~~essential businesses; firearms; ammunition; sales~~
essential businesses; civil actions; ammunition

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 348

SENATE BILL 1382

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-721; AMENDING SECTION 26-303, ARIZONA REVISED STATUTES; RELATING TO FIREARMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 12, chapter 6, article 12, Arizona Revised Statutes, is amended by adding section 12-721, to read:

12-721. Prohibited commencement of qualified civil liability actions; firearm manufacturers and sellers; applicability; attorney fees and costs; definitions

A. A PERSON MAY NOT COMMENCE A QUALIFIED CIVIL LIABILITY ACTION.

B. THIS SECTION DOES NOT PROHIBIT A PERSON WHO IS UNDER SEVENTEEN YEARS OF AGE FROM RECOVERING DAMAGES PURSUANT TO A CIVIL ACTION AUTHORIZED BY A FEDERAL OR STATE LAW DESCRIBED IN SUBSECTION C, PARAGRAPH 4, SUBDIVISION (c), ITEM (i), (ii), (iii), (iv) OR (v) OF THIS SECTION.

C. THE PREVAILING PARTY IN AN ACTION FILED PURSUANT TO THIS SECTION SHALL RECOVER REASONABLE ATTORNEY FEES AND COSTS.

D. FOR THE PURPOSES OF THIS SECTION:

1. "ENGAGED IN THE BUSINESS" MEANS ANY OF THE FOLLOWING:

(a) AS APPLIED TO A MANUFACTURER OF FIREARMS, A PERSON THAT DEVOTES TIME, ATTENTION AND LABOR TO MANUFACTURING FIREARMS AS A REGULAR COURSE OF TRADE OR BUSINESS WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT THROUGH THE SALE OR DISTRIBUTION OF THE MANUFACTURED FIREARMS.

(b) AS APPLIED TO A MANUFACTURER OF AMMUNITION, A PERSON THAT DEVOTES TIME, ATTENTION AND LABOR TO MANUFACTURING AMMUNITION AS A REGULAR COURSE OF TRADE OR BUSINESS WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT THROUGH THE SALE OR DISTRIBUTION OF THE MANUFACTURED AMMUNITION.

(c) AS APPLIED TO A DEALER IN FIREARMS, AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(11)(A), A PERSON THAT DEVOTES TIME, ATTENTION AND LABOR TO DEALING IN FIREARMS AS A REGULAR COURSE OF TRADE OR BUSINESS WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT THROUGH THE REPETITIVE PURCHASE AND RESALE OF FIREARMS BUT DOES NOT INCLUDE A PERSON WHO MAKES OCCASIONAL SALES, EXCHANGES OR PURCHASES OF FIREARMS FOR THE ENHANCEMENT OF A PERSONAL COLLECTION OR FOR A HOBBY OR WHO SELLS ALL OR PART OF THE PERSON'S PERSONAL COLLECTION OF FIREARMS.

(d) AS APPLIED TO A DEALER IN FIREARMS, AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(11)(B), A PERSON THAT DEVOTES TIME, ATTENTION AND LABOR TO ENGAGING IN THE ACTIVITY AS A REGULAR COURSE OF TRADE OR BUSINESS WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT BUT DOES NOT INCLUDE A PERSON WHO MAKES OCCASIONAL REPAIRS OF FIREARMS OR WHO OCCASIONALLY FITS SPECIAL BARRELS, STOCKS OR TRIGGER MECHANISMS TO FIREARMS.

(e) AS APPLIED TO AN IMPORTER OF FIREARMS, A PERSON THAT DEVOTES TIME, ATTENTION AND LABOR TO IMPORTING FIREARMS AS A REGULAR COURSE OF TRADE OR BUSINESS WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT THROUGH THE SALE OR DISTRIBUTION OF THE IMPORTED FIREARMS.

(f) AS APPLIED TO AN IMPORTER OF AMMUNITION, A PERSON THAT DEVOTES TIME, ATTENTION AND LABOR TO IMPORTING AMMUNITION AS A REGULAR COURSE OF TRADE OR BUSINESS WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT THROUGH THE SALE OR DISTRIBUTION OF THE IMPORTED AMMUNITION.

2. "MANUFACTURER" MEANS, WITH RESPECT TO A QUALIFIED PRODUCT, A PERSON THAT IS ENGAGED IN THE BUSINESS OF MANUFACTURING THE PRODUCT IN INTERSTATE OR FOREIGN COMMERCE AND THAT IS LICENSED TO ENGAGE IN BUSINESS.

3. "NEGLIGENT ENTRUSTMENT" MEANS SUPPLYING A QUALIFIED PRODUCT BY A SELLER FOR USE BY ANOTHER PERSON WHEN THE SELLER KNOWS, OR REASONABLY SHOULD KNOW, THE PERSON TO WHOM THE PRODUCT IS SUPPLIED IS LIKELY TO, AND DOES, USE THE PRODUCT IN A MANNER INVOLVING UNREASONABLE RISK OF PHYSICAL INJURY TO THE PERSON OR OTHERS.

4. "QUALIFIED CIVIL LIABILITY ACTION" MEANS A CIVIL ACTION OR PROCEEDING OR AN ADMINISTRATIVE PROCEEDING BROUGHT BY ANY PERSON AGAINST A MANUFACTURER OR SELLER OF A QUALIFIED PRODUCT OR A TRADE ASSOCIATION FOR DAMAGES, PUNITIVE DAMAGES, INJUNCTIVE OR DECLARATORY RELIEF, ABATEMENT, RESTITUTION, FINES, PENALTIES OR OTHER RELIEF RESULTING FROM THE CRIMINAL OR UNLAWFUL MISUSE OF A QUALIFIED PRODUCT BY THE PERSON OR A THIRD PARTY. QUALIFIED CIVIL LIABILITY ACTION DOES NOT INCLUDE:

(a) AN ACTION BROUGHT AGAINST A TRANSFEROR CONVICTED UNDER 18 UNITED STATES CODE SECTION 924(h) OR SECTION 13-3102, SUBSECTION A, PARAGRAPH 14 BY A PARTY DIRECTLY HARMED BY THE CONDUCT OF WHICH THE TRANSFEREE IS CONVICTED.

(b) AN ACTION BROUGHT AGAINST A SELLER FOR NEGLIGENT ENTRUSTMENT OR NEGLIGENCE PER SE.

(c) AN ACTION IN WHICH A MANUFACTURER OR SELLER OF A QUALIFIED PRODUCT KNOWINGLY VIOLATED A STATE OR FEDERAL LAW APPLICABLE TO THE SALE OF THE QUALIFIED PRODUCT AND THE VIOLATION WAS A PROXIMATE CAUSE OF THE HARM FOR WHICH RELIEF IS SOUGHT, INCLUDING ANY OF THE FOLLOWING:

(i) ANY CASE IN WHICH THE MANUFACTURER OR SELLER KNOWINGLY MADE ANY FALSE ENTRY IN OR FAILED TO MAKE APPROPRIATE ENTRY IN ANY RECORD REQUIRED TO BE KEPT UNDER FEDERAL OR STATE LAW WITH RESPECT TO THE QUALIFIED PRODUCT OR AIDED, ABETTED OR CONSPIRED WITH ANY PERSON IN MAKING ANY FALSE OR FICTITIOUS ORAL OR WRITTEN STATEMENT WITH RESPECT TO ANY FACT MATERIAL TO THE LAWFULNESS OF THE SALE OR OTHER DISPOSITION OF A QUALIFIED PRODUCT.

(ii) ANY CASE IN WHICH THE MANUFACTURER OR SELLER AIDED, ABETTED OR CONSPIRED WITH ANY OTHER PERSON TO SELL OR OTHERWISE DISPOSE OF A QUALIFIED PRODUCT, KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE ACTUAL BUYER OF THE QUALIFIED PRODUCT WAS PROHIBITED FROM POSSESSING OR RECEIVING A FIREARM OR AMMUNITION UNDER 18 UNITED STATES CODE SECTION 922(g) OR (n).

(iii) AN ACTION FOR BREACH OF CONTRACT OR WARRANTY IN CONNECTION WITH THE PURCHASE OF THE QUALIFIED PRODUCT.

(iv) AN ACTION FOR DEATH, PHYSICAL INJURY OR PROPERTY DAMAGE RESULTING DIRECTLY FROM A DEFECT IN THE DESIGN OR MANUFACTURE OF THE QUALIFIED PRODUCT, WHEN USED AS INTENDED OR IN A REASONABLY FORESEEABLE MANNER, EXCEPT THAT IF THE DISCHARGE OF THE QUALIFIED PRODUCT WAS CAUSED BY A VOLITIONAL ACT THAT CONSTITUTED A CRIMINAL OFFENSE, THE ACT IS CONSIDERED THE SOLE PROXIMATE CAUSE OF ANY RESULTING DEATH, PERSONAL INJURY OR PROPERTY DAMAGE.

(v) AN ACTION OR PROCEEDING COMMENCED BY THE UNITED STATES ATTORNEY GENERAL TO ENFORCE 18 UNITED STATES CODE CHAPTER 44 OR 26 UNITED STATES CODE CHAPTER 53.

5. "QUALIFIED PRODUCT" MEANS A FIREARM AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(3)(A) OR (B), INCLUDING AN ANTIQUE FIREARM AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(16) OR AMMUNITION AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(17)(A) OR A COMPONENT PART OF A FIREARM OR AMMUNITION, THAT HAS BEEN SHIPPED OR TRANSPORTED IN INTERSTATE OR FOREIGN COMMERCE.

6. "SELLER" MEANS, WITH RESPECT TO A QUALIFIED PRODUCT, ANY OF THE FOLLOWING:

(a) AN IMPORTER AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(9) THAT IS ENGAGED IN THE BUSINESS AS AN IMPORTER IN INTERSTATE OR FOREIGN COMMERCE AND THAT IS LICENSED TO ENGAGE IN BUSINESS AS AN IMPORTER UNDER 18 UNITED STATES CODE CHAPTER 44.

(b) A DEALER AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(11) THAT IS ENGAGED IN THE BUSINESS AS A DEALER IN INTERSTATE OR FOREIGN COMMERCE AND THAT IS LICENSED TO ENGAGE IN BUSINESS AS A DEALER UNDER 18 UNITED STATES CODE CHAPTER 44.

(c) A PERSON THAT IS ENGAGED IN THE BUSINESS OF SELLING AMMUNITION AS DEFINED IN 18 UNITED STATES CODE SECTION 921(a)(17)(A) IN INTERSTATE OR FOREIGN COMMERCE AT THE WHOLESALE OR RETAIL LEVEL.

7. "TRADE ASSOCIATION" MEANS ANY CORPORATION, UNINCORPORATED ASSOCIATION, FEDERATION, BUSINESS LEAGUE OR PROFESSIONAL OR BUSINESS ORGANIZATION THAT IS ALL OF THE FOLLOWING:

(a) NOT ORGANIZED OR OPERATED FOR PROFIT AND NO PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

(b) IS AN ORGANIZATION DESCRIBED IN 26 UNITED STATES CODE SECTION 501(c)(6) AND IS EXEMPT FROM TAX UNDER 26 UNITED STATES CODE SECTION 501(a).

(c) TWO OR MORE MEMBERS OF WHICH ARE MANUFACTURERS OR SELLERS OF A QUALIFIED PRODUCT.

8. "WITH THE PRINCIPAL OBJECTIVE OF LIVELIHOOD AND PROFIT" MEANS THE INTENT UNDERLYING THE SALE OR DISPOSITION OF FIREARMS IS PREDOMINANTLY ONE OF OBTAINING LIVELIHOOD AND PECUNIARY GAIN AS OPPOSED TO OTHER INTENTS, INCLUDING IMPROVING OR LIQUIDATING A PERSONAL FIREARMS COLLECTION.

Sec. 2. Section 26-303, Arizona Revised Statutes, is amended to read:

26-303. Emergency powers of governor; termination; authorization for adjutant general; limitation

A. During a state of war emergency, the governor may:

1. Suspend the provisions of any statute prescribing the procedure for conduct of state business, or the orders or rules of any state agency, if the governor determines and ~~declares~~ PROCLAIMS that strict compliance with the provisions of any such statute, order or rule would in any way prevent, hinder or delay mitigation of the effects of the emergency.

2. Commandeer and ~~utilize~~ USE any property, except for firearms or ammunition or firearms or ammunition components, or personnel deemed necessary in carrying out the responsibilities vested in the office of the governor by this chapter as chief executive of ~~the~~ THIS state, and thereafter ~~the~~ THIS state shall pay reasonable compensation ~~therefor~~ FOR THE PROPERTY as follows:

(a) If property is taken for temporary use, the governor, within ten days after the taking, shall determine the amount of compensation to be paid ~~therefor~~ FOR THE PROPERTY. If the property is returned in a damaged condition, the governor, within ten days after its return, shall determine the amount of compensation to be paid for such damage.

(b) If the governor deems it necessary for ~~the~~ THIS state to take title to property under this section, the governor shall then cause the owner of the property to be notified thereof in writing by registered mail, postage prepaid, and then cause a copy of the notice to be filed with the secretary of state.

(c) If the owner refuses to accept the amount of compensation fixed by the governor for the property referred to in subdivisions (a) and (b) OF THIS PARAGRAPH, the amount of compensation shall be determined by appropriate proceedings in the superior court in the county where the property was originally taken.

B. During a state of war emergency, the governor shall have complete authority over all agencies of the state government and shall exercise all police power vested in this state by the constitution and laws of this state in order to effectuate the purposes of this chapter.

C. The powers granted TO the governor by this chapter with respect to a state of war emergency shall terminate if the legislature is not in session and the governor, within twenty-four hours after the beginning of such A state of war emergency, has not issued a call for an immediate special session of the legislature for the purpose of legislating on subjects relating to such A state of war emergency.

D. The governor may proclaim a state of emergency, which shall take effect immediately in an area affected or likely to be affected if the governor finds that circumstances described in section 26-301, paragraph 15 exist.

E. During a state of emergency:

1. The governor shall have complete authority over all agencies of the state government and the right to exercise, within the area designated, all police power vested in ~~the~~ THIS state by the constitution and laws of this state in order to effectuate the purposes of this chapter.

2. The governor may direct all agencies of the state government to ~~utilize~~ USE and employ state personnel, equipment and facilities ~~for the performance of~~ TO PERFORM any ~~and all~~ activities designed to prevent or alleviate actual and threatened damage due to the emergency. The governor may direct such agencies to provide supplemental services and equipment to political subdivisions to restore any services in order to provide for the health and safety of the citizens of the affected area.

F. The powers granted the governor by this chapter with respect to a state of emergency shall terminate when the state of emergency has been terminated by proclamation of the governor or by concurrent resolution of the legislature declaring it at an end.

G. ~~No provision of~~ This chapter ~~may~~ DOES NOT limit, modify or abridge the powers vested in the governor under the constitution or statutes of this state.

H. If authorized by the governor, the adjutant general has the powers prescribed in this subsection. If, in the judgment of the adjutant general, circumstances described in section 26-301, paragraph 15 exist, the adjutant general may:

1. Exercise those powers pursuant to statute and gubernatorial authorization following the proclamation of a state of emergency under subsection D of this section.

2. Incur obligations of ~~one hundred thousand dollars~~ $100,000 or less for each emergency or contingency payable pursuant to section 35-192 as though a state of emergency had been proclaimed under subsection D of this section.

I. The powers exercised by the adjutant general pursuant to subsection H of this section expire seventy-two hours after the adjutant general makes a determination under subsection H of this section.

J. Pursuant to the second amendment of the United States Constitution and article II, section 26, Constitution of Arizona, and notwithstanding any other law, the emergency powers of the governor, the adjutant general or any other official or person ~~shall~~ DO not ~~be construed to~~ allow the imposition of additional restrictions on the lawful possession, transfer, sale, transportation, carrying, storage, display or use of firearms or ammunition or firearms or ammunition components. A

STORE THAT SELLS FIREARMS OR AMMUNITION, OR FIREARMS OR AMMUNITION COMPONENTS, IS AN ESSENTIAL BUSINESS AND IS PROTECTED FROM A QUALIFIED CIVIL LIABILITY ACTION PURSUANT TO SECTION 12-721.

K. ~~Nothing in~~ This section ~~shall be construed to~~ DOES NOT prohibit the governor, the adjutant general or other officials responding to an emergency from ordering the reasonable movement of stores of ammunition out of the way of dangerous conditions.

APPROVED BY THE GOVERNOR MAY 7, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2021.