

ARIZONA STATE SENATE

45TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: March 6, 2001

TIME: 1:30 pm

ROOM: SHR 1

CHAIRMAN: Senator Richardson

VICE CHAIRMAN: Senator Bee

ANALYST: Sheryl Rabin

COMMITTEE SECRETARY: Tracey Moulton

ASST. ANALYST: Ethan Shaner

ATTENDANCE

BILLS

| <u>Committee Members</u> | <u>Pr</u> | <u>Ab</u> | <u>Ex</u> | <u>Bill Number</u> | <u>Disposition</u> |
|------------------------------|-----------|-----------|-----------|--------------------|--------------------|
| Senator Aguirre | X | | | S.B. 1157 | HELD |
| Senator Bundgaard | X | | | S.B. 1238 | HELD |
| Senator Burns | X | | | S.B. 1284 | DPA |
| Senator Cumiskey | X | | | S.B. 1396 | FAILED |
| Senator Rios | X | | | S.B. 1408 | DPA |
| Senator Smith | X | | | S.B. 1511 | DPA |
| Senator Bee, Vice Chairman | X | | | S.B. 1530 | DPA |
| Senator Richardson, Chairman | X | | | S.B. 1548 | HELD |
| | | | | H.B. 1566 | HELD |
| | | | | H.B. 2286 | DP |

GOVERNOR'S APPOINTMENTS

Name

Position

Recommendation

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:35 p.m. and attendance was noted. For additional attendees, see Sign-In Sheet (Attachment A).

APPROVAL OF MINUTES

Without objection, Senator Richardson moved the minutes of the January 23, 2001 Committee on Judiciary meeting be approved as distributed.

CONSIDERATION OF BILLS

S.B. 1548 – death penalty; incompetent inmate – HELD

Senator Richardson announced S.B. 1548 would be placed in a subcommittee with the following members: Senator Richardson, Chairman, Senator Aguirre and Senator Bee.

S.B. 1566 – gun shows; instant background checks – HELD

Senator Richardson announced S.B. 1566 would be held.

H.B. 2286 – jury fee collection – DO PASS

Ethan Shaner, Research Assistant Analyst, explained H.B. 2286 removes the three-year time limit to commence an action to collect jury fees and stipulates that the judgment remains in effect until the jury fees are paid in full.

Senator Richardson announced the following people were present in support of the bill:
Support – Gordon Mulleneaux, Arizona Association of Superior Court Clerks

**Senator Bee moved H.B. 2286 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 7-0-1 (Attachment 1).**

S.B. 1408 – joint and several liability; fault – DO PASS AMENDED

Sheryl Rabin, Research Analyst, explained S.B. 1408 holds parties jointly and severally liable when one party's liability for fault arises out of a duty created by the Federal Employer's Liability Act (FELA) (45 U.S.C. section 51), relating to railroads.

Ms. Rabin explained the Richardson amendment dated 3/2/01, 4:00 p.m. states that an employee of the defendant shall not be held responsible for contribution to the defendant. Additionally, an action for contribution shall be adjudicated by the same court and jury that determines the action for the plaintiff's injury or death and the plaintiff is entitled to recover expenses from the defendant that were incurred due to the contribution suit.

Ms. Rabin explained the Richardson amendment dated 3/2/01, 9:54 a.m. contains a non-severability clause stating that if any language added by this bill is adjudicated invalid, all language added by the bill is void and the original statute will remain intact.

Allan Stanton, Railroads, United Transportation Union, testified in support of the bill and commented that the Richardson amendment dated 3/2/01, 4:00 p.m. was worked out in negotiations with representatives of the rail unions. This amendment states that a case would be tried in one trial and compensation to plaintiffs that receive judgements against the railroads, under the federal law for any expenses that he might incur. The non-severability language is one, which he discussed with Senator Richardson and staff relative to the issue of holding a co-employee not liable for any negligence.

Robert S. Svob, Jr., Union Pacific locomotive engineer, Chairman of the Brotherhood of Locomotive Engineers Arizona State Legislative Board, testified in opposition to the bill and commented their main concern is that if this bill becomes law, it will encroach on the employees Federal Employers' Liability Act rights.

Senator Richardson announced the following people were present in support of the bill: **Scott Olson, United Transportation Union and Judith Connell, Arizona Trial Lawyers Association.**

Senator Bee moved S.B. 1408 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 3/2/01, 4:00 p.m. be ADOPTED (Attachment B). The motion CARRIED by a voice vote.

Senator Bee moved the Richardson amendment dated 3/2/01, 9:54 a.m. be ADOPTED (Attachment C). The motion CARRIED by a voice vote.

Senator Bee moved S.B. 1408 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 2).

S.B. 1157 – threatening; intimidating; criminal justice employees – HELD

Senator Richardson announced S.B. 1157 would be held.

S.B. 1396 – urban land; recreational uses – FAILED

Garth Kamp, Research Intern, explained S.B. 1396 limits the liability of municipalities and counties relating to injuries sustained by recreational and educational users on specified municipal and county lands such as parks.

Mr. Kamp explained the amendment passed in the Natural Resources, Agriculture and Environment Committee.

Becky Hill, League of Arizona Cities and Towns, testified in support of the bill and commented that the League would like to clarify statute that was passed in 1993.

Melinda Garrahan, Cities of Cottonwood, Fredonia, Flagstaff and Page, testified that she is a member of a private law firm and has represented people from both sides of this issue. She commented that many schools do not have a great deal of money for recreational facilities. There is not the same level of commercial recreational entities in rural, small town Arizona. She stated that this is an important bill to support the idea of recreational immunities without having the budgets of the cities and towns being depleted.

Janice Goldstein, Arizona Trial Lawyers Association, introduced **Dan Salcido, Arizona Trial Lawyers Association**. In response to Senator Burns, Mr. Salcido stated that if the county or the municipal park that controls an area, such as Spur Creek, had signage that indicated that it was a wildlife preserve with mountain lion, javelina and other wild animals, and for visitors to stay on designated areas, they would not be responsible or liable for an animal attack.

Mr. Salcido commented that this bill would give immunity to school districts and municipalities from their acts of negligence. Instead of budgeting a lot of funds to promote sport facilities, arenas and the like, they could set aside a small amount of funding for park and playground maintenance. The League wants to expand the legislation that was passed in 1993 to allow private property owners the right to let people use their land without the risk of responsibilities, but not affording municipalities the same right.

Senator Richardson announced the following people were present in support of the bill: **Steve Olson, City of Scottsdale; Russell Smoldon, Salt River Project; Patrice Kraus, City of Chandler; and Paul Nordin, Town of Fountain Hills.**

**Senator Bee moved S.B. 1396 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 2-5-1 (Attachment 3).**

S.B. 1530 – confidentiality agreements; restrictions – DO PASS AMENDED

Ms. Rabin explained S.B. 1530 limits confidentiality in settlements in civil cases when the action was for injury, wrongful death, or financial loss caused by a defective product, environmental hazard, or financial fraud and requires specified types of documents to be made public unless certain exceptions apply. Under the bill, information becomes public if it is contained in a confidentiality agreement or settlement agreement not filed with the court or if the information is acquired through discovery. A court has the discretion to order the information be kept confidential for an appropriate period of time if the information is a trade secret, privileged, or an overriding interest exists to keep the information confidential and that interest is greater than the right of public access to the information.

The bill also declares as void any agreement or contract that restricts a party in these types of cases from disclosing information relating to the defective product, environmental hazard, or financial fraud to a governmental agency that has enforcement authority over the problem.

Ms. Rabin explained the Bundgaard amendment dated 3/5/01, 7:33 a.m. states that the language in this bill shall not prevent or limit a governmental agency from obtaining information to which it is otherwise entitled to by statute. The amendment also clarifies the definition of “environmental hazard.”

David Kimball, Arizona Chamber of Commerce and Greater Phoenix Chamber, testified in opposition to the bill and commented the Chambers are concerned with that language that is currently drafted in the bill would effectively discourage remediation of historical contamination.

Deborah Linzer, representing herself, testified in support of the bill and commented that her daughter, Jennianna was killed in an accident in 1999 when the tread of the Goodyear tires of the vehicle she was riding in shredded, which caused a roll over accident. She commented that she did not know what the Goodyear Tire Company knew regarding the safety issues on the tires that they

produced. She urged the Committee to pass this bill to keep other families from suffering what her family and friends have suffered.

David Childers, National Association of Independent Insurers, testified in opposition to the bill and commented on his concern with the term financial fraud and the way it is defined in the bill. He was concerned about any fraudulent insurance claims practice as prescribed in A.R.S. 20-461 or any fraudulent plan to sell a publicly offered investment product without full disclosure of risk. The reference to A.R.S. 20-461, is regarding unfair claims settlement practices act, which prescribes a wide variety of activities which are prohibited by insurance companies. He noted that fraud is not included in this section of the law. He stated that there are numerous charges in the criminal code that address financial fraud as does A.R.S. 20-463 of the insurance code. He suggested that this language should be changed.

Tom Coe, representing himself, testified that this bill would be beneficial to everyone in the State once it is passed into law.

Samantha Fearn, Arizona Chamber of Commerce, testified in opposition to the bill and commented that some of the information that the bill proposes to make open and available to the public is information that is readily available to a plaintiff's attorney in a case proceeding. If this presumption is shifted it will make litigation more difficult. She noted that under current law, a plaintiff's attorney could request the judge not hold certain documents confidential.

Richard Langerman, Arizona Trial Lawyers, testified in support of the bill and commented that this is probably the single most important public safety measure that has been addressed by the Legislature in many years.

Mr. Langerman stated that this legislation would help the general public have knowledge of problems that have been discovered about products, and therefore the public can make informed decisions on purchasing these products. He stated that confidentiality orders only benefit the companies manufacturing defective products from further litigation and this bill would address the problem. He urged the Committee to support the bill.

Senator Richardson announced the following people were present in support of the bill: **Paul Barnes, Neighborhood Coalition of Greater Phoenix; Phil MacDonnell, Attorney, Arizona Newspaper Association; Jon Hinz, Fairness and Accountability in Insurance Reform; and Sandy Behr, Sierra Club-Grand Canyon Chapter.**

Senator Richardson announced the following people were present in opposition to the bill: **Mike Williams, American Plastics Council; Jim Norton, Arizona Association of Industries; Wendy Briggs, American Insurance Association; Michelle Covell, NFIB; David Landrith, Arizona Medical Association; Don Isaacson, State Farm Insurance Company; Spencer Kamps, Home Builders Association of Central Phoenix; Ian Calkins, Greater Phoenix Chamber of Commerce; Penny Taylor, Southwest Gas Corporation; and Michelle Ahlmer, Arizona Retailers Association.**

Senator Bee moved S.B. 1530 be returned with a DO PASS recommendation.

Senator Bee moved the Bundgaard amendment dated 3/5/01, 7:33 a.m. be ADOPTED (Attachment D). The motion CARRIED by a voice vote.

Senator Bee moved S.B. 1530 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 4).

S.B. 1238 – inmates; early release; drug treatment – HELD

Ms. Rabin explained the strike-everything amendment to S.B. 1238 requires the Arizona Department of Corrections (ADC) to develop and implement a residential drug treatment pilot program. Under the amendment, ADC contracts with a private entity inside or outside of the state to provide the drug treatment services. Judges are permitted to order a person convicted of any specified nonviolent offense to a sentence in a residential facility. These offenses include driving under the influence (DUI) drug offenses and other offenses that resulted from a person's drug use. The amendment appropriates \$2.2 million from the state general fund in FY 2001-2002 to ADC to fund a residential facility licensed by the Department of Health Services (DHS). ADC will develop a policy to establish financial self sufficiency of the pilot program. The pilot program would be repealed on July 1, 2004.under the program.

Senator Richardson noted that testimony has already been heard on this bill and remarked that this is a large bill with many changes. She noted that there was a large appropriation on the bill. She suggested that the Committee vote the bill out of the Committee, remove the appropriation, since it would not fit within the "box". She stated that Senator Peterson has offered to offer an amendment on the floor to change the bill into a study committee to review this situation.

Senator Smith commented that he was uncertain if this is the responsibility of the ADC. He remarked that it is a judicial responsibility to provide alternative solutions to incarceration and opined that this is bringing a new responsibility for the Department. He noted that he supports the idea of a study committee.

Jeff Taylor, Grace Place, agreed with Senator Smith and noted that he spoke with the Administrative Offices of the Court and they have agreed to administer this program. He noted that the spirit of the bill is important and deserves further study.

Senator Burns stated that although she is in support of a study committee she is concerned with attempting to amend the bill on the floor with what amounts to be a strike-everything amendment. She stated there are other ways of creating a study committee than by the suggestion of passing the bill out and amending it on the floor.

Glenn Davis, General Counsel, Democratic Caucus, commented that a strike-everything amendment cannot be offered on the floor and he opined that if the intent is to only create a study committee from the bill, as an amendment, the amendment would be a strike-everything. He stated that a study committee could be created by having the President set this up as an ad hoc committee.

Senator Richardson announced the following people were present in support of the bill: **Margaret Grannis, representing herself; Joy Marx-Mendoza, representing herself; James Hamm, Middle Ground; Eleanor Eisenberg, ACLU.**

Senator Richardson announced the following people were present in opposition to the bill: **Jerry Landau, Maricopa County Attorney's Office; and Dr. Robert Olding, Department of Corrections.**

Senator Richardson announced that the bill would be held. She commented that this is an important issue and commended Senator Petersen for his efforts.

S.B. 1284 – dangerous crimes against children; drugs – DO PASS AMENDED

Ms. Rabin explained S.B. 1284 classifies administration of flunitrazepam, gamma hydroxy butrate (GHB) or ketamine hydrochloride to a person under 18 years of age as a dangerous crime against children and makes this crime a class 2 felony.

Ms. Rabin explained there are four components to the Richardson amendment. The first component of the amendment makes the destruction of juvenile court records easier than under current law. Under the amendment, certain criteria must be met before records can be destroyed, including that restitution has been paid in full and that a criminal charge is not pending. Additionally, expungement could occur at age 18, where in last week's amendment this was set at age 19. The second component of the amendment refers to supervision. Under current law, community supervision of offenders is given in years or months and the length of community supervision may be rounded to the nearest month, which extends the length of the term. This portion of the amendment is being brought in response to a court of appeals case that required calculation of community supervision time to be calculated in a manner that gives the benefit to the defendant. The third component of the amendment refers to stalking and clarifies the difference between a class 3 and a class 5 felony sentence. Current statutory language creates a class 5 felony if the person had fear for the person's safety and a class 3 felony if the person had fear of personal injury. The current distinction is unclear. The fourth and final component relates to luring a minor for sexual exploitation and clarifies current law by adding a reference to a subsection of law that relates to sentencing.

Senator Richardson noted that the language referring to computer imaging was taken out of the amendment, due to various concerns.

Senator Richardson announced the following people were present in support of the bill: **Jerry Landau, Maricopa County Attorney's Office; Marjorie Mead, National Organization for Women; Joseph Easton, Arizona Criminal Justice Commission; Michael Haener, Attorney General's Office; Joy Marx-Mendoza, representing herself; Eleanor Eisenberg, Arizona Civil Liberties Union.**

Senator Bee moved S.B. 1284 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 3/2/01, 4:30 p.m. be ADOPTED (Attachment E). The motion CARRIED by a voice vote.

Senator Bee moved S.B. 1284 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 5).

S.B. 1511 – local officers; merit system – DO PASS AMENDED

Ms. Rabin explained S.B. 1511 expands the powers and duties of the Law Enforcement Merit System Council (the Council). The Council has been in existence in some form for 32 years. The

Council was established for law enforcement agencies and their officers in counties, cities and towns of the state to provide personnel administration based on merit principles governing the appointment, promotion, layoff and removal of law enforcement officers. The bill allows the Council to issue subpoenas, permits the Council to affirm, reverse or modify department head or hearing officer rulings and affords the Council the discretion of awarding the appellant all or part of the costs and attorney fees associated with an appeal to the Council. The bill also expands the list of counties participating in the Council to all counties except those providing the established minimum protections.

Ms. Rabin explained the Richardson amendment makes the language in the bill gender neutral by replacing the word “men” with “law enforcement officers”.

Don Isaacson, Arizona State Fraternal Order of Police, testified in support of the bill and commented that the bill eliminates an exemption that exists today for merit systems for counties other than large counties and makes modernization provisions to the due process minimum provisions and includes correction officers.

Rebecca Herbst, Attorney, Fraternal Order of Police, testified in support of the bill.

Tape 2, Side A

Eric Edwards, Arizona Association of Chiefs of Police, testified in opposition to the bill and stated that this bill is a huge expansion of the Council and is creating several new standards that will have to be met.

Lyle Mann, Arizona Peace Officer Standards and Training Board, testified in opposition to the bill and commented that the Board is asking the Committee to allow police professionals to continue to guard the integrity of their profession.

Senator Richardson announced **Doug Cash, Fraternal Order of Police, State Lodge**, was present in support of the bill.

Senator Richardson announced the following people were present in opposition to the bill: **John Blackburn, Maricopa County Attorney/Arizona Sheriffs Association; Joseph Easton, Arizona Criminal Justice Commission; and Kelly Orrick, City of Mesa Police Department**

Senator Bee moved S.B. 1511 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 2/19/01, 9:03 a.m. be ADOPTED (Attachment F). The motion CARRIED by a voice vote.

Senator Bee moved S.B. 1511 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-3-0 (Attachment 6).

Without objection, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

Tracey Moulton
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)