE.

B. NOTWITHSTANDING SECTION 13-3415, SUBSECTION C, AND SUBJECT TO ANY RULES ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 36-2855, IT IS NOT UNLAWFUL AND MAY NOT BE AN OFFENSE OR A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS FOR A PERSON TO PLACE OR PUBLISH AN ADVERTISEMENT FOR MARIJUANA ACCESSORIES.

36-2862. Marijuana establishments; permissible activities

NOTWITHSTANDING ANY OTHER LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER, IT IS LAWFUL IN THIS STATE AND MAY NOT BE 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, PURCHASE, SELL, PACKAGE 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 OR TO POSSESS, SELL, PURCHASE OR TRANSPORT MARIJUANA AND MARIJUANA PRODUCTS TO OR FROM A MARIJUANA ESTABLISHMENT.
3. A MARIJUANA PRODUCT MANUFACTURER, OR AN AGENT ACTING ON BEHALF OF A MARIJUANA PRODUCT MANUFACTURER, TO PACKAGE, PROCESS, MANUFACTURE, STORE, POSSESS, 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, STORE, TRANSPORT, SELL OR PURCHASE MARIJUANA AND MARIJUANA PRODUCTS TO OR FROM A MARIJUANA ESTABLISHMENT.
5. A MARIJUANA TESTING FACILITY, OR AN AGENT ACTING ON BEHALF OF A MARIJUANA TESTING FACILITY, TO POSSESS, PROCESS, REPACKAGE, STORE, TRANSPORT OR TEST MARIJUANA AND MARIJUANA PRODUCTS.
6. A NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS REGISTERED PURSUANT TO CHAPTER 28.1 OF THIS TITLE, OR AN AGENT ACTING ON BEHALF OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS REGISTERED PURSUANT TO CHAPTER 28.1 OF THIS TITLE, TO SELL OR OTHERWISE TRANSFER MARIJUANA OR MARIJUANA PRODUCTS TO A MARIJUANA ESTABLISHMENT OR FOR A MARIJUANA ESTABLISHMENT, OR AN AGENT ACTING ON BEHALF OF A MARIJUANA ESTABLISHMENT, TO SELL OR OTHERWISE TRANSFER MARIJUANA OR MARIJUANA PRODUCTS TO A NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS REGISTERED PURSUANT TO CHAPTER 28.1 OF THIS TITLE.
7. ANY PERSON TO LEASE OR OTHERWISE ALLOW PROPERTY THAT IS OWNED, MANAGED OR CONTROLLED BY THE PERSON TO BE USED FOR ANY LAWFUL ACTIVITY

PURSUANT TO THIS CHAPTER.

36-2863. Identification of underage persons

NOTWITHSTANDING ANY OTHER LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER, 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 OR A MARIJUANA PRODUCT TO A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE, IS NOT SUBJECT TO PROSECUTION, PENALTY OR SEIZURE OR FORFEITURE OF ASSETS IF:

1. THE PERSON REQUESTED 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 AND DETERMINED THAT THE DATE OF BIRTH ON THE IDENTIFICATION INDICATED THAT RECIPIENT WAS NOT UNDER TWENTY-ONE YEARS OF AGE.

2. THE RECIPIENT IS PERMITTED TO POSSESS THE MARIJUANA PURSUANT TO CHAPTER 28.1 OF THIS TITLE.

36-2864. Contracts pertaining to marijuana enforceable

IT IS THE PUBLIC POLICY OF THE PEOPLE OF THIS STATE THAT CONTRACTS RELATED TO THE OPERATION OF MARIJUANA ESTABLISHMENTS UNDER THIS CHAPTER BE ENFORCEABLE, AND A CONTRACT ENTERED INTO BY A LICENSEE OR ITS AGENT AS ALLOWED PURSUANT TO A VALID LICENSE ISSUED BY THE DEPARTMENT OR BY A PERSON WHO ALLOWS PROPERTY TO BE USED BY A LICENSEE OR ITS AGENTS AS ALLOWED PURSUANT TO A VALID LICENSE ISSUED BY THE DEPARTMENT MAY NOT BE DEEMED UNENFORCEABLE ON THE BASIS THAT ANY ACTION OR CONDUCT ALLOWED PURSUANT TO THE LICENSE IS PROHIBITED BY FEDERAL LAW.

36-2865. Provision of professional services

A PERSON WHO IS LICENSED, CERTIFIED OR REGISTERED BY ANY DEPARTMENT, AGENCY OR REGULATORY BOARD OF THIS STATE IS NOT SUBJECT TO DISCIPLINARY ACTION BY THAT ENTITY FOR PROVIDING PROFESSIONAL ASSISTANCE TO A PROSPECTIVE OR LICENSED MARIJUANA ESTABLISHMENT OR OTHER PERSON FOR ANY LAWFUL ACTIVITY UNDER THIS CHAPTER.

36-2866. Violations; classification

A. A PERSON WHO SMOKES OR OTHERWISE USES MARIJUANA OR A MARIJUANA PRODUCT IN A PUBLIC PLACE IS GUILTY OF A PETTY OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN THREE HUNDRED DOLLARS.

B. A PERSON WHO MANUFACTURES MARIJUANA BY CHEMICAL EXTRACTION WITH A FLAMMABLE SOLVENT, UNLESS DONE PURSUANT TO A MARIJUANA PRODUCT MANUFACTURING LICENSE ISSUED BY THE DEPARTMENT, IS GUILTY OF A CLASS 6 FELONY.

C. A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE AND WHO MISREPRESENTS THE PERSON'S AGE TO ANY OTHER 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 A MARIJUANA PRODUCT 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 AND PERFORMANCE OF UP TO TWENTY-FOUR HOURS OF COMMUNITY RESTITUTION.

D. A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE AND WHO SOLICITS ANOTHER PERSON TO PURCHASE MARIJUANA OR A MARIJUANA PRODUCT IN VIOLATION OF THIS CHAPTER IS GUILTY OF A PETTY OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN THREE

SECRETARY OF STATE
2015 MAY 18 PM 2:56

HUNDRED DOLLARS AND PERFORMANCE OF UP TO TWENTY-FOUR HOURS OF COMMUNITY RESTITUTION.

E. A PERSON ACTING IN THE PERSON'S CAPACITY AS AN AGENT OF A MARIJUANA ESTABLISHMENT WHO KNOWINGLY ALLOWS A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE AND WHO IS NOT AUTHORIZED TO POSSESS MARIJUANA PURSUANT TO CHAPTER 28.1 OF THIS TITLE TO REMAIN IN A SECURED AREA ON THE LICENSED PREMISES WHERE MARIJUANA OR MARIJUANA PRODUCTS ARE PRODUCED, PROCESSED, MANUFACTURED, SOLD OR USED IS GUILTY OF A PETTY OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN THREE HUNDRED DOLLARS.

F. EXCEPT AS OTHERWISE PROVIDED IN CHAPTER 28.1 OF THIS TITLE, ANY UNLICENSED PERSON WHO PRODUCES MARIJUANA PLANTS PURSUANT TO SECTION 36-2860 WHERE THEY ARE SUBJECT TO PUBLIC VIEW WITHOUT THE USE OF BINOCULARS, AIRCRAFT OR OTHER OPTICAL AIDS, WHERE PRODUCTION IS PROHIBITED BY A PERSON WHO OWNS, MANAGES OR LEASES THE PROPERTY WHERE THE MARIJUANA IS PRODUCED, IN ANY OUTDOOR AREA OR OUTSIDE OF AN ENCLOSED AREA THAT IS EQUIPPED WITH A LOCK OR OTHER SECURITY DEVICE IS GUILTY OF:

1. FOR A FIRST VIOLATION, A PETTY OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN THREE HUNDRED DOLLARS.

2. FOR A SECOND OR SUBSEQUENT VIOLATION, A CLASS 3 MISDEMEANOR.

G. NOTWITHSTANDING SECTION 13-3405, A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE AND WHO POSSESSES OR USES ONE OUNCE OR LESS OR WHO TRANSFERS MARIJUANA WITHOUT REMUNERATION FROM A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE TO SOMEONE WHO IS WITHIN TWO YEARS OF THE AGE OF THE TRANSFEROR IS GUILTY OF A PETTY OFFENSE THAT IS 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.

H. NOTWITHSTANDING SECTION 13-3405 AND EXCEPT AS PROVIDED IN SECTION 36-2860, A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE AND 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.

I. THE LEGISLATURE MAY REDUCE OR ELIMINATE THE PENALTIES PROVIDED FOR IN THIS SECTION.

36-2867. Marijuana fund

A. THE MARIJUANA FUND IS ESTABLISHED CONSISTING OF ALL MONIES DEPOSITED PURSUANT TO SECTIONS 36-2857 AND 42-3384 AND INTEREST EARNED ON THOSE MONIES. THE STATE TREASURER SHALL DEPOSIT ALL MONIES RECEIVED UNDER SECTION 42-3384 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.

B. THE DEPARTMENT OF HEALTH SERVICES SHALL TRANSFER MONIES FROM THE MEDICAL MARIJUANA FUND ESTABLISHED BY SECTION 36-2817 WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION TO THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL TO BE DEPOSITED INTO THE MARIJUANA FUND AND EXPENDED TO PAY THE COSTS INCURRED BY THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL OR BY THE DEPARTMENT OF REVENUE BEFORE MONIES ARE DEPOSITED PURSUANT TO SECTIONS 36-2857 AND 42-3384. ANY MONIES TRANSFERRED BY THE DEPARTMENT OF HEALTH SERVICES TO THE MARIJUANA FUND SHALL BE REPAYED TO THE MEDICAL MARIJUANA FUND AT SUCH TIME AS FUNDS ARE AVAILABLE FROM THE MARIJUANA FUND.

C. ALL MONIES IN THE MARIJUANA FUND MUST FIRST BE EXPENDED TO PAY THE COSTS INCURRED BY THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL IN CARRYING OUT THIS CHAPTER AND RULES ADOPTED PURSUANT TO THIS CHAPTER.

D. THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL SHALL TRANSFER 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 DEPOSITED IN THE FUND UNDER SECTION 43384.

E. THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL SHALL DISTRIBUTE EACH QUARTER ONE-HALF OF THE LICENSE FEES COLLECTED FROM MARIJUANA ESTABLISHMENTS IN A LOCALITY TO THE LOCALITY IN WHICH THE MARIJUANA ESTABLISHMENT IS LOCATED.

F. THE DEPARTMENT OF MARIJUANA LICENSES AND CONTROL SHALL TRANSFER EACH QUARTER ALL MONIES IN EXCESS OF 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, CONSTRUCTION, MAINTENANCE AND OPERATION COSTS OF ANY KINDERGARTEN PROGRAM AND GRADES ONE THROUGH TWELVE.

2. FORTY PERCENT TO SCHOOL DISTRICTS AND CHARTER SCHOOLS THAT CERTIFY AT THE BEGINNING OF A FISCAL YEAR THAT FUNDS TRANSFERRED WILL BE USED TO PROVIDE FULL-DAY KINDERGARTEN INSTRUCTION. FUNDS DISTRIBUTED PURSUANT TO THIS PARAGRAPH SHALL BE ALLOCATED IN PROPORTION TO EACH SCHOOL'S WEIGHTED STUDENT COUNT FOR THE FISCAL YEAR PURSUANT TO SECTION 15-943, PARAGRAPH 2, SUBDIVISION A. ANY FUNDS TRANSFERRED PURSUANT TO THIS PARAGRAPH THAT ARE NOT USED BY THE END OF THE FISCAL YEAR TO PROVIDE FULL-DAY KINDERGARTEN INSTRUCTION SHALL BE RETURNED TO THE MARIJUANA FUND FOR REDISTRIBUTION PURSUANT TO THIS SUBSECTION F.

3. TWENTY PERCENT TO THE ARIZONA DEPARTMENT OF HEALTH SERVICES FOR THE PROGRAM ESTABLISHED BY TITLE 36, SECTION 1161, INCLUDING PUBLIC EDUCATION CAMPAIGNS REGARDING THE RELATIVE HARMS OF ALCOHOL, MARIJUANA AND OTHER SUBSTANCES.

4. THE MONIES TRANSFERRED PURSUANT TO THIS SUBSECTION ARE IN ADDITION TO ANY OTHER APPROPRIATION, TRANSFER OR OTHER ALLOCATION OF MONIES AND MAY NOT SUPPLANT, REPLACE OR CAUSE A REDUCTION IN OTHER FUNDING SOURCES.

G. MONIES IN THE FUND OR ITS ACCOUNTS MAY NOT 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.

36-2868. Enforcement of this chapter; mandamus

A. IF THE DEPARTMENT FAILS TO ADOPT RULES NECESSARY FOR THE IMPLEMENTATION OF THIS CHAPTER ON OR BEFORE SEPTEMBER 1, 2017, OR IF THE DEPARTMENT FAILS TO BEGIN ACCEPTING APPLICATIONS AS PROVIDED IN SECTION 36-2854, ANY CITIZEN MAY COMMENCE A MANDAMUS ACTION IN SUPERIOR COURT TO COMPEL THE DEPARTMENT TO PERFORM THE ACTIONS MANDATED UNDER THIS CHAPTER.

B. IF THE DEPARTMENT FAILS TO ISSUE A LICENSE OR SEND A NOTICE OF DENIAL WITHIN NINETY DAYS AFTER RECEIVING OF A COMPLETE MARIJUANA ESTABLISHMENT APPLICATION PURSUANT TO SECTION 36-2858, THE APPLICANT MAY COMMENCE A MANDAMUS ACTION IN SUPERIOR COURT TO COMPEL THE DEPARTMENT TO PERFORM THE ACTIONS MANDATED UNDER THIS CHAPTER.

C. IF THE DEPARTMENT FAILS TO ADOPT RULES NECESSARY FOR THE IMPLEMENTATION OF THIS CHAPTER ON OR BEFORE SEPTEMBER 1, 2018, NOTWITHSTANDING CHAPTER 28.1 OF THIS TITLE, EACH NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS REGISTERED AND IN GOOD STANDING PURSUANT TO CHAPTER 28.1 OF THIS TITLE MAY BEGIN TO PRODUCE, PROCESS, MANUFACTURE, TRANSPORT AND TEST MARIJUANA AND MARIJUANA PRODUCTS AND MAY SELL OR OTHERWISE TRANSFER MARIJUANA TO ANY PERSON WHO IS AT

LEAST TWENTY-ONE YEARS OF AGE UNTIL THE DEPARTMENT ISSUES LICENSES TO OPERATE MARIJUANA ESTABLISHMENTS TO QUALIFYING REORGANIZED MARIJUANA BUSINESSES THAT HAVE APPLIED.

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

ARTICLE 10.

MARIJUANA AND MARIJUANA PRODUCTS

42-3381. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "MARIJUANA", "MARIJUANA ESTABLISHMENT", "MARIJUANA PRODUCTS", "MARIJUANA RETAILER" AND "UNREASONABLY IMPRACTICABLE" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2851.

42-3382. Levy and rates of tax

A. IN ADDITION TO ALL OTHER TAXES, THERE IS LEVIED AND IMPOSED AND THERE SHALL BE COLLECTED BY THE DEPARTMENT A TAX ON ALL MARIJUANA AND MARIJUANA PRODUCTS 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 OR MARIJUANA PRODUCT SOLD.

B. A PRODUCT SUBJECT TO THE TAX IMPOSED BY THIS SECTION MAY NOT BE BUNDLED WITH A PRODUCT OR SERVICE THAT IS NOT SUBJECT TO THE TAX IMPOSED BY THIS SECTION.

C. 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 36-2867.

42-3383. Return and payment by marijuana retailer; penalty; interest

A. EVERY MARIJUANA RETAILER IN THIS STATE SHALL PAY THE TAX DUE UNDER THIS ARTICLE TO THE DEPARTMENT MONTHLY AND SHALL PREPARE ON THE FORM PRESCRIBED BY THE DEPARTMENT A SWORN RETURN FOR EACH MONTH IN WHICH THE TAX ACCRUES.

B. A MARIJUANA RETAILER WHO FAILS TO PAY THE TAX PRESCRIBED BY THIS ARTICLE WITHIN TEN DAYS AFTER THE DATE UPON WHICH THE PAYMENT BECOMES DUE IS 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.

42-3384. 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 36-2867.

42-3385. Rules

NOT LATER THAN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE DEPARTMENT SHALL ADOPT RULES THAT ARE NOT IN CONFLICT WITH TITLE 36, CHAPTER 28.2 AND PURSUANT TO TITLE 41, CHAPTER 6 THAT ARE NECESSARY OR CONVENIENT FOR THE ENFORCEMENT OF THIS ARTICLE, INCLUDING THE ESTABLISHMENT OF A PROCESS FOR THE PAYMENT, COLLECTION, AND ENFORCEMENT OF THE TAX LEVIED UNDER THIS ARTICLE. THE RULES MAY NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REQUIREMENTS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE.

Sec. 5. Title 43, Chapter 1, article 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 OR ARIZONA TAXABLE INCOME FOR A CORPORATION, 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 TO THE EXTENT NOT ALREADY EXCLUDED FROM ARIZONA GROSS INCOME.

Sec. 6. Initial terms of members of the Marijuana Commission

A. Notwithstanding section 36-2853, the initial terms of members of the Marijuana Commission are:

1. Two terms ending on the third Monday in January 2018.
2. Three terms ending on the third Monday in January 2019.
3. Two terms ending on the third Monday in January 2020.

B. Notwithstanding section 36-2853, subsection C, no member appointed to the Marijuana Commission before March 1, 2019 is required to be a controlling person of a marijuana establishment. Three members serving on the marijuana commission before March 1, 2019 shall, at the time of appointment, be principal officers of nonprofit medical marijuana dispensaries registered pursuant to chapter 28.1 of this title.

C. The governor shall make all subsequent appointments as prescribed by statute.

Sec. 7. Exemption from rulemaking

For the purposes of this Act, the department of revenue and the department of marijuana licenses and control are exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until January 1, 2018, except that each department shall provide the public with an opportunity to comment on proposed rules and shall publish otherwise exempted rules.

Sec. 8. 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.

SECRETARY OF STATE
2015 MAY 11 PM 2:56

EXHIBIT B


APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER

Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

The undersigned intends to circulate and file an **INITIATIVE** or a **REFERENDUM** (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the **MEASURE** or **CONSTITUTIONAL AMENDMENT** (circle appropriate word) intended to be **INITIATED** or **REFERRED** (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

The Regulation and Taxation of Marijuana Act: (1) establishes a 15% tax on retail marijuana sales, from which the revenue will be allocated to public health and education; (2) allows adults twenty-one years of age and older to possess and to privately consume and grow limited amounts of marijuana; (3) creates a system in which licensed businesses can produce and sell marijuana; (4) establishes a Department of Marijuana Licenses and Control to regulate the cultivation, manufacturing, testing, transportation, and sale of marijuana; and (5) provides local governments with the authority to regulate and limit marijuana businesses.


Signature of Applicant
Carlos Alfaro
Printed Name of Applicant
6933 E 1st St
Address
Scottsdale AZ 85251
City State Zip
480-270-0001
Telephone Number

**Campaign to Regulate Marijuana Like Alcohol,
sponsored by the Marijuana Policy Project**
Name of Organization (if any)
4400 N Scottsdale Rd Ste 9916
Address
Scottsdale AZ 85251
City State Zip
480-270-0001
Telephone Number
Carlos Alfaro - Treasurer
Name of Officer and Title
6933 E 1st St
Address
Scottsdale AZ 85251
City State Zip
480-270-0001
Telephone Number
Jon-Paul Holyoak - Chair
Name of Officer and Title
7373 E Doubletree Ranch Rd Ste 200
Address
Scottsdale AZ 85258
City State Zip
480-505-4085
Telephone Number

Date of Application MAY 11, 2015
Signatures Required 150,642
Deadline for Filing JULY 7, 2016
Serial Number Issued I-08-2016
FOR OFFICE USE ONLY

Revised 11/92

201400970

2015 MAY 11 PM 2:54

SECRETARY OF STATE