House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

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

CHAPTER 62

HOUSE BILL 2483

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)

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

Section 1. Section 11-812, Arizona Revised Statutes, is amended to read:

11-812. Restriction on regulation; exceptions; aggregate mining regulation; definitions

A. Nothing contained in any ordinance authorized by this chapter shall:

1. Affect existing uses of property or the right to its continued use or the reasonable repair or alteration of the property for the purpose for which used at the time the ordinance affecting the property takes effect.

2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. For the purposes of this paragraph, general agricultural purposes do not include the cultivation of cannabis as defined in section 13-3401 or marijuana as defined in section 13-3401 or 36-2801. For the purposes of this paragraph, "mining" has the same meaning prescribed in section 27-301.

3. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for agricultural composting, if the tract is five or more contiguous commercial acres. An agricultural composting operation shall notify in writing the board of supervisors and the nearest fire department of the location of the composting operation. If the nearest fire department is located in a city, town or fire district where the agricultural composting is not located, the agricultural composting operation shall also notify in writing the fire district in which the operation is located. Agricultural composting is subject to sections 3-112 and 49-141. For the purposes of this paragraph, "agricultural composting" has the same meaning prescribed in section 9-462.01, subsection G.

4. PREVENT, RESTRICT OR OTHERWISE REGULATE THE OTHERWISE LAWFUL DISCHARGE OF A FIREARM OR AIR GUN OR USE OF ARCHERY EQUIPMENT ON A PRIVATE LOT OR PARCEL OF LAND THAT IS NOT OPEN TO THE PUBLIC ON A COMMERCIAL OR MEMBERSHIP BASIS.

B. A nonconforming business use within a district may expand if the expansion does not exceed one hundred per cent of the area of the original business.

C. For the purposes of subsection A, paragraph 2 of this section, mining does not include aggregate mining operations in an aggregate mining operations zoning district established pursuant to this section. The board of supervisors of any county with a population of more than two million persons shall designate and establish the boundaries of an aggregate mining operations zoning district on the petition of at least one hundred persons who reside within one-half mile of an existing aggregate mining operation. In addition, the board of supervisors of any county may establish, in its discretion and on the board's initiative, one or more aggregate mining operations zoning districts. Aggregate mining operations zoning districts

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

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

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

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

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

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

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

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

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

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

I. For the purposes of this section:

1. "Aggregate" has the same meaning prescribed in section 27-441.

2. "Aggregate mining" has the same meaning prescribed in section 27-441.

3. "Aggregate mining operation" means property that is owned, operated or managed by the same person for aggregate mining.

4. "Operators" means persons who are actively engaged in aggregate mining operations within the zoning district or proposed zoning district and who have given notice to the state mine inspector pursuant to section 27-303.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. On a properly supervised range.

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

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

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

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

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

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

7. Using blanks.

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

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

D. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-601. Definition of outdoor shooting range

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

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

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

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

APPROVED BY THE GOVERNOR APRIL 16, 2014.

FILED IN THE OFFICE OF ~~THE~~ SECRETARY OF STATE APRIL 17, 2014.

Passed the House March 17, 2014

by the following vote: 32 Ayes,

24 Nays, 3 Not Voting Vacancy

Speaker of the House

Chief Clerk of the House

Passed the Senate April 16, 2014

by the following vote: 16 Ayes,

13 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

16 day of April, 2014

at 11:50 o'clock A M.

Secretary to the Governor

Approved this 16th day of

April

at 3:00 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 17th day of April, 2014

at 8:12 o'clock a M.

Secretary of State

H.B. 2483