

REFERENCE TITLE: firearms; state preemption; penalties

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1266

Introduced by
Senators Smith, Allen S, Burges, Lesko, McGuire; Representatives Borrelli,
Gowan, Montenegro, Thorpe; Senators Begay, Biggs, Farnsworth D, Griffin,
Kavanagh, Shooter; Representatives Finchem, Kern, Mesnard, Mitchell

AN ACT

AMENDING SECTION 13-3108, 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 13-3108, Arizona Revised Statutes, is amended to
3 read:

4 13-3108. Firearms regulated by state; state preemption;
5 injunction; civil penalty; cause of action;
6 violation; classification; definition

7 A. Except as provided in subsection G of this section, a political
8 subdivision of this state shall not enact any ordinance, rule or tax relating
9 to the transportation, possession, carrying, sale, transfer, purchase,
10 acquisition, gift, devise, storage, licensing, registration, discharge or use
11 of firearms or ammunition or any firearm or ammunition components or related
12 accessories in this state.

13 B. A political subdivision of this state shall not require the
14 licensing or registration of firearms or ammunition or any firearm or
15 ammunition components or related accessories or prohibit the ownership,
16 purchase, sale or transfer of firearms or ammunition or any firearm or
17 ammunition components, or related accessories.

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

21 1. Any identifying information of a person who leaves a weapon in
22 temporary storage at any public establishment or public event, except that
23 the operator of the establishment or the sponsor of the event may require
24 that a person provide a government issued identification or a reasonable copy
25 of a government issued identification for the purpose of establishing
26 ownership of the weapon. The operator or sponsor shall store any provided
27 identification with the weapon and shall return the identification to the
28 person when the weapon is retrieved. The operator or sponsor shall not
29 retain records or copies of any identification provided pursuant to this
30 paragraph after the weapon is retrieved.

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

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

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

42 E. A political subdivision of this state shall not enact any
43 ordinance, rule or regulation limiting the lawful taking of wildlife during
44 an open season established by the Arizona game and fish commission unless the
45 ordinance, rule or regulation is consistent with title 17 and rules and

1 orders adopted by the Arizona game and fish commission. This subsection does
2 not prevent a political subdivision from adopting an ordinance or rule
3 restricting the discharge of a firearm within one-fourth mile of an occupied
4 structure without the consent of the owner or occupant of the structure. For
5 the purposes of this subsection:

6 1. "Occupied structure" means any building in which, at the time of
7 the firearm's discharge, a reasonable person from the location where a
8 firearm is discharged would expect a person to be present.

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

10 F. This state, any agency or political subdivision of this state and
11 any law enforcement agency in this state shall not facilitate the destruction
12 of a firearm or purchase or otherwise acquire a firearm for the purpose of
13 destroying the firearm except as authorized by section 13-3105 or 17-240.

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

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

21 2. Prohibiting a minor who is unaccompanied by a parent, grandparent
22 or guardian or a certified hunter safety instructor or certified firearms
23 safety instructor acting with the consent of the minor's parent, grandparent
24 or guardian from knowingly possessing or carrying on the minor's person,
25 within the minor's immediate control or in or on a means of transportation a
26 firearm in any place that is open to the public or on any street or highway
27 or on any private property except private property that is owned or leased by
28 the minor or the minor's parent, grandparent or guardian. Any ordinance or
29 rule that is adopted pursuant to this paragraph shall not apply to a minor
30 who is fourteen, fifteen, sixteen or seventeen years of age and who is
31 engaged in any of the following:

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

35 (b) Lawful transportation of an unloaded firearm for the purpose of
36 lawful hunting.

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

40 (d) Any activity that is related to the production of crops,
41 livestock, poultry, livestock products, poultry products or ratites or
42 storage of agricultural commodities.

43 3. The regulation of commercial land and structures, including a
44 business relating to firearms or ammunition or their components or a

1 commercial shooting range in the same manner as other commercial businesses.
2 Notwithstanding any other law, this paragraph does not:

3 (a) Authorize a political subdivision to regulate the sale or transfer
4 of firearms on property it owns, leases, operates or controls in a manner
5 that is different than or inconsistent with state law. For the purposes of
6 this subdivision, a use permit or other contract that provides for the use of
7 property owned, leased, operated or controlled by a political subdivision
8 shall not be considered a sale, conveyance or disposition of property.

9 (b) Authorize a political subdivision through a zoning ordinance to
10 prohibit or otherwise regulate the otherwise lawful discharge of a firearm or
11 maintenance or improvements directly related to the discharge, ~~on~~ on a private
12 lot or parcel of land that is not open to the public on a commercial or
13 membership basis.

14 (c) Authorize a political subdivision to regulate the otherwise lawful
15 discharge of a firearm or maintenance or improvements directly related to the
16 discharge, ~~on~~ on land that is used for agriculture or other noncommercial
17 purposes.

18 4. Regulating employees or independent contractors of the political
19 subdivision who are acting within the course and scope of their employment or
20 contract.

21 5. Limiting or prohibiting the discharge of firearms in parks and
22 preserves except:

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

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

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

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

30 (e) By special permit of the chief law enforcement officer of the
31 political subdivision.

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

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

38 H. ANY ORDINANCE, REGULATION, TAX OR RULE THAT IS ENACTED BY A
39 POLITICAL SUBDIVISION IN VIOLATION OF THIS SECTION IS INVALID AND SUBJECT TO
40 A PERMANENT INJUNCTION AGAINST THE POLITICAL SUBDIVISION FROM ENFORCING THE
41 ORDINANCE, REGULATION, TAX OR RULE. IT IS NOT A DEFENSE THAT THE POLITICAL
42 SUBDIVISION WAS ACTING IN GOOD FAITH OR ON THE ADVICE OF COUNSEL.

43 I. IF A COURT DETERMINES THAT A POLITICAL SUBDIVISION HAS KNOWINGLY
44 AND WILFULLY VIOLATED THIS SECTION, THE COURT MAY ASSESS A CIVIL PENALTY OF
45 UP TO FIFTY THOUSAND DOLLARS AGAINST THE POLITICAL SUBDIVISION.

1 J. IF A COURT DETERMINES THAT A PERSON HAS KNOWINGLY AND WILFULLY
2 VIOLATED THIS SECTION WHILE ACTING IN THE PERSON'S OFFICIAL CAPACITY THROUGH
3 ENACTMENT OF ANY ORDINANCE, REGULATION, TAX, MEASURE, DIRECTIVE, RULE,
4 ENACTMENT, ORDER OR POLICY, THE PERSON MAY BE SUBJECT TO TERMINATION FROM
5 EMPLOYMENT TO THE EXTENT ALLOWABLE UNDER STATE LAW.

6 K. A PERSON OR AN ORGANIZATION WHOSE MEMBERSHIP IS ADVERSELY AFFECTED
7 BY ANY ORDINANCE, REGULATION, TAX, MEASURE, DIRECTIVE, RULE, ENACTMENT, ORDER
8 OR POLICY THAT IS IN VIOLATION OF THIS SECTION MAY FILE A CIVIL ACTION FOR
9 DECLARATORY AND INJUNCTIVE RELIEF AND ACTUAL DAMAGES AGAINST THE POLITICAL
10 SUBDIVISION IN ANY COURT OF THIS STATE HAVING JURISDICTION OVER ANY DEFENDANT
11 IN THE ACTION. IF THE PLAINTIFF PREVAILS IN THE ACTION, THE COURT SHALL
12 AWARD BOTH:

- 13 1. REASONABLE ATTORNEY FEES AND COSTS.
- 14 2. THE ACTUAL DAMAGES INCURRED NOT TO EXCEED ONE HUNDRED THOUSAND
15 DOLLARS.

16 ~~H.~~ L. A violation of any ordinance established pursuant to subsection
17 G, paragraph 5 of this section is a class 2 misdemeanor unless the political
18 subdivision designates a lesser classification by ordinance.

19 ~~I.~~ M. For the purposes of this section, "political subdivision"
20 includes a political subdivision acting in any capacity, including under
21 police power, in a proprietary capacity or otherwise.