

House Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 24

# HOUSE BILL 2005

AN ACT

AMENDING SECTIONS 32-2181.02 AND 32-2181.03, ARIZONA REVISED STATUTES;  
RELATING TO SUBDIVISION REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Section 32-2181.02, Arizona Revised Statutes, is amended  
3 to read:

4 32-2181.02. Exempt sales and leases; violation; classification

5 A. The following are exempt under this article:

6 1. The sale or lease in bulk of six or more lots, parcels or  
7 fractional interests to one buyer in one transaction.

8 2. The sale or lease of lots or parcels of one hundred sixty acres or  
9 more.

10 B. The following are exempt from section 32-2181, subsection A and  
11 section 32-2183, subsection A:

12 1. The sale or lease of parcels, lots, units or spaces that are zoned  
13 and restricted to commercial or industrial uses.

14 2. The sale or lease of lots or parcels located in a single platted  
15 subdivision by a subdivider if:

16 (a) A public report has been issued WITHIN THE PAST TWO YEARS pursuant  
17 to this article on the subdivision lots or parcels.

18 (b) The subdivision meets all current requirements otherwise required  
19 of a subdivision under this article.

20 (c) The method of sale or lease of lots or parcels meets all current  
21 requirements under this article.

22 (d) The lots or parcels are included on a recorded subdivision plat  
23 that is approved by a municipal or county government.

24 (e) All roads within the subdivision, all utilities to the lots or  
25 parcels being offered for sale or lease and all other required improvements  
26 within the subdivision, other than a residence to be built, are complete,  
27 paid for and free of any blanket encumbrances.

28 (f) The roads, utilities or other improvements are not complete, but  
29 the completion of all improvements is assured pursuant to section 32-2183,  
30 subsection D.

31 (g) Except for matters relating to ownership, there have been no  
32 material changes to the information set forth in the most recent public  
33 report issued for the subdivision lots that would require an amendment to the  
34 public report.

35 (h) No owner of a ten per cent or greater interest, subdivider,  
36 director, partner, agent, officer or developer of the subdivision has:

37 (i) Been convicted of a felony or any crime involving theft,  
38 dishonesty, violence against another person, fraud or real estate, regardless  
39 of whether the convictions were subsequently expunged.

40 (ii) Had a civil judgment entered against the person in a case  
41 involving allegations of misrepresentation, fraud, breach of fiduciary duty,  
42 misappropriation, dishonesty or, if the subject matter involved real  
43 property, securities or investments.

44 (iii) Had a business or professional license, including a real estate  
45 license, denied, suspended or revoked or voluntarily surrendered a business

1 or professional license during the course of an investigative or disciplinary  
2 proceeding or other disciplinary action taken in this state or any other  
3 state.

4 (i) The sale of the subdivided lands violates no laws or ordinances  
5 of any governmental authority.

6 (j) Before the buyer's or lessee's execution of a purchase contract  
7 or lease, the subdivider has provided the buyer or lessee with a copy of the  
8 most recent public report on the lot and has taken a receipt from the buyer  
9 for the copy.

10 (k) The subdivider has provided to the buyer or lessee, along with the  
11 public report, a signed statement that the subdivider has reviewed and is in  
12 compliance with the terms of the exemption provided in this paragraph.

13 (l) Before sale or lease, the subdivider has notified the  
14 commissioner, on a form provided by the department, of the subdivider's  
15 intent to sell or lease lots or parcels pursuant to this paragraph. The  
16 notice shall include:

17 (i) The name, address and telephone number of the subdivider.

18 (ii) The name, address and telephone number of any real estate broker  
19 retained by the subdivider to make sales or leases of the lots.

20 (iii) The name and location of the subdivision.

21 (iv) The most recent subdivision public report reference number on the  
22 lots.

23 (v) The completion status of subdivision improvements.

24 3. The conveyance to a person who previously conveyed the lot to a  
25 home builder for the purpose of constructing a dwelling for the person.

26 4. The sale or lease by a person of individual lots or parcels that  
27 were separately acquired by the person from different persons and that were  
28 not acquired for the purpose of development if:

29 (a) The lots or parcels are not located in a platted subdivision.

30 (b) Each lot or parcel bears the same legal description that it bore  
31 when the lot or parcel was acquired by the person.

32 (c) The seller or lessor is in compliance with all other applicable  
33 state and local government requirements.

34 5. The sale of an improved lot in a subdivision that is located  
35 outside of this state if:

36 (a) The subdivision is located within the United States and the sale  
37 is exempt from the provisions of the interstate land sales full disclosure  
38 act (P.L. 90-448; 82 Stat. 590; 15 United States Code sections 1701 through  
39 1720).

40 (b) The subdivider is required by the state where the subdivision is  
41 located to deliver a public report or equivalent disclosure document to  
42 prospective purchasers and the subdivider delivers the report or equivalent  
43 disclosure document.

44 6. The sale of an improved lot in a subdivision located in this state  
45 where five or more sales were previously made by the seller if:

1 (a) The sale is the seller's first or second sale in the subdivision  
2 within the previous twelve month period.

3 (b) The subdivision is located within the corporate limits of a town  
4 or city.

5 (c) Electricity and telephone service are complete and available to  
6 the improved lot.

7 (d) Water and sewage service is complete and available to the improved  
8 lot.

9 (e) Streets and roads located outside of the subdivision provide  
10 permanent access to the subdivision and are complete and maintained by the  
11 county, town or city, or by a legally created and operational property  
12 owners' association.

13 (f) Streets within the subdivision are dedicated, provide permanent  
14 access to the lot, are complete to town or city standards and are maintained  
15 by the town or city or, in the case of private streets, a legally created and  
16 operational property owners' association accepts the responsibility of  
17 perpetual maintenance.

18 (g) All subdivision common area improvements including landscaping,  
19 recreational facilities and other jointly used and maintained improvements  
20 are complete and maintained by a legally created and operational property  
21 owners' association.

22 (h) The purchaser's down payment, earnest money, deposit or other  
23 advanced money is placed and held in a neutral escrow depository in this  
24 state until escrow closes and the deed is delivered to the purchaser.

25 (i) Within the previous twelve months the seller has not had an  
26 ownership interest in more than two lots in the subdivision, including an  
27 interest by option, an agreement for sale, a beneficial interest under a  
28 trust or a purchase contract.

29 C. Nothing in this section shall be construed to increase, decrease  
30 or otherwise affect any rights or powers granted the commissioner under this  
31 chapter.

32 D. The provisions of this section do not apply to lands on which the  
33 commissioner has issued orders pursuant to sections 32-2154 and 32-2157 and  
34 section 32-2183, subsection I unless the commissioner has issued a public  
35 report on those lands subsequent to the date of the orders.

36 E. Nothing in this section shall be construed to increase, to decrease  
37 or to otherwise affect any rights or powers granted to political subdivisions  
38 of this state with respect to their jurisdictions.

39 Sec. 2. Section 32-2181.03, Arizona Revised Statutes, is amended to  
40 read:

41 32-2181.03. Lot reservations

42 A. The notice of intent required by section 32-2181, subsection A or  
43 section 32-2195, subsection B and the issuance of a public report required  
44 by section 32-2183, subsection A or section 32-2195.03, subsection A are not

1 required for any party to enter into a lot reservation ON PROPERTY LOCATED  
2 IN THIS STATE.

3 B. Before the issuance of a public report, a deposit may be accepted  
4 from a prospective buyer as a lot reservation if all of the following  
5 requirements are met:

6 1. Before accepting any lot reservation, the prospective seller shall  
7 mail or deliver written notice of the seller's intention to accept lot  
8 reservations to the department. The notice shall include:

9 (a) The name, address and telephone number of the prospective seller.

10 (b) The name, address and telephone number of any real estate broker  
11 retained by the prospective seller to promote the lot reservation program.

12 (c) The name and location of the project for which lot reservations  
13 are to be offered.

14 (d) The form to be used for accepting lot reservations, subject to  
15 approval by the commissioner.

16 2. The reservation deposit for a single lot or parcel shall not exceed  
17 five thousand dollars.

18 3. Within one business day after a reservation is accepted by the  
19 prospective seller, the reservation deposit shall be delivered to an escrow  
20 agent licensed pursuant to title 6, chapter 7 and deposited by the escrow  
21 agent in a depository insured by an agency of the United States. The escrow  
22 account may be interest bearing at the direction of either the prospective  
23 seller or prospective buyer. Payment of any account fees and payment of  
24 interest monies shall be as agreed to between the prospective buyer and  
25 prospective seller. All reservation deposits shall remain in an escrow  
26 account until cancellation or termination of the lot reservation or execution  
27 of a purchase contract.

28 4. Within fifteen calendar days of receipt by the prospective seller  
29 of the public report issued by the commissioner relative to the reserved lot  
30 or parcel, the prospective seller shall provide the prospective buyer with  
31 a copy of the public report and a copy of the proposed purchase contract for  
32 the sale of the lot or parcel. The prospective buyer and prospective seller  
33 have seven business days after the prospective buyer's receipt of the public  
34 report and the proposed purchase contract within which to enter into a  
35 contract for the purchase of the lot or parcel. If the prospective buyer and  
36 prospective seller do not enter into a contract for the purchase of the lot  
37 or parcel within the seven business day period, the reservation automatically  
38 terminates. The prospective seller has no cancellation rights other than as  
39 provided in this paragraph.

40 5. A prospective buyer may cancel a lot reservation at any time before  
41 the execution of a purchase contract by delivering written notice of  
42 termination to the prospective seller.

43 6. Within five business days after a lot reservation has been  
44 terminated for any reason, the prospective seller shall refund to the  
45 prospective buyer all reservation deposits made by the prospective buyer

1 including any interest monies earned less any account fees agreed upon, if  
2 applicable. The escrow agent shall refund to the prospective buyer all  
3 reservation deposits made by the prospective buyer including any interest  
4 monies earned less any account fees agreed upon if the prospective seller is  
5 not available. After this refund neither the prospective buyer nor the  
6 prospective seller has any obligation to the other arising out of the lot  
7 reservation.

8 7. A prospective buyer may not transfer rights under a reservation  
9 without the prior written consent of the prospective seller, and any  
10 purported transfer without the consent of the prospective seller is voidable  
11 at the sole discretion of the prospective seller.

12 8. If the department denies an application for a public report on the  
13 development on which lot reservations were taken, within five business days  
14 of notification by the department, the prospective seller shall notify in  
15 writing each prospective buyer who entered into a lot reservation agreement.  
16 The prospective seller shall return any reservation deposits previously  
17 taken.

18 9. All notices required by this section to be given to the department,  
19 the prospective buyer or the prospective seller shall be in writing and  
20 either hand delivered or sent by certified mail, return receipt requested,  
21 with postage fully prepaid. Notices sent by mail are deemed delivered on the  
22 earlier of actual receipt, as evidenced by the delivery receipt, or seven  
23 calendar days after being deposited in the United States mail.

24 10. Each lot reservation form shall contain the following statement:  
25 The state real estate department has not inspected or approved  
26 this project and no public report has yet been issued for the  
27 project. No offer to sell may be made and no offer to purchase  
28 may be accepted before issuance of a public report for the  
29 project.

30 C. The commissioner may deny authorization to accept lot reservations  
31 under this section to any person who has violated or is in violation of any  
32 provision of this chapter.

33 D. THE AUTHORITY TO TAKE LOT RESERVATIONS UNDER THIS SECTION EXPIRES  
34 TWO YEARS AFTER THE DATE THE COMMISSIONER RECEIVES NOTICE OF THE INTENT TO  
35 TAKE LOT RESERVATIONS FROM A DEVELOPER.

APPROVED BY THE GOVERNOR APRIL 16, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2002.

Passed the House February 4, 2002,

Passed the Senate April 10, 2002,

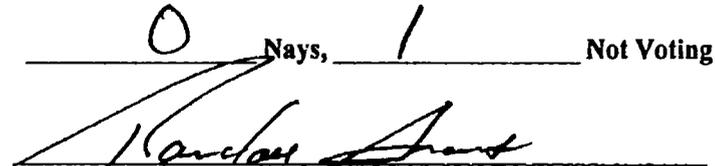
by the following vote: 56 Ayes,

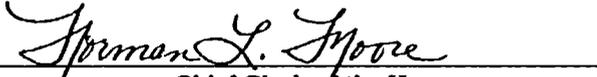
by the following vote: 29 Ayes,

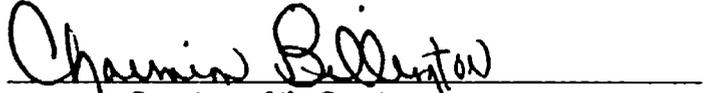
0 Nays, 4 Not Voting

0 Nays, 1 Not Voting

  
Speaker of the House

  
President of the Senate

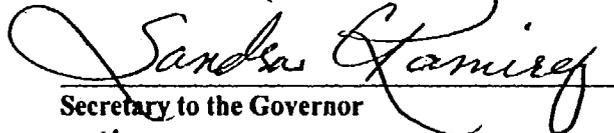
  
Chief Clerk of the House

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
11 day of April, 2002,

at 2:50 o'clock P M.

  
Secretary to the Governor

Approved this 16<sup>th</sup> day of  
April, 2002,

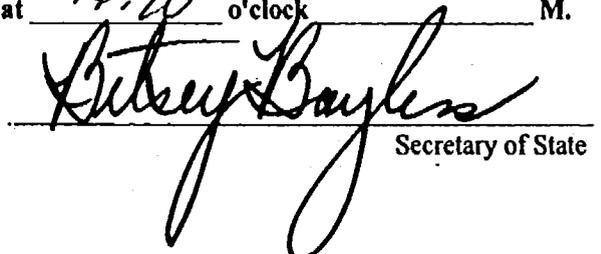
at 12:27 o'clock 9 M.

  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 16 day of April, 2002,

at 4:20 o'clock  M.

  
Secretary of State

H.B. 2005