House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 134

SENATE BILL 1345

AN ACT

AMENDING SECTIONS 13-3101 AND 13-3102, ARIZONA REVISED STATUTES; RELATING TO WEAPONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-3101, Arizona Revised Statutes, is amended to read:

13-3101. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Deadly weapon" means anything that is designed for lethal use. The term includes a firearm.

2. "Deface" means to remove, alter or destroy the manufacturer's serial number.

3. "Explosive" means any dynamite, nitroglycerine, black powder or other similar explosive material including plastic explosives. Explosive does not include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.

4. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will ~~or~~ EXPEL, is designed to EXPEL or ~~that~~ may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.

5. "Occupied structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor that is separately securable from any other structure attached to it, that is used for lodging, business, transportation, recreation or storage and in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs. Occupied structure includes any dwelling house, whether occupied, unoccupied or vacant.

6. "Prohibited possessor" means any person:

(a) Who has been found to constitute a danger to himself or to others pursuant to court order under section 36-540, and whose court ordered treatment has not been terminated by court order.

(b) Who has been convicted within or without this state of a felony or who has been adjudicated delinquent and whose civil right to possess or carry a gun or firearm has not been restored.

(c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.

(d) Who is at the time of possession serving a term of probation pursuant to a conviction for a domestic violence offense as defined in section 13-3601 or a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact under title 31, chapter 3, article 4.

(e) WHO IS A PROHIBITED POSSESSOR UNDER 18 UNITED STATES CODE 922(g)(5), EXCEPT AS PROVIDED BY 18 UNITED STATES CODE 922(y).

7. "Prohibited weapon" means, but does not include fireworks imported, distributed or used in compliance with state laws or local ordinances, any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes or a device that is commercially manufactured primarily for the purpose of illumination, including any of the following:

(a) Explosive, incendiary or poison gas:

(i) Bomb.

(ii) Grenade.

(iii) Rocket having a propellant charge of more than four ounces.

(iv) Mine.

(b) Device that is designed, made or adapted to muffle the report of a firearm.

(c) Firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger.

(d) Rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.

(e) Instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense.

(f) Breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.

(g) Chemical or combination of chemicals, compounds or materials, including dry ice, that are placed in a sealed or unsealed container for the purpose of generating a gas to cause a mechanical failure, rupture or bursting of the container.

(h) Combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in subdivision (a) or (f) of this paragraph.

B. The items set forth in subsection A, paragraph 7, subdivisions (a), (b), (c) and (d) of this section do not include any firearms or devices that are registered in the national firearms registry and transfer records of the United States treasury department or any firearm that has been classified as a curio or relic by the United States treasury department.

Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:

13-3102. <u>Misconduct involving weapons; defenses; classification; definitions</u>

A. A person commits misconduct involving weapons by knowingly:

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

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

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or

4. Possessing a deadly weapon OR PROHIBITED WEAPON if such person is a prohibited possessor; or

5. Selling or transferring a deadly weapon to a prohibited possessor; or

6. Defacing a deadly weapon; or

7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or

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

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

10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event; or

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

12. Possessing a deadly weapon on school grounds; or

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

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

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

B. Subsection A, paragraph 1 of this section shall not apply to a person in his dwelling, on his business premises or on real property owned or leased by that person.

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

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

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

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

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

D. Subsection A, paragraphs 3 and 7 of this section shall not apply to:

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

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

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

2. The regular and lawful transporting as merchandise; or

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

E. Subsection A, paragraph 3 of this section shall not apply to the merchandise of an authorized manufacturer of or dealer in prohibited weapons, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer, ~~or~~ a regularly constituted or appointed state, county or municipal police department or police officer, ~~or~~ a detention facility, ~~or~~ the military service of this or another state or the United States, ~~or~~ a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.

F. Subsection A, paragraph 1 of this section shall not apply to a weapon or weapons carried in a belt holster which holster is wholly or partially visible, or carried in a scabbard or case designed for carrying weapons which scabbard or case is wholly or partially visible or carried in luggage. Subsection A, paragraph 2 of this section shall not apply to a weapon or weapons carried in a case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, trunk or glove compartment of a means of transportation.

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

H. Subsection A, paragraph 3 of this section shall not apply to a weapon described in section 13-3101, SUBSECTION A, paragraph 7, subdivision (e), if such weapon is possessed for the purposes of preparing for, conducting or participating in lawful exhibitions, demonstrations, contests

or athletic events involving the use of such weapon. Subsection A, paragraph 12 of this section shall not apply to a weapon if such weapon is possessed for the purposes of preparing for, conducting or participating in hunter or firearm safety courses.

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

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

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

J. Misconduct involving weapons under subsection A, paragraph 9, 14 or 15 of this section is a class 3 felony. Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4 felony. Misconduct involving weapons under subsection A, paragraph 12 of this section is a class 1 misdemeanor unless the violation occurs in connection with conduct which violates the provisions of section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 5, 6 or 7 of this section is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, 2, 10 or 11 of this section is a class 1 misdemeanor.

K. For THE purposes of this section:

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

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

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

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

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.