

REFERENCE TITLE: firearms; private land; lawful discharge

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2483

Introduced by
Representatives Kavanagh, Forese, Gowan, Livingston, Smith, Stevens,
Tobin: Gray, Lovas

AN ACT

AMENDING SECTION 11-812, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-558; AMENDING SECTIONS 13-3107, 13-3108 AND 17-601, ARIZONA REVISED STATUTES; RELATING TO FIREARMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 11-812, Arizona Revised Statutes, is amended to
3 read:
4 11-812. Restriction on regulation; exceptions; aggregate mining
5 regulation; definitions
6 A. Nothing contained in any ordinance authorized by this chapter
7 shall:
8 1. Affect existing uses of property or the right to its continued use
9 or the reasonable repair or alteration of the property for the purpose for
10 which used at the time the ordinance affecting the property takes effect.
11 2. Prevent, restrict or otherwise regulate the use or occupation of
12 land or improvements for railroad, mining, metallurgical, grazing or general
13 agricultural purposes, if the tract concerned is five or more contiguous
14 commercial acres. For the purposes of this paragraph, general agricultural
15 purposes do not include the cultivation of cannabis as defined in section
16 13-3401 or marijuana as defined in section 13-3401 or 36-2801. For the
17 purposes of this paragraph, "mining" has the same meaning prescribed in
18 section 27-301.
19 3. Prevent, restrict or otherwise regulate the use or occupation of
20 land or improvements for agricultural composting, if the tract is five or
21 more contiguous commercial acres. An agricultural composting operation shall
22 notify in writing the board of supervisors and the nearest fire department of
23 the location of the composting operation. If the nearest fire department is
24 located in a city, town or fire district where the agricultural composting is
25 not located, the agricultural composting operation shall also notify in
26 writing the fire district in which the operation is located. Agricultural
27 composting is subject to sections 3-112 and 49-141. For the purposes of this
28 paragraph, "agricultural composting" has the same meaning prescribed in
29 section 9-462.01, subsection G.
30 4. PREVENT, RESTRICT OR OTHERWISE REGULATE THE OTHERWISE LAWFUL
31 DISCHARGE OF A FIREARM OR AIR GUN OR USE OF ARCHERY EQUIPMENT ON A PRIVATE
32 LOT OR PARCEL OF LAND THAT IS NOT OPEN TO THE PUBLIC ON A COMMERCIAL OR
33 MEMBERSHIP BASIS.
34 B. A nonconforming business use within a district may expand if the
35 expansion does not exceed one hundred per cent of the area of the original
36 business.
37 C. For the purposes of subsection A, paragraph 2 of this section,
38 mining does not include aggregate mining operations in an aggregate mining
39 operations zoning district established pursuant to this section. The board
40 of supervisors of any county with a population of more than two million
41 persons shall designate and establish the boundaries of an aggregate mining
42 operations zoning district on the petition of at least one hundred persons
43 who reside within one-half mile of an existing aggregate mining operation.
44 In addition, the board of supervisors of any county may establish, in its
45 discretion and on the board's initiative, one or more aggregate mining
46 operations zoning districts. Aggregate mining operations zoning districts

1 may only be located in areas that are inventoried and mapped as areas of
 2 known reserves or in areas with existing aggregate mining operations.
 3 Subject to subsections E and F of this section, a county and the state mine
 4 inspector may jointly adopt, as internal administrative regulations,
 5 reasonable aggregate mining operations zoning district standards limited to
 6 permitted uses, procedures for approval of property development plans and
 7 site development standards for dust control, height regulations, setbacks,
 8 days and hours of operation, off-street parking, screening, noise, vibration
 9 and air pollution control, signs, roadway access lanes, arterial highway
 10 protection and property reclamation for which aggregate mining operations are
 11 not otherwise subject to federal, state or local regulation or a governmental
 12 contractual obligation. Regulations jointly adopted pursuant to this
 13 subsection by the county and the state mine inspector shall not prohibit the
 14 activities included in the definition of mine pursuant to section 27-301,
 15 paragraph 8 or duplicate, conflict with or be more stringent than applicable
 16 federal, state or local laws.

17 D. The board of supervisors of any county that establishes an
 18 aggregate mining operations zoning district shall appoint an aggregate mining
 19 operations recommendation committee for the district. The committee consists
 20 of not more than seven operators, or representatives of operators, of active
 21 aggregate mining operations in any district within the county and an equal
 22 number of private citizens, who are not operators, who are not employed by
 23 operators and who do not represent operators, residing within three miles of
 24 the boundaries of aggregate mining operations or a proposed aggregate mining
 25 operation in the district for which the committee is established. The
 26 initial members appointed to the committee shall be deemed the primary
 27 members, and the board of supervisors shall appoint no more than five
 28 alternate members who represent operators and shall appoint no more than five
 29 alternate members who are private citizens. Alternate members may serve at
 30 meetings of the committee when a primary member is unable to attend. An
 31 aggregate mining operator may serve on more than one committee in the same
 32 county. The board of supervisors shall determine the length of terms of
 33 members of the committee and shall stagger the initial appointments so that
 34 not all members' terms expire at the same time. Members of the committee who
 35 no longer qualify for membership as provided by this subsection are subject
 36 to removal and replacement by the board of supervisors. The committee shall
 37 elect a member who is an aggregate mining operator to serve as chairperson
 38 for the first year in which the committee is created. For each year
 39 thereafter, the chairperson shall be elected by the members of the committee
 40 with a member who is a private citizen and a member who is an aggregate
 41 mining operator serving as chairperson in alternate years. The committee is
 42 subject to the open meeting requirements of title 38, chapter 3, article 3.1.

43 E. Within ninety days after an aggregate mining operations
 44 recommendation committee is established, the committee shall notify all
 45 existing aggregate mining operators in the district of the application of

1 this section and title 27, chapter 3, article 6 to the aggregate mining
2 operation. In addition, the committee shall:

3 1. By a majority vote of all members make recommendations to the board
4 of supervisors for aggregate mining zoning districts and administrative
5 regulations as provided in this section. The board of supervisors may adopt
6 or reject the recommendations but may not make any modifications to the
7 recommendations unless the modification is approved by a majority of the
8 members of the recommendation committee.

9 2. Serve as a forum for mediation of disputes between members of the
10 public and aggregate mining owners or operators. If the committee is unable
11 to resolve a dispute, the committee shall transmit the matter to the state
12 mine inspector, with written findings and recommendations, for further
13 action.

14 3. Hear written complaints filed with the state mine inspector
15 regarding alleged material deviations from approved community notices for
16 aggregate mining operations and make written recommendations to the state
17 mine inspector pursuant to section 27-446.

18 F. Any administrative regulations adopted by a board of supervisors
19 pursuant to this section are not effective until the regulations are approved
20 by the state mine inspector. The inspector may disapprove the administrative
21 regulations adopted by the board of supervisors only if they duplicate,
22 conflict with or are more stringent than applicable federal, state or local
23 laws, rules or regulations. If the inspector disapproves the administrative
24 regulations, the inspector must provide written reasons for the disapproval.
25 The inspector shall not make any modification to the administrative
26 regulations as adopted by the board of supervisors unless the modification is
27 approved by a majority of the members of the board of supervisors.

28 G. A person or entity is subject to this chapter if the use or
29 occupation of land or improvements by the person or entity consists of or
30 includes changing, remanufacturing or treating human sewage or sludge for
31 distribution or resale. These activities are not exempt from this chapter
32 under subsection A, paragraph 2 of this section.

33 H. A county shall not require as a condition for a permit or for any
34 approval, or otherwise cause, an owner or possessor of property to waive the
35 right to continue an existing nonconforming outdoor advertising use or
36 structure without acquiring the use or structure by purchase or condemnation
37 and paying just compensation unless the county, at its option, allows the use
38 or structure to be relocated to a comparable site in the county with the same
39 or a similar zoning classification, or to another site in the county
40 acceptable to both the county and the owner of the use or structure, and the
41 use or structure is relocated to the other site. The county shall pay for
42 relocating the outdoor advertising use or structure including the cost of
43 removing and constructing the new use or structure that is at least the same
44 size and height. This subsection does not apply to county rezoning of
45 property at the request of the property owner to a more intensive zoning
46 district.

- 1 I. For the purposes of this section:
2 1. "Aggregate" has the same meaning prescribed in section 27-441.
3 2. "Aggregate mining" has the same meaning prescribed in section
4 27-441.
5 3. "Aggregate mining operation" means property that is owned, operated
6 or managed by the same person for aggregate mining.
7 4. "Operators" means persons who are actively engaged in aggregate
8 mining operations within the zoning district or proposed zoning district and
9 who have given notice to the state mine inspector pursuant to section 27-303.

10 Sec. 2. Title 12, chapter 5, article 3, Arizona Revised Statutes, is
11 amended by adding section 12-558, to read:

12 12-558. Actions related to the lawful discharge of a firearm;
13 burden of proof; attorney fees and costs

14 A. NOTWITHSTANDING ANY OTHER LAW, THE OTHERWISE LAWFUL DISCHARGE OF A
15 FIREARM OR AIR GUN OR THE USE OF ARCHERY EQUIPMENT MAY NOT BE ENJOINED EXCEPT
16 BY:

17 1. AN ACTION MAINTAINED BY THE ATTORNEY GENERAL TO ABATE A PUBLIC
18 NUISANCE PURSUANT TO SECTION 13-2917.

19 2. A PRIVATE NUISANCE CAUSE OF ACTION OR AN ACTION BASED ON NEGLIGENCE
20 THAT IS FILED BY A PERSON WHO IS OCCUPYING A PERMANENT RESIDENCE THAT IS
21 LOCATED WITHIN ONE-FOURTH MILE OF THE LOCATION OF THE DISCHARGE OR USE.

22 B. THE BURDEN OF PROOF IS CLEAR AND CONVINCING EVIDENCE IN AN ACTION
23 THAT IS FILED PURSUANT TO SUBSECTION A OF THIS SECTION OR IN AN ACTION FOR
24 DAMAGES THAT IS BASED ON NEGLIGENCE IN THE OTHERWISE LAWFUL DISCHARGE OF A
25 FIREARM OR AIR GUN OR THE USE OF ARCHERY EQUIPMENT ON A PRIVATE LOT OR PARCEL
26 OF LAND THAT IS NOT OPEN TO THE PUBLIC ON A COMMERCIAL OR MEMBERSHIP BASIS
27 AND THAT IS FILED BY A PERSON WHO WAS NOT LAWFULLY PRESENT AT THE SAME
28 PRIVATE LOT OR PARCEL OF LAND AT THE TIME THAT THE ALLEGED DISCHARGE
29 OCCURRED.

30 C. THE PREVAILING PARTY IN AN ACTION FILED PURSUANT TO THIS SECTION,
31 EXCEPT AN OFFICER OR ENTITY OF THIS STATE, SHALL RECOVER REASONABLE ATTORNEY
32 FEES AND COSTS.

33 D. IN AN ACTION ALLEGING DAMAGES FROM THE LOSS OF PROPERTY VALUE DUE
34 TO THE OTHERWISE LAWFUL DISCHARGE OF A FIREARM OR AIR GUN OR THE USE OF
35 ARCHERY EQUIPMENT ON A PRIVATE LOT OR PARCEL OF LAND THAT BELONGS TO ANOTHER
36 PERSON, THE LOST VALUE SHALL BE PROVEN BY CLEAR AND CONVINCING EVIDENCE.

37 Sec. 3. Section 13-3107, Arizona Revised Statutes, is amended to read:

38 13-3107. Unlawful discharge of firearms; exceptions;
39 classification; definitions

40 A. A person who with criminal negligence discharges a firearm within
41 or into the limits of any municipality is guilty of a class 6 felony.

42 B. Notwithstanding the fact that the offense involves the discharge of
43 a deadly weapon, unless a dangerous offense is alleged and proven pursuant to
44 section 13-704, subsection L, section 13-604 applies to this offense.

45 C. This section does not apply if the firearm is discharged:

- 46 1. As allowed pursuant to chapter 4 of this title.

1 2. On a properly supervised range.
2 3. To lawfully take wildlife during an open season established by the
3 Arizona game and fish commission and subject to the limitations prescribed by
4 title 17 and Arizona game and fish commission rules and orders. This
5 paragraph does not prevent a city, town or county from adopting an ordinance
6 or rule restricting the discharge of a firearm within one-fourth mile of an
7 occupied structure **WITHOUT THE CONSENT OF THE OWNER OR OCCUPANT OF THE**
8 **STRUCTURE**. For **THE** purposes of this paragraph: ~~,-~~

9 (a) **"OCCUPIED STRUCTURE" MEANS ANY BUILDING IN WHICH, AT THE TIME OF**
10 **THE FIREARM'S DISCHARGE, A REASONABLE PERSON FROM THE LOCATION WHERE A**
11 **FIREARM IS DISCHARGED WOULD EXPECT A PERSON TO BE PRESENT.**

12 (b) "Take" has the same meaning prescribed in section 17-101.

13 4. For the control of nuisance wildlife by permit from the Arizona
14 game and fish department or the United States fish and wildlife service.

15 5. By special permit of the chief of police of the municipality.

16 6. As required by an animal control officer in the performance of
17 duties as specified in section 9-499.04.

18 7. Using blanks.

19 8. More than one mile from any occupied structure as defined in
20 section 13-3101.

21 9. In self-defense or defense of another person against an animal
22 attack if a reasonable person would believe that deadly physical force
23 against the animal is immediately necessary and reasonable under the
24 circumstances to protect oneself or the other person.

25 D. For the purposes of this section:

26 1. "Municipality" means any city or town and includes any property
27 that is fully enclosed within the city or town.

28 2. "Properly supervised range" means a range that is any of the
29 following:

30 (a) Operated by a club affiliated with the national rifle association
31 of America, the amateur trapshooting association, the national skeet
32 association or any other nationally recognized shooting organization, or by
33 any public or private school.

34 (b) Approved by any agency of the federal government, this state or a
35 county or city within which the range is located.

36 (c) Operated with adult supervision for shooting air or carbon dioxide
37 gas operated guns, or for shooting in underground ranges on private or public
38 property.

39 Sec. 4. Section 13-3108, Arizona Revised Statutes, is amended to read:

40 13-3108. Firearms regulated by state; state preemption;
41 violation; classification; definition

42 A. Except as provided in subsection G of this section, a political
43 subdivision of this state shall not enact any ordinance, rule or tax relating
44 to the transportation, possession, carrying, sale, transfer, purchase,
45 acquisition, gift, devise, storage, licensing, registration, discharge or use

1 of firearms or ammunition or any firearm or ammunition components or related
2 accessories in this state.

3 B. A political subdivision of this state shall not require the
4 licensing or registration of firearms or ammunition or any firearm or
5 ammunition components or related accessories or prohibit the ownership,
6 purchase, sale or transfer of firearms or ammunition or any firearm or
7 ammunition components, or related accessories.

8 C. A political subdivision of this state shall not require or maintain
9 a record in any form, whether permanent or temporary, including a list, log
10 or database, of any of the following:

11 1. Any identifying information of a person who leaves a weapon in
12 temporary storage at any public establishment or public event, except that
13 the operator of the establishment or the sponsor of the event may require
14 that a person provide a government issued identification or a reasonable copy
15 of a government issued identification for the purpose of establishing
16 ownership of the weapon. The operator or sponsor shall store any provided
17 identification with the weapon and shall return the identification to the
18 person when the weapon is retrieved. The operator or sponsor shall not
19 retain records or copies of any identification provided pursuant to this
20 paragraph after the weapon is retrieved.

21 2. Except in the course of a law enforcement investigation, any
22 identifying information of a person who owns, possesses, purchases, sells or
23 transfers a firearm.

24 3. The description, including the serial number, of a weapon that is
25 left in temporary storage at any public establishment or public event.

26 D. A political subdivision of this state shall not enact any rule or
27 ordinance that relates to firearms and is more prohibitive than or that has a
28 penalty that is greater than any state law penalty. A political
29 subdivision's rule or ordinance that relates to firearms and that is
30 inconsistent with or more restrictive than state law, whether enacted before
31 or after July 29, 2010, is null and void.

32 E. A political subdivision of this state shall not enact any
33 ordinance, rule or regulation limiting the lawful taking of wildlife during
34 an open season established by the Arizona game and fish commission unless the
35 ordinance, rule or regulation is consistent with title 17 and rules and
36 orders adopted by the Arizona game and fish commission. This subsection does
37 not prevent a political subdivision from adopting an ordinance or rule
38 restricting the discharge of a firearm within one-fourth mile of an occupied
39 structure **WITHOUT THE CONSENT OF THE OWNER OR OCCUPANT OF THE STRUCTURE**. For
40 the purposes of this subsection: ~~;~~

41 1. **"OCCUPIED STRUCTURE" MEANS ANY BUILDING IN WHICH, AT THE TIME OF**
42 **THE FIREARM'S DISCHARGE, A REASONABLE PERSON FROM THE LOCATION WHERE A**
43 **FIREARM IS DISCHARGED WOULD EXPECT A PERSON TO BE PRESENT.**

44 2. "Take" has the same meaning prescribed in section 17-101.

45 F. This state, any agency or political subdivision of this state and
46 any law enforcement agency in this state shall not facilitate the destruction

1 of a firearm or purchase or otherwise acquire a firearm for the purpose of
2 destroying the firearm except as authorized by section 13-3105 or 17-240.

3 G. This section does not prohibit a political subdivision of this
4 state from enacting and enforcing any ordinance or rule pursuant to state law
5 or relating to any of the following:

6 1. Imposing any privilege or use tax on the retail sale, lease or
7 rental of, or the gross proceeds or gross income from the sale, lease or
8 rental of, firearms or ammunition or any firearm or ammunition components at
9 a rate that applies generally to other items of tangible personal property.

10 2. Prohibiting a minor who is unaccompanied by a parent, grandparent
11 or guardian or a certified hunter safety instructor or certified firearms
12 safety instructor acting with the consent of the minor's parent, grandparent
13 or guardian from knowingly possessing or carrying on the minor's person,
14 within the minor's immediate control or in or on a means of transportation a
15 firearm in any place that is open to the public or on any street or highway
16 or on any private property except private property that is owned or leased by
17 the minor or the minor's parent, grandparent or guardian. Any ordinance or
18 rule that is adopted pursuant to this paragraph shall not apply to a minor
19 who is fourteen, fifteen, sixteen or seventeen years of age and who is
20 engaged in any of the following:

21 (a) Lawful hunting or shooting events or marksmanship practice at
22 established ranges or other areas where the discharge of a firearm is not
23 prohibited.

24 (b) Lawful transportation of an unloaded firearm for the purpose of
25 lawful hunting.

26 (c) Lawful transportation of an unloaded firearm for the purpose of
27 attending shooting events or marksmanship practice at established ranges or
28 other areas where the discharge of a firearm is not prohibited.

29 (d) Any activity that is related to the production of crops,
30 livestock, poultry, livestock products, poultry products or ratites or
31 storage of agricultural commodities.

32 3. The regulation of **COMMERCIAL** land and structures, including a
33 business relating to firearms or ammunition or their components or a
34 **COMMERCIAL** shooting range in the same manner as other commercial businesses.
35 Notwithstanding any other law, this paragraph does not:

36 (a) Authorize a political subdivision to regulate the sale or transfer
37 of firearms on property it owns, leases, operates or controls in a manner
38 that is different than or inconsistent with state law. For the purposes of
39 this ~~paragraph~~ **SUBDIVISION**, a use permit or other contract that provides for
40 the use of property owned, leased, operated or controlled by a political
41 subdivision shall not be considered a sale, conveyance or disposition of
42 property.

43 (b) **AUTHORIZE A POLITICAL SUBDIVISION THROUGH A ZONING ORDINANCE TO**
44 **PROHIBIT OR OTHERWISE REGULATE THE OTHERWISE LAWFUL DISCHARGE OF A FIREARM OR**
45 **MAINTENANCE OR IMPROVEMENTS DIRECTLY RELATED TO THE DISCHARGE, ON A PRIVATE**

1 LOT OR PARCEL OF LAND THAT IS NOT OPEN TO THE PUBLIC ON A COMMERCIAL OR
2 MEMBERSHIP BASIS.

3 (c) AUTHORIZE A POLITICAL SUBDIVISION TO REGULATE THE OTHERWISE LAWFUL
4 DISCHARGE OF A FIREARM OR MAINTENANCE OR IMPROVEMENTS DIRECTLY RELATED TO THE
5 DISCHARGE, ON LAND THAT IS USED FOR AGRICULTURE OR OTHER NON-COMMERCIAL
6 PURPOSES.

7 4. Regulating employees or independent contractors of the political
8 subdivision who are acting within the course and scope of their employment or
9 contract.

10 5. Limiting or prohibiting the discharge of firearms in parks and
11 preserves except:

12 (a) As allowed pursuant to chapter 4 of this title.

13 (b) On a properly supervised range as defined in section 13-3107.

14 (c) In an area approved as a hunting area by the Arizona game and fish
15 department. Any such area may be closed when deemed unsafe by the director
16 of the Arizona game and fish department.

17 (d) To control nuisance wildlife by permit from the Arizona game and
18 fish department or the United States fish and wildlife service.

19 (e) By special permit of the chief law enforcement officer of the
20 political subdivision.

21 (f) As required by an animal control officer in performing duties
22 specified in section 9-499.04 and title 11, chapter 7, article 6.

23 (g) In self-defense or defense of another person against an animal
24 attack if a reasonable person would believe that deadly physical force
25 against the animal is immediately necessary and reasonable under the
26 circumstances to protect oneself or the other person.

27 H. A violation of any ordinance established pursuant to subsection G,
28 paragraph 5 of this section is a class 2 misdemeanor unless the political
29 subdivision designates a lesser classification by ordinance.

30 I. For the purposes of this section, "political subdivision" includes
31 a political subdivision acting in any capacity, including under police power,
32 in a proprietary capacity or otherwise.

33 Sec. 5. Section 17-601, Arizona Revised Statutes, is amended to read:

34 17-601. Definition of outdoor shooting range

35 In this article, unless the context otherwise requires, "outdoor
36 shooting range" or "range" means a permanently located and improved area that
37 is designed and operated for the use of rifles, shotguns, pistols,
38 silhouettes, skeet, trap, black powder or any other similar sport shooting in
39 an outdoor environment. Outdoor shooting range does not include:

40 1. Any area for the exclusive use of archery or air guns. ~~or~~

41 2. A totally enclosed facility that is designed to offer a totally
42 controlled shooting environment that includes impenetrable walls, floor and
43 ceiling, adequate ventilation, lighting systems and acoustical treatment for
44 sound attenuation suitable for the range's approved use.

45 3. ANY AREA THAT IS USED FOR SHOOTING ON A PRIVATE LOT OR PARCEL OF
46 LAND THAT IS NOT OPEN TO THE PUBLIC ON A COMMERCIAL OR MEMBERSHIP BASIS.