

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1393

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, INCLUDING PM-10 AND
9 PM-2.5, PRODUCED BY MECHANICAL OR CHEMICAL PROCESSES, INCLUDING AGRICULTURAL
10 OPERATIONS AND WASTE OPERATIONS.

11 Sec. 2. Short title

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

13 Sec. 3. Declarations of authority

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

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

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

33 3. At the time the United States Constitution was ratified on June 21,
34 1788, the Enumerated Powers were meant and understood not to grant Congress
35 general police powers or the power to regulate the purely internal affairs of
36 the states or their people. This meaning and understanding of the Enumerated
37 Powers, as it pertains to regulation of anthropogenic carbon dioxide or other
38 greenhouse substances produced by biological, mechanical or chemical
39 processes, including refuse and agricultural operations, has never been
40 modified by any duly ratified amendment to the United States Constitution.
41 Accordingly, the foregoing meaning and understanding of the Enumerated Powers
42 is a matter of compact between the state and people of Arizona and the United
43 States as of the time that Arizona was admitted to statehood on February 14,
44 1912.

1 4. At the time the United States Constitution was ratified on June 21,
2 1788, the Enumerated Powers were not meant or understood to authorize
3 Congress to regulate wholly intrastate manufacturing or noneconomic
4 activities. This understanding of the Enumerated Powers, as it pertains to
5 the regulation of anthropogenic carbon dioxide or other greenhouse substances
6 produced by biological, mechanical or chemical processes, including refuse
7 and agricultural operations, has never been modified by any duly ratified
8 amendment to the United States Constitution. Accordingly, the foregoing
9 understanding of the Enumerated Powers is a matter of compact between the
10 state and people of Arizona and the United States as of the time that Arizona
11 was admitted to statehood on February 14, 1912.

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

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

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

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

1 9. Article II, sections 2 and 33, Constitution of Arizona, secure to
2 Arizona citizens, and prohibits unreasonable government interference with,
3 their natural rights to life, liberty and property as entailed by the
4 traditional Anglo-American conception of ordered liberty; including, but not
5 limited to, their rights as they were understood and secured by the law in
6 the state of Arizona at the time the Arizona Constitution was adopted. This
7 Constitutional protection is unchanged from the Arizona Constitution as it
8 was adopted. The guaranty of this right is a matter of compact between the
9 state and people of Arizona and the United States as of the time that Arizona
10 was admitted to statehood on February 14, 1912.

11 10. The Ninth Amendment to the United States Constitution secures
12 individual rights not specified in the Constitution and reserves to the
13 people of Arizona as against the federal government their natural rights to
14 life, liberty and property as entailed by the traditional Anglo-American
15 conception of ordered liberty, including, but not limited to, their rights as
16 they were understood and secured by the common law at the time that the
17 amendment was ratified on December 15, 1791, as well as their rights as they
18 were understood and secured by the law in the state of Arizona at the time
19 the Arizona Constitution was adopted. The guaranty of those rights is a
20 matter of compact between the state and people of Arizona and the United
21 States as of the time that Arizona was admitted to statehood on February 14,
22 1912.

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

35 Sec. 4. Declaration of exclusive sovereign authority and
36 sanctions

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

43 B. The intrastate emission of anthropogenic carbon dioxide or other
44 greenhouse substances produced by biological, mechanical or chemical
45 processes, including refuse and agricultural operations, is not subject to

1 federal law or federal regulation, under the Enumerated Powers of the federal
2 government. Accordingly, to the extent that such emissions can be regulated
3 consistent with the principles of free republican government, such power is
4 reserved to the State of Arizona or the people under the Tenth Amendment to
5 the United States Constitution.

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

11 Sec. 5. Rule of construction and severability

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

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

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

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

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