

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2389

AN ACT

AMENDING SECTIONS 8-385.01, 12-714, 13-3102, 13-3105, 13-3118, 13-4401.01, 13-4903, 13-4904 AND 15-515, ARIZONA REVISED STATUTES; RELATING TO WEAPONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-385.01, Arizona Revised Statutes, is amended to
3 read:

4 8-385.01. Victims' rights for neighborhood associations

5 A. A neighborhood association may register with the city, town or
6 county in which the neighborhood association is located to invoke the rights
7 that are afforded pursuant to this article. The city, town or county shall
8 establish procedures for the registration of neighborhood associations
9 pursuant to this section. The procedures shall require the neighborhood
10 association to provide to the city, town or county the name and telephone
11 number of one person who shall act on behalf of the neighborhood association
12 and who may receive notice or invoke rights pursuant to this section. The
13 neighborhood association shall notify the city, town or county of any changes
14 to this information. If the neighborhood association fails to keep this
15 information current, the neighborhood association is deemed to have waived
16 its rights under this section.

17 B. Notwithstanding any law to the contrary, if a juvenile commits an
18 act that if committed by an adult would be a crime under section 13-1602,
19 subsection A, paragraph 5, section 13-3102, subsection A, paragraph ~~9~~ 8,
20 section 13-3201 or 13-3204, section 13-3208, subsection B or section 13-3209,
21 13-3405, 13-3407, 13-3408, 13-3421 or 13-4702, a neighborhood association
22 that is registered with a city, town or county pursuant to subsection A of
23 this section may receive notice or may invoke rights pursuant to ~~the~~
24 ~~following~~ sections:—

25 ~~1. Section~~ 8-390, —

26 ~~2. Section~~ 8-400, —

27 ~~3. Section~~ AND 8-405.

28 C. Sections 8-407, 8-413 and 8-415 apply to all matters in which a
29 neighborhood association invokes rights under this section.

30 D. If the neighborhood association wishes to invoke victims' rights
31 for a crime as prescribed in subsection B of this section that resulted in an
32 arrest, the person who is registered with the city, town or county pursuant
33 to subsection A of this section shall contact the law enforcement agency
34 responsible for the arrest. The law enforcement agency shall fill out the
35 form prescribed by section 8-386. Thereafter the neighborhood association,
36 through the contact person, shall be afforded all of the rights listed under
37 subsection B of this section.

38 Sec. 2. Section 12-714, Arizona Revised Statutes, is amended to read:

39 12-714. Actions against firearm manufacturers; prohibition;
40 findings; definitions

41 A. A political subdivision of this state shall not commence a
42 qualified civil liability action in any Arizona court.

43 B. The legislature finds that:

1 1. The citizens of this state have the right, under the second
2 amendment to the United States Constitution and article ~~2~~ **II**, section 26 of
3 the Arizona Constitution, to keep and bear arms.

4 2. Lawsuits have been commenced against the manufacturers,
5 distributors, dealers and importers of nondefective firearms for the harm
6 caused by the misuse of firearms by third parties, including criminals.

7 3. Businesses in the United States that are engaged in the lawful sale
8 to the public of firearms or ammunition are not, and should not be liable for
9 the harm caused by those who unlawfully misuse firearms or ammunition.

10 4. The possibility of imposing liability on an entire industry for
11 harm that is the sole responsibility of others is an abuse of the legal
12 system, threatens the diminution of a basic constitutional right and
13 constitutes an unreasonable burden on the free enterprise system.

14 5. The liability actions commenced by political subdivisions are based
15 on theories without foundation in the common law and American jurisprudence.
16 Such an expansion of liability would constitute a deprivation of the rights,
17 privileges and immunities guaranteed to citizens of this state under both the
18 Constitution of Arizona and the United States Constitution.

19 C. As used in this section:

20 1. "Manufacturer" means, with respect to a qualified product:

21 (a) A person who is engaged in a business to import, make, produce,
22 create or assemble a qualified product and who designs or formulates, or has
23 engaged another person to design or formulate, a qualified product.

24 (b) A seller of a qualified product, but only with respect to an
25 aspect of the product that is made or affected when the seller makes,
26 produces, creates or assembles and designs or formulates an aspect of the
27 product made by another person.

28 (c) Any seller of a qualified product who represents to a user of a
29 qualified product that the seller is a manufacturer of the qualified product.

30 2. "Qualified civil liability action" means a civil action brought by
31 a political subdivision against a manufacturer or seller of a qualified
32 product or a trade association, for damages resulting from the criminal or
33 unlawful misuse of a qualified product by a third party. Qualified civil
34 liability action does not include an action brought against a transferor
35 convicted under 18 United States Code section 924(h) or section 13-3102,
36 subsection A, paragraph ~~14~~ **13** by a party directly harmed by the conduct of
37 which the transferee is convicted.

38 3. "Qualified product" means a nondefective firearm as defined in 18
39 United States Code section 921(a)(3) or nondefective ammunition as defined in
40 18 United States Code section 921(a)(17), or a component part of a firearm or
41 ammunition, that has been shipped or transported in interstate or foreign
42 commerce.

43 4. "Seller" means, with respect to a qualified product, a person who
44 either:

1 (a) In the course of a business conducted for that purpose sells,
2 distributes, rents, leases, prepares, blends, packages, labels or otherwise
3 is involved in placing a qualified product in the stream of commerce.

4 (b) Installs, repairs, refurbishes, reconditions or maintains an
5 aspect of a qualified product that is alleged to have resulted in damages.

6 5. "Trade association" means any association or business organization,
7 whether or not incorporated under federal or state law, two or more members
8 of which are manufacturers or sellers of a qualified product.

9 Sec. 3. Section 13-3102, Arizona Revised Statutes, is amended to read:

10 13-3102. Misconduct involving weapons; defenses;
11 classification; definitions

12 A. A person commits misconduct involving weapons by knowingly:

13 1. Carrying a deadly weapon without a permit pursuant to section
14 13-3112 except a pocket knife concealed on his person; or

15 ~~2. Carrying a deadly weapon without a permit pursuant to section~~
16 ~~13-3112 concealed within immediate control of any person in or on a means of~~
17 ~~transportation; or~~

18 ~~3.~~ 2. Manufacturing, possessing, transporting, selling or
19 transferring a prohibited weapon; or

20 ~~4.~~ 3. Possessing a deadly weapon or prohibited weapon if such person
21 is a prohibited possessor; or

22 ~~5.~~ 4. Selling or transferring a deadly weapon to a prohibited
23 possessor; or

24 ~~6.~~ 5. Defacing a deadly weapon; or

25 ~~7.~~ 6. Possessing a defaced deadly weapon knowing the deadly weapon
26 was defaced; or

27 ~~8.~~ 7. Using or possessing a deadly weapon during the commission of
28 any felony offense included in chapter 34 of this title; or

29 ~~9.~~ 8. Discharging a firearm at an occupied structure in order to
30 assist, promote or further the interests of a criminal street gang, a
31 criminal syndicate or a racketeering enterprise; or

32 ~~10.~~ 9. Unless specifically authorized by law, entering any public
33 establishment or attending any public event and carrying a deadly weapon on
34 his person after a reasonable request by the operator of the establishment or
35 the sponsor of the event or the sponsor's agent to remove his weapon and
36 place it in the custody of the operator of the establishment or the sponsor
37 of the event for temporary and secure storage of the weapon pursuant to
38 section 13-3102.01; or

39 ~~11.~~ 10. Unless specifically authorized by law, entering an election
40 polling place on the day of any election carrying a deadly weapon; or

41 ~~12.~~ 11. Possessing a deadly weapon on school grounds; or

42 ~~13.~~ 12. Unless specifically authorized by law, entering a nuclear or
43 hydroelectric generating station carrying a deadly weapon on his person or
44 within the immediate control of any person; or

1 ~~14.~~ 13. Supplying, selling or giving possession or control of a
2 firearm to another person if the person knows or has reason to know that the
3 other person would use the firearm in the commission of any felony; or

4 ~~15.~~ 14. Using, possessing or exercising control over a deadly weapon
5 in furtherance of any act of terrorism as defined in section 13-2301 or
6 possessing or exercising control over a deadly weapon knowing or having
7 reason to know that it will be used to facilitate any act of terrorism as
8 defined in section 13-2301.

9 B. Subsection A, paragraph 1 of this section shall not apply to a
10 person in his dwelling, on his business premises, **IN OR ON A MEANS OF**
11 **TRANSPORTATION, EXCLUDING ANY PUBLIC TRANSIT**, or on real property owned, ~~or~~
12 leased **OR RENTED** by that person.

13 C. Subsection A, paragraphs 1, 2, ~~3, 7~~ 6, 9, 10, 11, ~~AND 12 and 13~~ of
14 this section shall not apply to:

15 1. A peace officer or any person summoned by any peace officer to
16 assist and while actually assisting in the performance of official duties; or

17 2. A member of the military forces of the United States or of any
18 state of the United States in the performance of official duties; or

19 3. A warden, deputy warden or correctional officer of the state
20 department of corrections; or

21 4. A person specifically licensed, authorized or permitted pursuant to
22 a statute of this state or of the United States.

23 D. Subsection A, paragraphs ~~3- 2~~ and ~~7- 6~~ of this section shall not
24 apply to:

25 1. The possessing, transporting, selling or transferring of weapons by
26 a museum as a part of its collection or an educational institution for
27 educational purposes or by an authorized employee of such museum or
28 institution, if:

29 (a) Such museum or institution is operated by the United States or
30 this state or a political subdivision of this state, or by an organization
31 described in 26 United States Code section 170(c) as a recipient of a
32 charitable contribution; and

33 (b) Reasonable precautions are taken with respect to theft or misuse
34 of such material.

35 2. The regular and lawful transporting as merchandise; or

36 3. Acquisition by a person by operation of law such as by gift, devise
37 or descent or in a fiduciary capacity as a recipient of the property or
38 former property of an insolvent, incapacitated or deceased person.

39 E. Subsection A, paragraph ~~3- 2~~ of this section shall not apply to the
40 merchandise of an authorized manufacturer of or dealer in prohibited weapons,
41 when such material is intended to be manufactured, possessed, transported,
42 sold or transferred solely for or to a dealer, a regularly constituted or
43 appointed state, county or municipal police department or police officer, a
44 detention facility, the military service of this or another state or the

1 United States, a museum or educational institution or a person specifically
2 licensed or permitted pursuant to federal or state law.

3 F. Subsection A, paragraph 1 of this section shall not apply to a
4 weapon or weapons carried in a belt holster ~~which holster~~ THAT is wholly or
5 partially visible, ~~or~~ carried in a scabbard or case designed for carrying
6 weapons ~~which scabbard or case~~ THAT is wholly or partially visible or carried
7 in luggage. ~~Subsection A, paragraph 2 of this section shall not apply to a~~
8 ~~weapon or weapons carried in a case, holster, scabbard, pack or luggage that~~
9 ~~is carried within a means of transportation or within a storage compartment,~~
10 ~~map pocket, trunk or glove compartment of a means of transportation.~~

11 G. Subsection A, paragraph ~~10~~ 9 of this section shall not apply to
12 shooting ranges or shooting events, hunting areas or similar locations or
13 activities.

14 H. Subsection A, paragraph ~~3~~ 2 of this section shall not apply to a
15 weapon described in section 13-3101, subsection A, paragraph 7, subdivision
16 (e), if such weapon is possessed for the purposes of preparing for,
17 conducting or participating in lawful exhibitions, demonstrations, contests
18 or athletic events involving the use of such weapon. Subsection A, paragraph
19 ~~12~~ 11 of this section shall not apply to a weapon if such weapon is possessed
20 for the purposes of preparing for, conducting or participating in hunter or
21 firearm safety courses.

22 I. Subsection A, paragraph ~~12~~ 11 of this section shall not apply to
23 the possession of a:

24 1. Firearm that is not loaded and that is carried within a means of
25 transportation under the control of an adult provided that if the adult
26 leaves the means of transportation the firearm shall not be visible from the
27 outside of the means of transportation and the means of transportation shall
28 be locked.

29 2. Firearm for use on the school grounds in a program approved by a
30 school.

31 J. The operator of the establishment or the sponsor of the event or
32 the employee of the operator or sponsor or the agent of the sponsor,
33 including a public entity or public employee, is not liable for acts or
34 omissions pursuant to subsection A, paragraph ~~10~~ 9 of this section unless the
35 operator, sponsor, employee or agent intended to cause injury or was grossly
36 negligent.

37 K. Misconduct involving weapons under subsection A, paragraph ~~9~~, 8, 13
38 ~~OR~~ 14 ~~or~~ ~~15~~ of this section is a class 3 felony. Misconduct involving
39 weapons under subsection A, paragraph 2, 3, ~~4~~, ~~8~~ 7 or ~~13~~ 12 of this section
40 is a class 4 felony. Misconduct involving weapons under subsection A,
41 paragraph ~~12~~ 11 of this section is a class 1 misdemeanor unless the violation
42 occurs in connection with conduct which violates ~~the provisions of~~ section
43 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section
44 13-3409 or section 13-3411, in which case the offense is a class 6 felony.
45 Misconduct involving weapons under subsection A, paragraph 4, 5, ~~OR~~ 6 ~~or~~ 7

1 of this section is a class 6 felony. Misconduct involving weapons under
2 subsection A, paragraph 1, ~~2, 9 OR 10 or 11~~ of this section is a class 1
3 misdemeanor.

4 L. For the purposes of this section:

5 1. "Public establishment" means a structure, vehicle or craft that is
6 owned, leased or operated by this state or a political subdivision of this
7 state.

8 2. "Public event" means a specifically named or sponsored event of
9 limited duration **THAT IS** either conducted by a public entity or conducted by
10 a private entity with a permit or license granted by a public entity. Public
11 event does not include an unsponsored gathering of people in a public place.

12 3. "School" means a public or nonpublic kindergarten program, common
13 school or high school.

14 4. "School grounds" means in, or on the grounds of, a school.

15 Sec. 4. Section 13-3105, Arizona Revised Statutes, is amended to read:
16 13-3105. Forfeiture of weapons and explosives

17 A. ~~Upon~~ **ON** the conviction of any person for ~~the~~ **A** violation of any
18 felony in this state in which a deadly weapon, dangerous instrument or
19 explosive was used, displayed or unlawfully possessed by ~~such~~ **THE** person, the
20 court shall order the article forfeited and sold, destroyed or otherwise
21 properly disposed.

22 B. ~~Upon~~ **ON** the conviction of any person for ~~the~~ **A** violation of section
23 13-2904, subsection A, paragraph 6 or section 13-3102, subsection A,
24 paragraph 1, ~~2, 8 7 OR 9 or 10~~, the court may order the forfeiture of the
25 deadly weapon or dangerous instrument involved in the offense.

26 C. If at any time the court finds pursuant to rule 11 of the Arizona
27 rules of criminal procedure that a person who is charged with a violation of
28 this title is incompetent, the court shall order that any deadly weapon,
29 dangerous instrument or explosive used, displayed or unlawfully possessed by
30 the person during the commission of the alleged offense be forfeited and
31 sold, destroyed or otherwise properly disposed.

32 Sec. 5. Section 13-3118, Arizona Revised Statutes, is amended to read:
33 13-3118. Possession or storage of firearms; restrictions
34 prohibited; exceptions

35 A. Except for the legislature, this state and any agency or political
36 subdivision of this state shall not enact or implement any law, rule or
37 ordinance relating to the possession or storage of firearms other than as
38 provided in statute.

39 B. This section does not prohibit:

40 1. A state, county or municipal judicial department, law enforcement
41 agency or prosecutorial agency from prohibiting a deadly weapon pursuant to
42 section 13-3102, subsection A, paragraph ~~10~~ **9**.

43 2. A political subdivision of this state from enacting any rule or
44 ordinance requiring a business that obtains a secondhand firearm by purchase,
45 trade or consignment to retain the firearm for a period of not more than ten

1 days at its place of business or another storage location that is approved by
2 the applicable law enforcement agency.

3 Sec. 6. Section 13-4401.01, Arizona Revised Statutes, is amended to
4 read:

5 13-4401.01. Victims' rights for neighborhood associations

6 A. A neighborhood association may register with the city, town or
7 county in which the neighborhood association is located to invoke the rights
8 that are afforded pursuant to this ~~article~~ CHAPTER. The city, town or county
9 shall establish procedures for the registration of neighborhood associations
10 pursuant to this section. The procedures shall require the neighborhood
11 association to provide to the city, town or county the name and telephone
12 number of one person who shall act on behalf of the neighborhood association
13 and who may receive notice or invoke rights pursuant to this section. The
14 neighborhood association shall notify the city, town or county of any changes
15 to this information. If the neighborhood association fails to keep this
16 information current, the neighborhood association is deemed to have waived
17 its rights under this section.

18 B. Notwithstanding any law to the contrary, if a person commits an act
19 in violation of section 13-1602, subsection A, paragraph 5, section 13-3102,
20 subsection A, paragraph ~~9- 8~~, section 13-3201 or 13-3204, section 13-3208,
21 subsection B or section 13-3209, 13-3405, 13-3407, 13-3408, 13-3409, 13-3421
22 or 13-4702, a neighborhood association that is registered with a city, town
23 or county pursuant to subsection A of this section may receive notice or may
24 invoke rights pursuant to ~~the following~~ sections:-

25 ~~1. Section~~ 13-4409, ~~.-~~

26 ~~2. Section~~ 13-4420.-

27 ~~3. Section~~ AND 13-4426.

28 C. Sections 13-4428, 13-4434 and 13-4436 apply to all matters in which
29 a neighborhood association invokes rights under this section.

30 D. If the neighborhood association wishes to invoke victims' rights
31 for a crime as prescribed in subsection B of this section that resulted in an
32 arrest, the person who is registered with the city, town or county pursuant
33 to subsection A of this section shall contact the law enforcement agency
34 responsible for the arrest. The law enforcement agency shall fill out the
35 form prescribed by section 13-4405. Thereafter the neighborhood association,
36 through the contact person, shall be afforded all of the rights listed under
37 subsection B of this section.

38 Sec. 7. Section 13-4903, Arizona Revised Statutes, is amended to read:

39 13-4903. Use of force; armed nuclear security guards

40 A. An armed nuclear security guard is justified in using physical
41 force against another person at a commercial nuclear generating station or
42 structure or fenced yard of a commercial nuclear generating station if the
43 armed nuclear security guard reasonably believes that such force is necessary
44 to prevent or terminate the commission or attempted commission of criminal
45 damage under section 13-1602, subsection A, paragraph 3 and subsection B,

1 paragraph 1, misconduct involving weapons under section 13-3102, subsection
2 A, paragraph ~~13~~ 12 or criminal trespass on a commercial nuclear generating
3 station under section 13-4902.

4 B. Notwithstanding sections 13-403, 13-404, 13-405, 13-406, 13-408,
5 13-409, 13-410 and 13-411, an armed nuclear security guard is justified in
6 using physical force up to and including deadly physical force against
7 another person at a commercial nuclear generating station or structure or
8 fenced yard of a commercial nuclear generating station if the armed nuclear
9 security guard reasonably believes that such force is necessary to:

10 1. Prevent the commission of manslaughter under section 13-1103,
11 second or first degree murder under section 13-1104 or 13-1105, aggravated
12 assault under section 13-1204, subsection A, paragraph 1 or 2, kidnapping
13 under section 13-1304, burglary in the second or first degree under section
14 13-1507 or 13-1508, arson of a structure or property under section 13-1703,
15 arson of an occupied structure under section 13-1704, armed robbery under
16 section 13-1904 or an act of terrorism under section 13-2308.01.

17 2. Defend oneself or a third person from the use or imminent use of
18 deadly physical force.

19 C. Notwithstanding any other provision of this chapter, an armed
20 nuclear security guard is justified in threatening to use physical or deadly
21 physical force if and to the extent a reasonable armed nuclear security guard
22 believes it necessary to protect oneself or others against another person's
23 potential use of physical force or deadly physical force.

24 D. An armed nuclear security guard is not subject to civil liability
25 for engaging in conduct that is otherwise justified pursuant to this chapter.

26 Sec. 8. Section 13-4904, Arizona Revised Statutes, is amended to read:
27 13-4904. Detention authority: armed nuclear security guards

28 A. An armed nuclear security guard, with reasonable belief, may detain
29 in or on a commercial nuclear generating station or a structure or fenced
30 yard of a commercial nuclear generating station in a reasonable manner and
31 for a reasonable time any person who is suspected of COMMITTING or attempting
32 to commit manslaughter under section 13-1103, second or first degree murder
33 under section 13-1104 or 13-1105, aggravated assault under section 13-1204,
34 subsection A, paragraph 1 or 2, kidnapping under section 13-1304, burglary in
35 the second or first degree under section 13-1507 or 13-1508, criminal damage
36 under section 13-1602, subsection A, paragraph 3 and subsection B, paragraph
37 1, arson of a structure or property under section 13-1703, arson of an
38 occupied structure under section 13-1704, armed robbery under section
39 13-1904, an act of terrorism under section 13-2308.01, misconduct involving
40 weapons under section 13-3102, subsection A, paragraph ~~13~~ 12 or criminal
41 trespass on a commercial nuclear generating station under section 13-4902 for
42 the purpose of summoning a law enforcement officer.

43 B. Reasonable belief of an armed nuclear security guard is a defense
44 to a civil or criminal action against an armed nuclear security guard for
45 false arrest, false or unlawful imprisonment or wrongful detention.

1 Sec. 9. Section 15-515, Arizona Revised Statutes, is amended to read:
2 15-515. Duty to report violations occurring on school premises
3 All school personnel who observe a violation of section 13-3102,
4 subsection A, paragraph ~~12~~ 11 or section 13-3111 on school premises shall
5 immediately report the violation to the school administrator. The
6 administrator shall immediately report the violation to a peace officer. The
7 peace officer shall report this violation to the department of public safety
8 for inclusion in the statewide and federal uniform crime reports prescribed
9 in section 41-1750, subsection A, paragraph 2.