

REFERENCE TITLE: greenhouse substances; freedom to breathe

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SB 1394**

Introduced by  
Senators Allen: Griffin, Reagan, Shooter; Representative Barton

AN ACT

AMENDING TITLE 49, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 3.1; RELATING  
TO THE INTERSTATE FREEDOM TO BREATHE COMPACT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 49, Arizona Revised Statutes, is amended by adding  
3 chapter 3.1, to read:

4 CHAPTER 3.1

5 INTERSTATE FREEDOM TO BREATHE COMPACT

6 ARTICLE 1. INTERSTATE FREEDOM TO BREATHE COMPACT

7 49-651. Adoption of compact; text of compact

8 THE GOVERNOR IS AUTHORIZED AND DIRECTED TO ENTER INTO A COMPACT ON  
9 BEHALF OF THIS STATE WITH ANY OF THE UNITED STATES LAWFULLY JOINED IN THE  
10 COMPACT IN A FORM SUBSTANTIALLY AS FOLLOWS:

11 ARTICLE I

12 FINDINGS AND DECLARATION OF POLICY

13 A. 4 UNITED STATES CODE SECTION 112 GIVES CONGRESSIONAL CONSENT "TO  
14 ANY TWO OR MORE STATES TO ENTER INTO AGREEMENTS OR COMPACTS FOR COOPERATIVE  
15 EFFORT AND MUTUAL ASSISTANCE IN THE PREVENTION OF CRIME AND IN THE  
16 ENFORCEMENT OF THEIR RESPECTIVE CRIMINAL LAWS AND POLICIES, AND TO ESTABLISH  
17 SUCH AGENCIES, JOINT OR OTHERWISE, AS THEY MAY DEEM DESIRABLE FOR MAKING  
18 EFFECTIVE SUCH AGREEMENTS AND COMPACTS".

19 B. PURSUANT TO THEIR POLICE POWERS TO PROTECT PUBLIC HEALTH, SAFETY,  
20 WELFARE AND MORALS, THE PARTY STATES HAVE ENACTED OR ANTICIPATE ENACTING LAWS  
21 OR CONSTITUTIONAL PROVISIONS TO PROTECT AND GUARANTEE THE FREEDOM TO BREATHE.

22 C. THE PARTY STATES HAVE ENACTED OR ANTICIPATE ENACTING LAWS THAT MAKE  
23 IT A CRIME IN THEIR STATE FOR ANYONE TO INTERFERE WITH THEIR RESPECTIVE  
24 FREEDOM TO BREATHE LAWS.

25 D. THE PARTY STATES FIND IT NECESSARY AND DEEM IT DESIRABLE FOR MAKING  
26 EFFECTIVE THEIR RESPECTIVE CURRENT OR ANTICIPATED FREEDOM TO BREATHE CRIMINAL  
27 LAWS, AS WELL AS THIS AGREEMENT AND COMPACT, TO DO THE FOLLOWING:

28 1. PROHIBIT ANY GOVERNMENTAL AGENT FROM DEPRIVING ANY RESIDENT OF ANY  
29 PARTY STATE OF THE RIGHTS AND FREEDOMS GUARANTEED UNDER ITS RESPECTIVE  
30 CURRENT OR ANTICIPATED FREEDOM TO BREATHE LAWS.

31 2. PROHIBIT ANY GOVERNMENTAL AGENT FROM PENALIZING ANY RESIDENT OF ANY  
32 PARTY STATE FOR EXERCISING THE RIGHTS AND FREEDOMS GUARANTEED UNDER ITS  
33 RESPECTIVE CURRENT OR ANTICIPATED FREEDOM TO BREATHE LAWS.

34 3. COOPERATE WITH EACH OTHER AND TO GIVE EACH OTHER MUTUAL ASSISTANCE  
35 IN THE PREVENTION OF CRIMES UNDER THE FREEDOM TO BREATHE CRIMINAL LAWS OF ANY  
36 PARTY STATE.

37 4. COOPERATE WITH EACH OTHER AND TO GIVE EACH OTHER MUTUAL ASSISTANCE  
38 IN THE CRIMINAL PROSECUTION OF ANYONE WHO VIOLATES THE FREEDOM TO BREATHE  
39 CRIMINAL LAWS OF ANY PARTY STATE.

40 ARTICLE II

41 DEFINITIONS

42 AS USED IN THIS COMPACT, UNLESS THE CONTEXT CLEARLY INDICATES  
43 OTHERWISE:

1           1. "FREEDOM TO BREATHE LAWS" MEANS ANY STATE LAW OR CONSTITUTIONAL  
2 PROVISION THAT DOES EITHER OR BOTH OF THE FOLLOWING:

3           (a) PROTECTS AND GUARANTEES THE FREEDOM OR RIGHT TO ENGAGE IN THE  
4 HARMLESS INTRASTATE EMISSION OF ANTHROPOGENIC CARBON DIOXIDE OR OTHER  
5 GREENHOUSE SUBSTANCES PRODUCED BY BIOLOGICAL, MECHANICAL OR CHEMICAL  
6 PROCESSES, INCLUDING REFUSE AND AGRICULTURAL OPERATIONS.

7           (b) RESERVES THE EXCLUSIVE POWER TO REGULATE THE INTRASTATE EMISSION  
8 OF ANTHROPOGENIC CARBON DIOXIDE OR OTHER GREENHOUSE SUBSTANCES PRODUCED BY  
9 BIOLOGICAL, MECHANICAL OR CHEMICAL PROCESSES, INCLUDING REFUSE AND  
10 AGRICULTURAL OPERATIONS, TO THE ENACTING STATE.

11           2. "FREEDOM TO BREATHE CRIMINAL LAWS" MEANS ANY STATE LAW THAT MAKES  
12 IT A CRIME FOR ANYONE TO INTERFERE WITH THE STATE'S RESPECTIVE FREEDOM TO  
13 BREATHE LAWS.

14           3. "PENALIZE" MEANS IMPOSING ANY CIVIL PENALTY, CRIMINAL FINE, TAX,  
15 SALARY OR WAGE WITHHOLDING OR SURCHARGE OR ANY NAMED FEE WITH A SIMILAR  
16 EFFECT ESTABLISHED BY LAW OR RULE BY A GOVERNMENT ESTABLISHED, CREATED OR  
17 CONTROLLED AGENCY THAT IS USED TO PUNISH OR DISCOURAGE THE ENJOYMENT OF  
18 FREEDOMS OR RIGHTS PROTECTED UNDER THE STATE'S FREEDOM TO BREATHE LAW.

19           4. "STATE" MEANS A STATE OF THE UNITED STATES.

20                                 ARTICLE III

21   TERMS

22           NOTWITHSTANDING ANY STATE OR FEDERAL LAW TO THE CONTRARY:

23           1. EACH PARTY STATE SHALL GIVE FULL FAITH AND CREDIT TO THE FREEDOM TO  
24 BREATHE CRIMINAL LAWS AND FREEDOM TO BREATHE LAWS OF EVERY PARTY STATE.

25           2. A GOVERNMENTAL AGENT SHALL NOT DEPRIVE RESIDENTS OF PARTY STATES OF  
26 THE RIGHTS AND FREEDOMS PROTECTED UNDER THEIR RESPECTIVE STATE'S FREEDOM TO  
27 BREATHE CRIMINAL LAWS AND GUARANTEED BY THEIR RESPECTIVE STATE'S FREEDOM TO  
28 BREATHE LAWS.

29           3. A GOVERNMENTAL AGENT SHALL NOT DEPRIVE PARTY STATES OF THE POWERS  
30 PROTECTED UNDER THEIR RESPECTIVE FREEDOM TO BREATHE CRIMINAL LAWS AND  
31 GUARANTEED BY THEIR RESPECTIVE FREEDOM TO BREATHE LAWS.

32           4. A GOVERNMENTAL AGENT SHALL NOT PENALIZE RESIDENTS OF PARTY STATES  
33 FOR EXERCISING THE RIGHTS AND FREEDOMS PROTECTED UNDER THEIR RESPECTIVE  
34 STATE'S FREEDOM TO BREATHE CRIMINAL LAWS AND GUARANTEED BY THEIR RESPECTIVE  
35 STATE'S FREEDOM TO BREATHE LAWS.

36           5. A GOVERNMENTAL AGENT SHALL NOT PENALIZE PARTY STATES FOR EXERCISING  
37 THE POWERS PROTECTED UNDER THEIR RESPECTIVE FREEDOM TO BREATHE CRIMINAL LAWS  
38 AND GUARANTEED BY THEIR RESPECTIVE FREEDOM TO BREATHE LAWS.

39           6. THE PARTY STATES SHALL COOPERATE WITH EACH OTHER AND GIVE EACH  
40 OTHER MUTUAL ASSISTANCE IN THE PREVENTION OF CRIMES UNDER THE FREEDOM TO  
41 BREATHE CRIMINAL LAWS OF ANY PARTY STATE.

1           7. THE PARTY STATES SHALL COOPERATE WITH EACH OTHER AND GIVE EACH  
2 OTHER MUTUAL ASSISTANCE IN THE CRIMINAL PROSECUTION OF ANY PERSON WHO  
3 VIOLATES THE FREEDOM TO BREATHE CRIMINAL LAWS OF ANY PARTY STATE.

4                                   ARTICLE IV  
5                                   ENFORCEMENT

6           NOTWITHSTANDING ANY STATE OR FEDERAL LAW TO THE CONTRARY:

7           1. THE CHIEF LAW ENFORCEMENT OFFICER OF EACH PARTY STATE SHALL ENFORCE  
8 THIS AGREEMENT AND COMPACT.

9           2. A TAXPAYING RESIDENT OF ANY PARTY STATE HAS STANDING IN THE COURTS  
10 OF ANY PARTY STATE TO REQUIRE THE CHIEF LAW ENFORCEMENT OFFICER OF ANY PARTY  
11 STATE TO ENFORCE THIS AGREEMENT AND COMPACT.

12                                   ARTICLE V

13                                   COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

14           A. THE GOVERNOR OF EACH PARTY STATE OR THE GOVERNOR'S DESIGNEE IS THE  
15 COMPACT ADMINISTRATOR. THE COMPACT ADMINISTRATOR SHALL:

16           1. MAINTAIN AN ACCURATE LIST OF ALL PARTY STATES.

17           2. CONSISTENT WITH SUBSECTIONS C AND D, TRANSMIT IN A TIMELY FASHION  
18 TO OTHER PARTY STATES CITATIONS OF ALL CURRENT FREEDOM TO BREATHE LAWS AND  
19 CURRENT FREEDOM TO BREATHE CRIMINAL LAWS OF THE COMPACT ADMINISTRATOR'S  
20 RESPECTIVE STATE.

21           3. RECEIVE AND MAINTAIN A COMPLETE LIST OF THE FREEDOM TO BREATHE LAWS  
22 AND FREEDOM TO BREATHE CRIMINAL LAWS OF EACH PARTY STATE.

23           B. THE COMPACT ADMINISTRATOR OF EACH PARTY STATE SHALL FURNISH TO THE  
24 COMPACT ADMINISTRATOR OF EACH PARTY STATE ANY INFORMATION OR DOCUMENTS THAT  
25 ARE REASONABLY NECESSARY TO FACILITATE THE ADMINISTRATION OF THIS COMPACT.

26           C. WITHIN TEN DAYS AFTER EXECUTING THIS AGREEMENT AND COMPACT, AND  
27 THEREAFTER ON THE CLOSE OF EACH OF THEIR RESPECTIVE SUCCEEDING LEGISLATIVE  
28 SESSIONS, THE PARTY STATES SHALL NOTIFY EACH OTHER IN WRITING AND BY  
29 APPROPRIATE CITATION OF EACH OF THEIR CURRENT FREEDOM TO BREATHE LAWS, WHICH  
30 SHALL BE DEEMED WITHIN THE SUBJECT MATTER OF THIS AGREEMENT AND COMPACT,  
31 UNLESS THE COMPACT ADMINISTRATOR OF ONE OR MORE PARTY STATES GIVES SPECIFIC  
32 NOTICE IN WRITING TO ALL OTHER PARTY STATES WITHIN SIXTY DAYS OF SUCH NOTICE  
33 THAT IT OBJECTS TO THE INCLUSION OF SUCH LAW OR LAWS IN THIS AGREEMENT AND  
34 COMPACT.

35           D. WITHIN TEN DAYS AFTER EXECUTING THIS AGREEMENT AND COMPACT, AND  
36 THEREAFTER ON THE CLOSE OF EACH OF THEIR RESPECTIVE SUCCEEDING LEGISLATIVE  
37 SESSIONS, THE PARTY STATES SHALL NOTIFY EACH OTHER IN WRITING AND BY  
38 APPROPRIATE CITATION OF EACH OF THEIR CURRENT FREEDOM TO BREATHE CRIMINAL  
39 LAWS, WHICH SHALL BE DEEMED WITHIN THE SUBJECT MATTER OF THIS AGREEMENT AND  
40 COMPACT, UNLESS THE COMPACT ADMINISTRATOR OF ONE OR MORE PARTY STATES GIVES  
41 SPECIFIC NOTICE IN WRITING TO ALL OTHER PARTY STATES WITHIN SIXTY DAYS OF  
42 SUCH NOTICE THAT IT OBJECTS TO THE INCLUSION OF SUCH LAW OR LAWS IN THIS  
43 AGREEMENT AND COMPACT.

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ARTICLE VI  
ENTRY INTO EFFECT AND WITHDRAWAL

A. THIS COMPACT IS DEEMED ACCEPTED WHEN AT LEAST TWO STATES DELIVER A NOTICE OF CONFIRMATION, WHICH IS DULY EXECUTED BY THEIR RESPECTIVE AUTHORIZED REPRESENTATIVE AND WHICH ACKNOWLEDGES COMPLETE AGREEMENT TO THE TERMS OF THIS COMPACT, TO EACH OTHER'S GOVERNOR, THE OFFICE OF THE CLERK OF THE UNITED STATES HOUSE OF REPRESENTATIVES, THE OFFICE OF THE SECRETARY OF THE UNITED STATES SENATE, THE PRESIDENT OF THE UNITED STATES SENATE AND THE SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES. THEREAFTER, THE COMPACT IS DEEMED ACCEPTED BY ANY STATE WHEN A RESPECTIVE NOTICE OF CONFIRMATION, WHICH IS DULY EXECUTED BY THE STATE'S RESPECTIVE AUTHORIZED REPRESENTATIVE AND WHICH ACKNOWLEDGES COMPLETE AGREEMENT TO THE TERMS OF THIS COMPACT, IS DELIVERED TO EACH PARTY STATE'S COMPACT ADMINISTRATOR, THE OFFICE OF THE CLERK OF THE UNITED STATES HOUSE OF REPRESENTATIVES, THE OFFICE OF THE SECRETARY OF THE UNITED STATES SENATE, THE PRESIDENT OF THE UNITED STATES SENATE AND THE SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES.

B. ANY PARTY STATE MAY WITHDRAW FROM THIS COMPACT BY ENACTING A JOINT RESOLUTION DECLARING SUCH WITHDRAWAL AND DELIVERING NOTICE OF THE WITHDRAWAL TO EACH OTHER PARTY STATE. A WITHDRAWAL DOES NOT AFFECT THE VALIDITY OR APPLICABILITY OF THE COMPACT TO STATES REMAINING PARTY TO THE COMPACT.

ARTICLE VII  
CONSTRUCTION AND SEVERABILITY

A. THIS COMPACT SHALL BE LIBERALLY CONSTRUED SO AS TO EFFECTUATE ITS PURPOSES.

B. THIS COMPACT IS NOT INTENDED TO AND SHALL NOT:

1. PREVENT ANY PERSON OR ASSOCIATION OF PERSONS FROM ENJOYING OR ENFORCING PRIVATE PROPERTY RIGHTS.

2. AUTHORIZE ANY ACTIVITY THAT ORDINARILY CAUSES COGNIZABLE HARM OR INJURY TO ANY PERSON OR ASSOCIATION OF PERSONS.

3. AUTHORIZE INCREASED REGULATION OF ANY PEACEFUL AND PRODUCTIVE ACTIVITY OF ANY PERSON OR ASSOCIATION OF PERSONS.

C. THIS COMPACT IS INTENDED TO OPERATE AS THE LAW OF THE NATION WITH RESPECT TO THE PARTY STATES UNDER 4 UNITED STATES CODE SECTION 112, TO SUPERSEDE ANY INCONSISTENT STATE AND FEDERAL LAW AND TO ESTABLISH VESTED RIGHTS IN FAVOR OF RESIDENTS OF THE PARTY STATES IN THE ENJOYMENT OF THE RIGHTS AND FREEDOMS PROTECTED BY THEIR RESPECTIVE FREEDOM TO BREATHE CRIMINAL LAWS AND GUARANTEED BY THEIR RESPECTIVE FREEDOM TO BREATHE LAWS.

D. IF ANY PHRASE, CLAUSE, SENTENCE OR PROVISION OF THIS COMPACT IS DECLARED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO BE CONTRARY TO THE CONSTITUTION OF THE UNITED STATES OR IS OTHERWISE HELD INVALID, THE VALIDITY OF THE REMAINDER OF THIS COMPACT SHALL NOT BE AFFECTED.

1           E. IF THE APPLICABILITY OF ANY PHRASE, CLAUSE, SENTENCE OR PROVISION  
2 OF THIS COMPACT TO ANY GOVERNMENT, AGENCY, PERSON OR CIRCUMSTANCE IS DECLARED  
3 IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO BE CONTRARY TO  
4 THE CONSTITUTION OF THE UNITED STATES OR IS OTHERWISE HELD INVALID, THE  
5 VALIDITY OF THE REMAINDER OF THIS COMPACT AND THE APPLICABILITY OF THE  
6 REMAINDER OF THIS COMPACT TO ANY GOVERNMENT, AGENCY, PERSON OR CIRCUMSTANCE  
7 SHALL NOT BE AFFECTED.

8           F. IF THIS COMPACT IS HELD TO BE CONTRARY TO THE CONSTITUTION OF ANY  
9 PARTY STATE, THE COMPACT SHALL REMAIN IN FULL FORCE AND EFFECT AS TO THE  
10 REMAINING PARTY STATES AND IN FULL FORCE AND EFFECT AS TO THE AFFECTED PARTY  
11 STATE AS TO ALL SEVERABLE MATTERS.