

Commerce & Workforce Development Committee

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COMMERCE & WORKFORCE DEVELOPMENT COMMITTEE

LEGISLATION ENACTED

oil and gas commission; continuation (S.B. 1059) – Chapter 47

Retroactive to July 1, 2016, the Oil and Gas Conservation Commission is continued until July 1, 2022.

~~Arizona power authority; continuation (NOW: power authority; hearings; continuation; audit (S.B. 1060)~~ – Chapter 107 E

An emergency measure, effective July 1, 2016, that continues the Arizona Power Authority until July 1, 2024. Additionally requires the Auditor General to conduct a performance audit and the Office of Administrative Hearings to review appealable agency actions.

office of tourism; continuation (S.B. 1118) – Chapter 108

Retroactive to July 1, 2016, the Office of Tourism is continued until July 1, 2022.

board of technical registration; continuation (S.B. 1119) – Chapter 142

Retroactive to July 1, 2016, the Board of Technical Registration is continued until July 1, 2024.

boxing commission; continuation (S.B. 1120) – Chapter 22

Retroactive to July 1, 2016, the Arizona State Boxing and Mixed Martial Arts Commission is continued until July 1, 2018.

real estate licenses; broker possession (S.B. 1193) – Chapter 336

Allows a real estate broker to use online public records to satisfy license possession requirements and requires a real estate employer to dispose of an inactive license instead of returning it.

corporation commission; electronic filings (S.B. 1309) – Chapter 222

Allows the Arizona Corporation Commission to accept electronic documents from a public service corporation.

TPT exemption; billboard rentals (S.B. 1310) – Chapter 223

Exempts billboards from the personal property rental transaction privilege tax.

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vexatious litigants; workers' compensation (S.B. 1323) – Chapter 26

Allows an administrative law judge in a workers' compensation case to designate a pro se litigant as a *vexatious litigant* if the judge finds the litigant engaged in vexatious conduct. The designation prohibits the litigant from filing any new pleading, motion or other document without the judge's approval. The litigant has 30 days to respond to the designation and the judge has 30 days from receipt of the response to issue an order. The designation does not apply to future cases and is suspended if the litigant is subsequently represented by legal counsel.

Defines *vexatious conduct* as: 1) repeated filing of actions solely or primarily for the purpose of harassment; 2) unreasonably expanding or delaying Industrial Commission of Arizona (ICA) proceedings; 3) bringing or defending claims without substantial justification; 4) engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the litigant; 5) a pattern of making unreasonable, repetitive and excessive requests for information; or 6) repeated filing of documents or requests for relief that have been the subject of previous rulings by the ICA in the same litigation. Defines *without substantial justification* as a claim or defense that is groundless or not made in good faith.

business entities; shareholders; officers; directors (S.B. 1356) – Chapter 354

Extends the powers and interests of a benefit corporation to all corporations formed under A.R.S. Title 10. Modifies statutes relating to proxies, remote communication, shareholder agreements and permissible corporate actions and permits private lawsuits for damages resulting from certain fraudulent actions.

mobile home; RV parks; prohibition (S.B. 1362) – Chapter 315

Stipulates that a rental agreement and park rules or regulations under the Arizona Mobile Home Parks Residential Landlord and Tenant Act and Recreational Vehicle Long-Term Rental Space Act cannot require a tenant to place another person's name on the title to their mobile home or recreational vehicle.

liquor omnibus (S.B. 1373) – Chapter 161

Allows a restaurant license applicant or licensee to apply for a permit to sell beer for consumption off the premises under certain circumstances and raises the cap on the amount of beer an on-sale retailer or employee may serve to one person at one time from 40 ounces to 50 ounces.

telephone solicitations (S.B. 1375) – Chapter 279

Expands the prohibition on telephone solicitation to include all telephone numbers.

wine; direct shipment (S.B. 1381) – Chapter 76

Allows the Department of Liquor Licenses and Control (DLLC) to issue a *direct shipment license* to a winery that holds a basic permit and current license to produce wine issued

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in this or another state. The license is nontransferable, valid for one year, renewable and allows licensees to sell and ship wine directly to consumers if certain requirements are met. A licensee may ship up to six 9-liter cases until 2018, up to nine cases in 2018 and up to 12 cases in 2019 and thereafter, per customer annually.

Requires licensees to annually provide the Director of DLLC (Director) with shipment records that include licensee name and address, license number, shipment date, recipient address and the amount shipped. Common carriers, except for railroads, must also keep, and remit to the DLLC upon request, records of wine shipped to purchasers in this state.

Prescribes direct shipment license application requirements and requires that a licensee pay applicable transaction privilege and luxury taxes, allow Department of Revenue or the Director to audit wine shipment records, and consent to the jurisdiction of Arizona government agencies, courts, laws, rules and regulations.

industries for blind; repeal; successor (S.B. 1411) – Chapter 341

Requires the Arizona Industries for the Blind to establish a successor nonprofit corporation by July 1, 2017, and transfers all assets and liabilities to the successor upon satisfaction of evidence requirements.

industrial commission; compensation (S.B. 1420) – Chapter 327

Changes per diem eligibility requirements for Industrial Commissioner stipends from *performing duties* to *preparing for or attending a Commission meeting* and requires Commissioners to submit documentation of duties performed for each day a per diem is requested.

board of technical registration; omnibus (S.B. 1422) – Chapter 167

Requires a certified home inspector to file financial assurances before any fee-based home inspection is performed and eliminates the home inspector-in-training designation. Mandates that a home inspector whose certification has expired must apply as a new candidate, pay the application fee and pass the examination for certification if it has been at least two years since the applicant passed the Board of Technical Registration-approved national examination.

pharmacy board; manufacturers; dietary supplements (S.B. 1460) – Chapter 284

SEE THE HEALTH AND HUMAN SERVICES COMMITTEE.

taxis; limousines; livery vehicles (S.B. 1492) – Chapter 171

SEE THE TRANSPORTATION COMMITTEE.

industrial commission of Arizona; omnibus (S.B. 1500) – Chapter 356

Eliminates the Industrial Commission of Arizona's (ICA) regulation of private employee agents and sunsets the oversight of boilers and lined water heaters. Transfers adjudication of Arizona Division of Occupational Safety and Health contests to the Office of Administrative

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Hearings and specifies eligible activity, reporting and oversight requirements for ICA commissioner per diem compensation.

Arizona commerce authority; continuation; report (S.B. 1501) – Chapter 114

Retroactive to July 1, 2016, the Arizona Commerce Authority (ACA) is continued until July 1, 2018. Requires the ACA to expand reporting, publish progress metrics and develop written procedures for administration of the Arizona Competes Fund.

liquor purchases; other state identification (H.B. 2031) – Chapter 91 E

An emergency measure, effective April 5, 2016, that allows an unexpired, out-of-state driver license issued before a person's 21st birthday to be used for purchasing liquor 30 days after the person turns 21 and allows a person to use a license issued by another state, the District of Columbia, or a territory of the U.S. or Canada that is substantially equivalent to an Arizona non-operating identification license.

cosmetology; omnibus (H.B. 2035) – Chapter 251

Allows a person who is 18 years or older to apply as an aesthetician, cosmetologist, nail technician or instructor without completing at least two years of high school or equivalent education. Provides reciprocity requirement options for out-of-state licensees and establishes the Cosmetic Lasers Study Committee.

public safety employees; omnibus (H.B. 2074) – Chapter 178

SEE THE PUBLIC SAFETY, MILITARY AND TECHNOLOGY COMMITTEE.

~~independent business status; declaration~~ (NOW: declaration; independent business status (H.B. 2114) – Chapter 231

Permits an employing unit and contractor to create a rebuttable presumption of an independent contractor relationship by executing a Declaration of Independent Business Status Form. Requires that the Declaration Form state that the contractor acknowledges that: 1) the contractor operates the contractor's own independent business and is providing services for the contracting party as an independent contractor; 2) the contractor is not an employee of the contracting party and services rendered do not establish any right to unemployment benefits or other right arising from an employment relationship; and 3) the terms of the Declaration Form apply to the contractor, the contractor's employees and the contractor's independent contractors.

lead acid battery sales; fees (H.B. 2132) – Chapter 36

Removes the cap on the refundable deposit a battery seller must charge when a consumer purchases a new lead acid battery without returning a used one.

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liquor; sampling; eligibility; square footage (H.B. 2182) – Chapter 345

Extends liquor sampling privileges to beer and wine store premises under 5,000 square feet that dedicate at least 75 percent of retail shelf space to the sale of spirituous liquor.

~~real estate; fund; prosecutor~~ (NOW: employee scheduling; preemption) (H.B. 2191) – Chapter 233

Prohibits a city, town or county from adopting an ordinance, resolution or other regulation that requires an employer, except municipality public sector employers, to alter or adjust any employee scheduling unless the employer action is required to satisfy state or federal law.

~~trade or commerce; technical correction~~ (NOW: alcohol; director duties; surcharge reports) (H.B. 2215) – Chapter 184

Requires the Director of the Arizona Department of Liquor Licenses and Control to report on the use of liquor license surcharges imposed for enforcement programs.

employment security; omnibus (H.B. 2222) – Chapter 185

Transfers federal apprenticeship registration duties from the Arizona Commerce Authority to the Department of Economic Security (DES) and requires an individual to make at least one job contact per day on four different days, rather than three work search contacts during the week, to be eligible for Shared Work Unemployment Compensation. Decreases DES Appeal Board membership from four to three members.

workers' compensation; modifications (H.B. 2240) – Chapter 186

Entitles any party in a workers' compensation hearing to file a notice of an Administration Law Judge change and receive the change as a matter of right. Eliminates, from wages considered to be earned for calculation of unemployment benefits, the addition of 50 percent of retirement and pension benefits received during the period of temporary partial disability. Requires interest on benefits to be paid at the Board of Governors Federal Reserve rate plus 1 percent, not to exceed 10 percent, if permanent partial disability benefits remain unpaid 10 days after the date the award or notice becomes final or a previously denied claim for dependent benefits is subsequently accepted, in which case interest accumulates from the date the claim was filed.

mobile home removal; licensure; noncompliance (H.B. 2259) – Chapter 236

Prohibits a person from beginning the removal of a mobile home in a mobile home park without first satisfying clearance requirements and designates the refusal to leave at the request of the landlord for noncompliance with clearance requirements as a class 3 misdemeanor for criminal trespass.

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construction contracts; bonds; notice requirements (H.B. 2268) – Chapter 237

Allows a person contracting with a subcontractor and making a claim against a contractor bonded for a public project to give the 90-day claim notice to the contractor by any means that provides written, third-party verification of delivery.

~~barber licenses; education qualifications~~ (NOW: education qualifications; barber licenses) (H.B. 2292) – Chapter 188

Classifies a school as a postsecondary educational institution that is licensed by the Board of Barbers to offer training programs beyond the secondary school level and only admits students who are at least 16 years old or have a recognized high school diploma or its equivalent.

mobile home parks; tree maintenance (H.B. 2304) – Chapter 253

Includes the maintenance of trees in a mobile home park landlord's obligation to maintain fit premises, unless otherwise specified in a rental agreement. Retroactive to May 31, 2016, designates a rule that imposes a reoccurring financial obligation on the tenant as unenforceable if it is adopted after the execution of an initial rental agreement.

patent troll prevention act (H.B. 2386) – Chapter 69

Prohibits an assertion of patent infringement made in bad faith. Establishes factors a court should consider in evaluating whether a patent infringement assertion is made in good or bad faith, including whether the asserting party: 1) requested a licensing fee within an unreasonably short period of time; 2) knew or should have known the assertion is without merit; 3) has previously filed a lawsuit based on a substantially equivalent assertion that was found to be without merit; 4) conducted a reasonable analysis to substantiate infringement; 5) attempted to negotiate an appropriate remedy in a reasonable manner; or 6) demonstrated reasonable business practices in previous patent enforcement efforts.

Permits a person acting in good faith who owns a patent to: 1) advise others of that ownership or right of license or enforcement; 2) communicate to others that the patent is available for license or sale; and 3) seek compensation for a past or present infringement under a reasonable belief that a person may owe compensation.

funeral establishments; procurement organizations (H.B. 2475) – Chapter 348

Prohibits operation of a procurement organization and a funeral establishment on the same premises and a funeral director or embalmer from holding interest in a procurement organization.

nonwage compensation; minimum wage (H.B. 2579) – Chapter 203

Prohibits a city, town or other political subdivision from further regulating nonwage compensation, including: fringe benefits; welfare benefits; child or adult care plans; sick pay;

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vacation pay; severance pay; commissions; bonuses; retirement plan or pension contributions; employment benefits as defined by U.S. Code; or any other amounts promised to an employee that are more than the minimum compensation due to an employee.

data center tax relief; qualification (H.B. 2584) – Chapter 369

Allows new data centers to obtain certification as sustainable redevelopment projects and leased land, buildings, modular data centers and computer data center equipment to qualify towards the required data center minimum investment. Grants the Arizona Commerce Authority exclusive jurisdiction over certification and the Department of Revenue jurisdiction over tax relief administration. Retroactive to September 13, 2013, removes the requirement that the data center owner, operator or qualified colocation tenant present its exemption certificate to the retailer at the time of purchase to qualify for the personal property and municipal tax exemptions.

nonprofit corporations; electronic voting (H.B. 2592) – Chapter 204

Allows a nonprofit corporation to conduct a written ballot through an online voting system that: 1) verifies the member's identity; 2) authenticates the validity of each electronic vote to ensure that the vote is not altered in transit; 3) transmits a receipt to each member who casts an electronic vote; and 4) stores electronic votes for recount, inspection and review. Requires notice of an online voting system for written ballots to include a reasonable procedure by which a member may obtain and cast a ballot through another form of delivery, including U.S. mail and fax transmission.

regulatory boards; licensing; revisions (H.B. 2613) – Chapter 371

Eliminates assayer, citrus fruit packer, fruit and vegetable packer, driving instructor and yoga instructor licenses and allows trained geologists and some cremationists to practice without a license. Requires the Arizona Department of Administration to study the consolidation of regulatory boards and licensure.

cooperative associations (H.B. 2614) – Chapter 349

Allows five or more small businesses, individuals or entities engaged in the marketing and distribution of manufactured goods to form a cooperative association and allows cooperative associations to make profits for themselves or their members.

independent contractors; criteria (H.B. 2652) – Chapter 210

Classifies a *qualified marketplace contractor* as an independent contractor through the execution of a contract if: 1) the contractor is providing services as an independent contractor; 2) payment is based on the performance of services or other output; 3) the contractor may choose any working hours or schedules; 4) the contract does not restrict the contractor's ability to perform services for other parties; 5) the contractor bears expenses incurred by the contractor in performing the services; 6) the contractor is responsible for taxes on the contractor's income; and 7) the contract may be terminated on reasonable notice by either party without cause. Defines

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qualified marketplace contractor as any person or entity that enters into an agreement with a *qualified marketplace platform* to use the qualified marketplace platform's digital platform to provide services to third-party individuals or entities seeking those services. Defines *qualified marketplace platform* as an entity that operates a digital website or smartphone application to facilitate the provision of services by qualified marketplace contractors to individuals or entities and accepts service requests from the public only through its digital website or smartphone application.

Governor's economic opportunity office; consolidation (H.B. 2666) – Chapter 372 W/O

Establishes the Office of Economic Opportunity to monitor the state's tax competitiveness, evaluate the effectiveness of state incentive programs and develop data-informed policy recommendations. Transfers programs administered by the Arizona Health Facilities Authority, Arizona Housing Finance Authority, Arizona International Development Authority, Greater Arizona Development Authority and Water Infrastructure Financing Authority to the Arizona Finance Authority. Enables data collection and reporting by the Workforce Data Task Force. Reduces, from 125 percent to 100 percent, the Qualified Facility Income Tax Credit median annual wage requirement at facilities in a city or town with a population of fewer than 50,000, a county other than Maricopa or Pima or on tribal lands. Additionally requires 30 percent of Arizona Competes Fund appropriations to be reserved for supporting rural business, small business and other business developments that enhance economic development.

peace officer employment; study committee (H.B. 2677) – Chapter 324

SEE THE PUBLIC SAFETY, MILITARY AND TECHNOLOGY COMMITTEE.

LEGISLATION VETOED

trade names; trademarks; application (S.B. 1401) – VETOED

Requires trademark and trade name applicants to conduct a search and determine uniqueness of trademark or trade name.

The Governor indicates in his veto letter that he is concerned about the additional and subjective requirements the bill places on businesses and entrepreneurs. He also suggests the bill could expose trademark applicants to additional litigation due to the new requirements.