

REFERENCE TITLE: **greenhouse emissions; legislative authority**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1393

Introduced by
Senators Allen: Gould, Griffin, Klein, Melvin, Reagan, Shooter, Smith,
Yarbrough; Representatives Barton, Harper

AN ACT

**AMENDING TITLE 41, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14;
RELATING TO THE LEGISLATURE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 7, Arizona Revised Statutes, is amended
3 by adding article 14, to read:

4 ARTICLE 14. LEGISLATIVE AUTHORITY

5 41-1294. Authority over greenhouse gases

6 NOTWITHSTANDING ANY FEDERAL LAW OR REGULATION, THIS STATE, THROUGH THE
7 LEGISLATURE, HAS AUTHORITY TO REGULATE ANTHROPOGENIC EMISSIONS OF CARBON
8 DIOXIDE AND OTHER GREENHOUSE GASES AND SUBSTANCES PRODUCED BY MECHANICAL OR
9 CHEMICAL PROCESSES, INCLUDING AGRICULTURAL OPERATIONS AND WASTE OPERATIONS.

10 Sec. 2. Short title

11 This act may be cited as the "Freedom to Breathe Act".

12 Sec. 3. Declarations of authority

13 The legislature of this state declares that the authority for this act
14 is the following:

15 1. The Tenth Amendment to the United States Constitution guarantees
16 and reserves to the states and their people all powers not granted to the
17 federal government elsewhere in the Constitution as they were understood at
18 the time that the amendment was ratified on December 15, 1791, subject only
19 to modification by duly ratified subsequent amendments to the United States
20 Constitution. The guaranty of those powers is a matter of compact between
21 the state and people of Arizona and the United States as of the time that
22 Arizona was admitted to statehood on February 14, 1912.

23 2. As a matter of compact between the state and people of Arizona and
24 the United States as of the time that Arizona was admitted to statehood, the
25 Tenth Amendment to the United States Constitution guarantees to the state and
26 people of Arizona that Congress and the federal government will not exercise
27 any purported power under article I, section 8 of the United States
28 Constitution (the "Enumerated Powers") except in accordance with its meaning
29 and understanding at the time the United States Constitution was ratified on
30 June 21, 1788, subject only to modification by duly ratified subsequent
31 amendments to the United States Constitution.

32 3. At the time the United States Constitution was ratified on June 21,
33 1788, the Enumerated Powers were meant and understood not to grant Congress
34 general police powers or the power to regulate the purely internal affairs of
35 the states or their people. This meaning and understanding of the Enumerated
36 Powers, as it pertains to regulation of anthropogenic carbon dioxide or other
37 greenhouse substances produced by biological, mechanical or chemical
38 processes, including refuse and agricultural operations, has never been
39 modified by any duly ratified amendment to the United States Constitution.
40 Accordingly, the foregoing meaning and understanding of the Enumerated Powers
41 is a matter of compact between the state and people of Arizona and the United
42 States as of the time that Arizona was admitted to statehood on February 14,
43 1912.

44 4. At the time the United States Constitution was ratified on June 21,
45 1788, the Enumerated Powers were not meant or understood to authorize

1 Congress to regulate wholly intrastate manufacturing or noneconomic
2 activities. This understanding of the Enumerated Powers, as it pertains to
3 the regulation of anthropogenic carbon dioxide or other greenhouse substances
4 produced by biological, mechanical or chemical processes, including refuse
5 and agricultural operations, has never been modified by any duly ratified
6 amendment to the United States Constitution. Accordingly, the foregoing
7 understanding of the Enumerated Powers is a matter of compact between the
8 state and people of Arizona and the United States as of the time that Arizona
9 was admitted to statehood on February 14, 1912.

10 5. At the time the United States Constitution was ratified on June 21,
11 1788, the Enumerated Powers were not meant or understood to authorize
12 Congress to prohibit any aspect of interstate trade except as necessary and
13 proper to prevent state law from engaging in local protectionism and
14 otherwise solely to ensure that interstate trade occurs smoothly and
15 efficiently among the states. This understanding of the Enumerated Powers,
16 as it pertains to the regulation of anthropogenic carbon dioxide or other
17 greenhouse substances produced by biological, mechanical or chemical
18 processes, including refuse and agricultural operations, has never been
19 modified by any duly ratified amendment to the United States Constitution.
20 Accordingly, the foregoing understanding of the Enumerated Powers is a matter
21 of compact between the state and people of Arizona and the United States as
22 of the time that Arizona was admitted to statehood on February 14, 1912.

23 6. Congress has not expressly preempted state regulation of intrastate
24 commerce pertaining to the regulation of anthropogenic carbon dioxide or
25 other greenhouse substances produced by biological, mechanical or chemical
26 processes, including refuse and agricultural operations.

27 7. The regulation of intrastate commerce, manufacturing and
28 noneconomic activities, as it pertains to intrastate anthropogenic carbon
29 dioxide or other greenhouse substances produced by biological, mechanical or
30 chemical processes, including refuse and agricultural operations, is excluded
31 from the meaning and understanding of the Enumerated Powers at the time the
32 United States Constitution was ratified on June 21, 1788, and it is vested in
33 the states under the Tenth Amendment to the United States Constitution.

34 8. Under the Tenth Amendment, the people and state of Arizona retain
35 their exclusive power to regulate wholly intrastate commerce, manufacturing
36 or noneconomic activities, as it pertains to intrastate anthropogenic carbon
37 dioxide or other greenhouse substances produced by biological, mechanical or
38 chemical processes, including refuse and agricultural operations, subject
39 only to the Fourteenth Amendment's guaranty that the people and state of
40 Arizona shall exercise such sovereign power in accordance with each citizen's
41 lawful privileges or immunities, and in compliance with the requirements of
42 due process and equal protection of the law.

43 9. Article II, sections 2 and 33, Constitution of Arizona, secure to
44 Arizona citizens, and prohibits unreasonable government interference with,
45 their natural rights to life, liberty and property as entailed by the

1 traditional Anglo-American conception of ordered liberty; including, but not
2 limited to, their rights as they were understood and secured by the law in
3 the state of Arizona at the time the Arizona Constitution was adopted. This
4 Constitutional protection is unchanged from the Arizona Constitution as it
5 was adopted. The guaranty of this right is a matter of compact between the
6 state and people of Arizona and the United States as of the time that Arizona
7 was admitted to statehood on February 14, 1912.

8 10. The Ninth Amendment to the United States Constitution secures
9 individual rights not specified in the Constitution and reserves to the
10 people of Arizona as against the federal government their natural rights to
11 life, liberty and property as entailed by the traditional Anglo-American
12 conception of ordered liberty, including, but not limited to, their rights as
13 they were understood and secured by the common law at the time that the
14 amendment was ratified on December 15, 1791, as well as their rights as they
15 were understood and secured by the law in the state of Arizona at the time
16 the Arizona Constitution was adopted. The guaranty of those rights is a
17 matter of compact between the state and people of Arizona and the United
18 States as of the time that Arizona was admitted to statehood on February 14,
19 1912.

20 11. To the extent that article II, sections 2 and 33, Constitution of
21 Arizona, secures to Arizona citizens a more expansive right to emit
22 intrastate anthropogenic carbon dioxide or other greenhouse substances
23 produced by biological, mechanical or chemical processes, including refuse
24 and agricultural operations, than does the Ninth Amendment to the United
25 States Constitution, the Tenth Amendment to the United States Constitution
26 secures and reserves to the people of Arizona as against the federal
27 government that right as it was understood and secured by the law in the
28 state of Arizona at the time the Arizona Constitution was adopted. The
29 guaranty of this right is a matter of compact between the state and people of
30 Arizona and the United States as of the time that Arizona was admitted to
31 statehood on February 14, 1912.

32 Sec. 4. Declaration of exclusive sovereign authority and
33 sanctions

34 A. The harmless emission of anthropogenic carbon dioxide or other
35 greenhouse substances produced by biological, mechanical or chemical
36 processes, including refuse and agricultural operations, is a necessary
37 incident of the Constitutional rights of Arizonans under the Ninth Amendment
38 to the United States Constitution, as well as article II, sections 2 and 33,
39 Constitution of Arizona.

40 B. The intrastate emission of anthropogenic carbon dioxide or other
41 greenhouse substances produced by biological, mechanical or chemical
42 processes, including refuse and agricultural operations, is not subject to
43 federal law or federal regulation, under the Enumerated Powers of the federal
44 government. Accordingly, to the extent that such emissions can be regulated
45 consistent with the principles of free republican government, such power is

1 reserved to the State of Arizona or the people under the Tenth Amendment to
2 the United States Constitution.

3 C. Any effort by any governmental official to enforce within the
4 borders of the state of Arizona federal laws or federal regulations
5 purporting to restrict intrastate emissions of anthropogenic carbon dioxide
6 or other greenhouse substances is herewith declared a violation of civil
7 rights and unlawful under Arizona state law.

8 Sec. 5. Rule of construction and severability

9 Any court responsible for construing this act must adopt a construction
10 of each provision that:

11 1. Confines the power of Congress to regulate under the Enumerated
12 Powers, as it pertains to the intrastate emission of anthropogenic carbon
13 dioxide or other greenhouse substances produced by biological, mechanical or
14 chemical processes, including refuse and agricultural operations, to the
15 least expansive interpretation permitted under binding precedent.

16 2. Secures the authority of the state of Arizona to exclusively
17 regulate intrastate manufacturing, commerce and noneconomic activities, as it
18 pertains to the emission of anthropogenic carbon dioxide or other greenhouse
19 substances produced by biological, mechanical or chemical processes,
20 including refuse and agricultural operations, under the Tenth Amendment to
21 the United States Constitution to the greatest extent permitted under binding
22 precedent.

23 3. Protects the constitutional rights of Arizonans under the Ninth
24 Amendment to the United States Constitution, as well as article II, sections
25 2 and 33, Constitution of Arizona, as they pertain to the intrastate emission
26 of anthropogenic carbon dioxide or other greenhouse substances produced by
27 biological, mechanical or chemical processes, including refuse and
28 agricultural operations, from regulation or restraint by the federal
29 government to the greatest extent permitted under binding precedent.

30 4. If any portion of this act is held to be unlawful or
31 unconstitutional under any present or future law or court decision, that
32 provision will be fully severable. This act shall then be construed and
33 enforced as if the unlawful or unconstitutional provision had never comprised
34 a part of it, and the remaining provisions of this act will remain in full
35 force and effect and will not be affected by any such unlawful or
36 unconstitutional provision or by its severance from this act.