

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1149

AN ACT

AMENDING SECTIONS 13-3101 AND 13-3102, ARIZONA REVISED STATUTES; RELATING TO WEAPONS AND EXPLOSIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3101, Arizona Revised Statutes, is amended to  
3 read:

4 13-3101. Definitions

5 A. In this chapter, unless the context otherwise requires:

6 1. "Deadly weapon" means anything that is designed for lethal use.  
7 The term includes a firearm.

8 2. "Deface" means to remove, alter or destroy the manufacturer's  
9 serial number.

10 3. "Explosive" means any dynamite, nitroglycerine, black powder, or  
11 other similar explosive material, including plastic explosives. Explosive  
12 does not include ammunition or ammunition components such as primers,  
13 percussion caps, smokeless powder, black powder and black powder substitutes  
14 used for hand loading purposes.

15 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
16 rifle, shotgun or other weapon that will expel, is designed to expel or may  
17 readily be converted to expel a projectile by the action of an explosive.  
18 Firearm does not include a firearm in permanently inoperable condition.

19 5. "Improvised explosive device" means a device that incorporates  
20 explosives or destructive, lethal, noxious, pyrotechnic or incendiary  
21 chemicals and that is designed to destroy, disfigure, terrify or harass.

22 6. "Occupied structure" means any building, object, vehicle,  
23 watercraft, aircraft or place with sides and a floor that is separately  
24 securable from any other structure attached to it, that is used for lodging,  
25 business, transportation, recreation or storage and in which one or more  
26 human beings either are or are likely to be present or so near as to be in  
27 equivalent danger at the time the discharge of a firearm occurs. Occupied  
28 structure includes any dwelling house, whether occupied, unoccupied or  
29 vacant.

30 7. "Prohibited possessor" means any person:

31 (a) Who has been found to constitute a danger to self or to others or  
32 to be persistently or acutely disabled or gravely disabled pursuant to court  
33 order under section 36-540, and whose right to possess a firearm has not been  
34 restored pursuant to section 13-925.

35 (b) Who has been convicted within or without this state of a felony or  
36 who has been adjudicated delinquent for a felony and whose civil right to  
37 possess or carry a gun or firearm has not been restored.

38 (c) Who is at the time of possession serving a term of imprisonment in  
39 any correctional or detention facility.

40 (d) Who is at the time of possession serving a term of probation  
41 pursuant to a conviction for a domestic violence offense as defined in  
42 section 13-3601 or a felony offense, parole, community supervision, work  
43 furlough, home arrest or release on any other basis or who is serving a term  
44 of probation or parole pursuant to the interstate compact under title 31,  
45 chapter 3, article 4.1.

1 (e) Who is an undocumented alien or a nonimmigrant alien traveling  
2 with or without documentation in this state for business or pleasure or who  
3 is studying in this state and who maintains a foreign residence abroad. This  
4 subdivision does not apply to:

5 (i) Nonimmigrant aliens who possess a valid hunting license or permit  
6 that is lawfully issued by a state in the United States.

7 (ii) Nonimmigrant aliens who enter the United States to participate in  
8 a competitive target shooting event or to display firearms at a sports or  
9 hunting trade show that is sponsored by a national, state or local firearms  
10 trade organization devoted to the competitive use or other sporting use of  
11 firearms.

12 (iii) Certain diplomats.

13 (iv) Officials of foreign governments or distinguished foreign  
14 visitors who are designated by the United States department of state.

15 (v) Persons who have received a waiver from the United States attorney  
16 general.

17 8. "Prohibited weapon":

18 (a) Includes the following:

19 (i) An item that is a bomb, grenade, rocket having a propellant charge  
20 of more than four ounces or mine and that is explosive, incendiary or poison  
21 gas.

22 (ii) A device that is designed, made or adapted to muffle the report  
23 of a firearm.

24 (iii) A firearm that is capable of shooting more than one shot  
25 automatically, without manual reloading, by a single function of the trigger.

26 (iv) A rifle with a barrel length of less than sixteen inches, or  
27 shotgun with a barrel length of less than eighteen inches, or any firearm  
28 that is made from a rifle or shotgun and that, as modified, has an overall  
29 length of less than twenty-six inches.

30 (v) An instrument, including a nunchaku, that consists of two or more  
31 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,  
32 wire or chain, in the design of a weapon used in connection with the practice  
33 of a system of self-defense.

34 (vi) A breakable container that contains a flammable liquid with a  
35 flash point of one hundred fifty degrees Fahrenheit or less and that has a  
36 wick or similar device capable of being ignited.

37 (vii) A chemical or combination of chemicals, compounds or materials,  
38 including dry ice, that is possessed or manufactured for the purpose of  
39 generating a gas to cause a mechanical failure, rupture or bursting or an  
40 explosion or detonation of the chemical or combination of chemicals,  
41 compounds or materials.

42 (viii) An improvised explosive device.

43 (ix) Any combination of parts or materials that is designed and  
44 intended for use in making or converting a device into an item set forth in  
45 item (i), (vi) or (viii) of this subdivision.

1 (b) Does not include:

2 (i) Any fireworks that are imported, distributed or used in compliance  
3 with state laws or local ordinances.

4 (ii) Any propellant, propellant actuated devices or propellant  
5 actuated industrial tools that are manufactured, imported or distributed for  
6 their intended purposes.

7 (iii) A device that is commercially manufactured primarily for the  
8 purpose of illumination.

9 9. "TRAFFICKING" MEANS TO SELL, TRANSFER, DISTRIBUTE, DISPENSE OR  
10 OTHERWISE DISPOSE OF A WEAPON OR EXPLOSIVE TO ANOTHER PERSON, OR TO BUY,  
11 RECEIVE, POSSESS OR OBTAIN CONTROL OF A WEAPON OR EXPLOSIVE, WITH THE INTENT  
12 TO SELL, TRANSFER, DISTRIBUTE, DISPENSE OR OTHERWISE DISPOSE OF THE WEAPON OR  
13 EXPLOSIVE TO ANOTHER PERSON.

14 B. The items set forth in subsection A, paragraph 8, subdivision (a),  
15 items (i), (ii), (iii) and (iv) of this section do not include any firearms  
16 or devices that are registered in the national firearms registry and transfer  
17 records of the United States treasury department or any firearm that has been  
18 classified as a curio or relic by the United States treasury department.

19 Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:

20 13-3102. Misconduct involving weapons; defenses;  
21 classification; definitions

22 A. A person commits misconduct involving weapons by knowingly:

23 1. Carrying a deadly weapon except a pocket knife concealed on his  
24 person or within his immediate control in or on a means of transportation:

25 (a) In the furtherance of a serious offense as defined in section  
26 13-706, a violent crime as defined in section 13-901.03 or any other felony  
27 offense; or

28 (b) When contacted by a law enforcement officer and failing to  
29 accurately answer the officer if the officer asks whether the person is  
30 carrying a concealed deadly weapon; or

31 2. Carrying a deadly weapon except a pocket knife concealed on his  
32 person or concealed within his immediate control in or on a means of  
33 transportation if the person is under twenty-one years of age; or

34 3. Manufacturing, possessing, transporting, selling or transferring a  
35 prohibited weapon, except that if the violation involves dry ice, a person  
36 commits misconduct involving weapons by knowingly possessing the dry ice with  
37 the intent to cause injury to or death of another person or to cause damage  
38 to the property of another person; or

39 4. Possessing a deadly weapon or prohibited weapon if such person is a  
40 prohibited possessor; or

41 5. Selling or transferring a deadly weapon to a prohibited possessor;  
42 or

43 6. Defacing a deadly weapon; or

44 7. Possessing a defaced deadly weapon knowing the deadly weapon was  
45 defaced; or

1           8. Using or possessing a deadly weapon during the commission of any  
2 felony offense included in chapter 34 of this title; or

3           9. Discharging a firearm at an occupied structure in order to assist,  
4 promote or further the interests of a criminal street gang, a criminal  
5 syndicate or a racketeering enterprise; or

6           10. Unless specifically authorized by law, entering any public  
7 establishment or attending any public event and carrying a deadly weapon on  
8 his person after a reasonable request by the operator of the establishment or  
9 the sponsor of the event or the sponsor's agent to remove his weapon and  
10 place it in the custody of the operator of the establishment or the sponsor  
11 of the event for temporary and secure storage of the weapon pursuant to  
12 section 13-3102.01; or

13           11. Unless specifically authorized by law, entering an election polling  
14 place on the day of any election carrying a deadly weapon; or

15           12. Possessing a deadly weapon on school grounds; or

16           13. Unless specifically authorized by law, entering a nuclear or  
17 hydroelectric generating station carrying a deadly weapon on his person or  
18 within the immediate control of any person; or

19           14. Supplying, selling or giving possession or control of a firearm to  
20 another person if the person knows or has reason to know that the other  
21 person would use the firearm in the commission of any felony; or

22           15. Using, possessing or exercising control over a deadly weapon in  
23 furtherance of any act of terrorism as defined in section 13-2301 or  
24 possessing or exercising control over a deadly weapon knowing or having  
25 reason to know that it will be used to facilitate any act of terrorism as  
26 defined in section 13-2301.

27           16. **TRAFFICKING IN WEAPONS OR EXPLOSIVES FOR FINANCIAL GAIN IN ORDER TO**  
28 **ASSIST, PROMOTE OR FURTHER THE INTERESTS OF A CRIMINAL STREET GANG, A**  
29 **CRIMINAL SYNDICATE OR A RACKETEERING ENTERPRISE.**

30           B. Subsection A, paragraph 2 of this section shall not apply to:

31           1. A person in his dwelling, on his business premises or on real  
32 property owned or leased by that person or that person's parent, grandparent  
33 or legal guardian.

34           2. A member of the sheriff's volunteer posse or reserve organization  
35 who has received and passed firearms training that is approved by the Arizona  
36 peace officer standards and training board and who is authorized by the  
37 sheriff to carry a concealed weapon pursuant to section 11-441.

38           3. A firearm that is carried in:

39           (a) A manner where any portion of the firearm or holster in which the  
40 firearm is carried is visible.

41           (b) A holster that is wholly or partially visible.

42           (c) A scabbard or case designed for carrying weapons that is wholly or  
43 partially visible.

44           (d) Luggage.

1 (e) A case, holster, scabbard, pack or luggage that is carried within  
2 a means of transportation or within a storage compartment, map pocket, trunk  
3 or glove compartment of a means of transportation.

4 C. Subsection A, paragraphs 2, 3, 7, 10, 11, 12 and 13 of this section  
5 shall not apply to:

6 1. A peace officer or any person summoned by any peace officer to  
7 assist and while actually assisting in the performance of official duties; or

8 2. A member of the military forces of the United States or of any  
9 state of the United States in the performance of official duties; or

10 3. A warden, deputy warden, community correctional officer, detention  
11 officer, special investigator or correctional officer of the state department  
12 of corrections or the department of juvenile corrections; or

13 4. A person specifically licensed, authorized or permitted pursuant to  
14 a statute of this state or of the United States.

15 D. Subsection A, paragraphs 3 and 7 of this section shall not apply  
16 to:

17 1. The possessing, transporting, selling or transferring of weapons by  
18 a museum as a part of its collection or an educational institution for  
19 educational purposes or by an authorized employee of such museum or  
20 institution, if:

21 (a) Such museum or institution is operated by the United States or  
22 this state or a political subdivision of this state, or by an organization  
23 described in 26 United States Code section 170(c) as a recipient of a  
24 charitable contribution; and

25 (b) Reasonable precautions are taken with respect to theft or misuse  
26 of such material.

27 2. The regular and lawful transporting as merchandise; or

28 3. Acquisition by a person by operation of law such as by gift, devise  
29 or descent or in a fiduciary capacity as a recipient of the property or  
30 former property of an insolvent, incapacitated or deceased person.

31 E. Subsection A, paragraph 3 of this section shall not apply to the  
32 merchandise of an authorized manufacturer of or dealer in prohibited weapons,  
33 when such material is intended to be manufactured, possessed, transported,  
34 sold or transferred solely for or to a dealer, a regularly constituted or  
35 appointed state, county or municipal police department or police officer, a  
36 detention facility, the military service of this or another state or the  
37 United States, a museum or educational institution or a person specifically  
38 licensed or permitted pursuant to federal or state law.

39 F. Subsection A, paragraph 10 of this section shall not apply to  
40 shooting ranges or shooting events, hunting areas or similar locations or  
41 activities.

42 G. Subsection A, paragraph 3 of this section shall not apply to a  
43 weapon described in section 13-3101, subsection A, paragraph 8, subdivision  
44 (a), item (v), if such weapon is possessed for the purposes of preparing for,  
45 conducting or participating in lawful exhibitions, demonstrations, contests

1 or athletic events involving the use of such weapon. Subsection A, paragraph  
2 12 of this section shall not apply to a weapon if such weapon is possessed  
3 for the purposes of preparing for, conducting or participating in hunter or  
4 firearm safety courses.

5 H. Subsection A, paragraph 12 of this section shall not apply to the  
6 possession of a:

7 1. Firearm that is not loaded and that is carried within a means of  
8 transportation under the control of an adult provided that if the adult  
9 leaves the means of transportation the firearm shall not be visible from the  
10 outside of the means of transportation and the means of transportation shall  
11 be locked.

12 2. Firearm for use on the school grounds in a program approved by a  
13 school.

14 3. Firearm by a person who possesses a certificate of firearms  
15 proficiency pursuant to section 13-3112, subsection T and who is authorized  
16 to carry a concealed firearm pursuant to the law enforcement officers safety  
17 act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B  
18 and 926C).

19 I. Subsection A, paragraphs 2, 3, 7 and 13 of this section shall not  
20 apply to commercial nuclear generating station armed nuclear security guards  
21 during the performance of official duties or during any security training  
22 exercises sponsored by the commercial nuclear generating station or local,  
23 state or federal authorities.

24 J. The operator of the establishment or the sponsor of the event or  
25 the employee of the operator or sponsor or the agent of the sponsor,  
26 including a public entity or public employee, is not liable for acts or  
27 omissions pursuant to subsection A, paragraph 10 of this section unless the  
28 operator, sponsor, employee or agent intended to cause injury or was grossly  
29 negligent.

30 K. If a law enforcement officer contacts a person who is in possession  
31 of a firearm, the law enforcement officer may take temporary custody of the  
32 firearm for the duration of that contact.

33 L. Misconduct involving weapons under subsection A, paragraph 15 of  
34 this section is a class 2 felony. Misconduct involving weapons under  
35 subsection A, paragraph 9, ~~OR~~ 14 OR 16 of this section is a class 3 felony.  
36 Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of  
37 this section is a class 4 felony. Misconduct involving weapons under  
38 subsection A, paragraph 12 of this section is a class 1 misdemeanor unless  
39 the violation occurs in connection with conduct that violates section  
40 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section  
41 13-3409 or section 13-3411, in which case the offense is a class 6 felony.  
42 Misconduct involving weapons under subsection A, paragraph 1, subdivision (a)  
43 of this section or subsection A, paragraph 5, 6 or 7 of this section is a  
44 class 6 felony. Misconduct involving weapons under subsection A, paragraph  
45 1, subdivision (b) of this section or subsection A, paragraph 10 or 11 of

1 this section is a class 1 misdemeanor. Misconduct involving weapons under  
2 subsection A, paragraph 2 of this section is a class 3 misdemeanor.

3 M. For the purposes of this section:

4 1. "Contacted by a law enforcement officer" means a lawful traffic or  
5 criminal investigation, arrest or detention or an investigatory stop by a law  
6 enforcement officer that is based on reasonable suspicion that an offense has  
7 been or is about to be committed.

8 2. "Public establishment" means a structure, vehicle or craft that is  
9 owned, leased or operated by this state or a political subdivision of this  
10 state.

11 3. "Public event" means a specifically named or sponsored event of  
12 limited duration that is either conducted by a public entity or conducted by  
13 a private entity with a permit or license granted by a public entity. Public  
14 event does not include an unsponsored gathering of people in a public place.

15 4. "School" means a public or nonpublic kindergarten program, common  
16 school or high school.

17 5. "School grounds" means in, or on the grounds of, a school.