

CORRECTED
ARIZONA STATE SENATE

45TH LEGISLATURE
SECOND REGULAR SESSION

**MINUTES OF COMMITTEE ON
COMMERCE**

DATE: March 13, 2002 **TIME:** 8:30 a.m. **ROOM:** SHR 1

CHAIRMAN: Senator Verkamp **VICE CHAIRMAN:** Senator Arzberger

ANALYST: Julie Szperling **COMMITTEE SECRETARY:** Nancy L. DeMichele

ASSISTANT ANALYST: Dallas Gold

INTERN: Nathaniel Searing

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Burns	X			SB 1018	DPA/SE
Senator Hamilton	X			SB 1066	DPA/SE
Senator Mitchell	X			SB 1190	DPA/SE
Senator Valadez	X			SB 1197	HELD
Senator Arzberger, Vice Chair	X			SB 1225	HELD
Senator Verkamp, Chair	X			SB 1258	DPA/SE
				SB 1261	DPA
				SB 1262	DPA/SE
				SB 1278	DPA
				SB 1296	DPA
				SB 1327	HELD
				SB 1339	DPA
				SB 1340	HELD
				SB 1342	DPA
				SB 1399	DPA
				SB 1402	DISC/HELD
				SB 1429	DP
				SB 1430	DPA
				SB 1439	HELD

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Samuel L. Baird	Member, Board of Manufactured Housing	CONFIRMATION
Mary Virginia Handorf	Member, Greater Arizona Development Authority	CONFIRMATION
Earl J. Owens	Member, State Board of Funeral Directors and Embalmers	CONFIRMATION
Robert Lewis Seale	Member, Radiation Regulatory Hearing Board	CONFIRMATION
Paul J. Lopez	Member, Arizona State Boxing Commission	CONFIRMATION
Peter A. Woog	Member, Information Technology Authorization Committee	CONFIRMATION

Chairman Verkamp called the meeting to order at 8:37 a.m., and attendance was taken. For additional attendees, see Sign-In Sheet (Attachment A).

APPROVAL OF MINUTES

Senator Verkamp announced, without objection, the minutes of the meeting of February 13, 2002, are approved as distributed.

SB 1197 – condominium conversions; liability – HELD

SB 1225 – construction defects; liability – HELD

SB 1327 – electrical worker certification board; appropriation – HELD

SB 1439 – job training programs; workforce preparation – HELD

Senator Verkamp announced that the following bills would be held: SB 1197; SB 1225; SB 1327; and SB 1439.

EXECUTIVE NOMINATIONS

Samuel L. Baird – Member, Board of Manufactured Housing - RECOMMEND CONFIRMATION

Samuel L. Baird stated he has resided in Arizona for 40 years and graduated from Phoenix College and Arizona State University. He said he has spent over 30 years in the manufactured housing industry, and has held various management positions and multi-plant responsibilities in Arizona and other states. He stated he has a strong interest in doing the right things for the industry, and is concerned with enhancing and protecting the industry's image. He commented he has served and chaired various State associations and committees and is deeply committed. Mr. Baird indicated he is pleased to be considered for nomination and, if confirmed, will honorably serve to do the right thing.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Samuel L. Baird, as a Member of the Board of Manufactured Housing. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 1).

Mary Virginia Handorf – Member, Greater Arizona Development Authority - RECOMMEND CONFIRMATION

Ann Lynch, Special Assistant to Governor Hull, stated that Ms. Handorf is unable to attend today's meeting. Ms. Lynch indicated that Governor Hull is pleased to nominate Ms. Handorf to the Greater Arizona Development Authority. Ms. Handorf ("Ginny") has been a resident of Arizona for 30 years and has served on the Pinetop Town Council since 1994, and has been Pinetop's Mayor since 1999. Ms. Handorf and her husband own a business in Pinetop, and she has served on the Executive Board of the White Mountain Regional Development Corporation since 1994.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Mary Virginia Handorf, as a Member of the Greater Arizona Development Authority. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 2).

Earl J. Owens – Member, State Board of Funeral Directors and Embalmers - RECOMMEND CONFIRMATION

Earl J. Owens stated he is a resident of Pinetop-Lakeside, and is a third generation native of Show Low. He commented he is a funeral director, owner and president of Owens Mortuaries in Show Low, Holbrook and Snowflake. He noted he has been in the business for over 40 years, and has served in various capacities including the board and president of the board of the Arizona Funeral Directors Association. He commented he is looking forward to serving as a member of the State Board of Funeral Directors and Embalmers.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Earl J. Owens, as a Member of the State Board of Funeral Directors and Embalmers. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 3).

Robert Lewis Seale – Member, Radiation Regulatory Hearing Board - RECOMMEND CONFIRMATION

Robert Lewis Seale stated he has been a resident of Arizona since 1961, and was a member of the faculty at the University of Arizona until his retirement in 1996. He commented that a year ago he completed an eight-year term as a member of the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards. He indicated he has been active in various technical societies and other studies involved with nuclear energy and radiation physics. He said the nomination is a re-appointment to the Board, as he has served one term.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Robert Lewis Seale, as a Member of the Radiation Regulatory Hearing Board. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 4).

Paul J. Lopez – Member, Arizona State Boxing Commission - RECOMMEND CONFIRMATION

Paul J. Lopez stated he is a resident of the City of Phoenix and a native of Arizona, and is humbled by the opportunity to serve as a member of the Arizona State Boxing Commission. He said that he has been an active participant in the sport of boxing in recent years. He commented he looks forward to ensuring that some of the regulations and legislation that Senator McCain introduced will be implemented for the safety of the boxers as well as children who are seeking a career in boxing or as an alternative for them to "stay off the streets."

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Paul J. Lopez, as a Member of the Arizona State Boxing Commission. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 5).

Peter A. Woog – Member, Information Technology Authorization Committee - RECOMMEND CONFIRMATION

Ms. Lynch, Special Assistant to Governor Hull, stated that the Governor is pleased to re-nominate Peter A. Woog to the Information Technology Authorization Committee. Mr. Woog served one year of a two-year term and was previously confirmed by the Commerce Committee. She commented that Mr. Woog has a management consulting business called Gray Fox Enterprises, and has previously held staff and board positions on a number of local and national companies. Ms. Lynch indicated that Mr. Woog brings extensive experience in information technology systems to the Board.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Peter A. Woog, as a Member of the Information Technology Authorization Committee. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 6).

CONSIDERATION OF BILLS

SB 1296 – telemarketing; Arizona no call list – DO PASS AMENDED

Senator Cummiskey, bill sponsor, explained SB 1296 is an effort to curb unsolicited telemarketing calls to residences. He stated that this year the decision was made to work together with the Arizona Secretary of State and the Attorney General's Office on this legislation. He commented that this bill is modeled after a successful program in Missouri regarding a no-call list. He said SB 1296 is a collaborative effort to try and take a positive step for consumers. He explained that efforts are being made to further refine the bill. He pointed out that the Burns amendment is the result of several meetings with the industry to address concerns regarding the administration and refinement of this proposal. He said work has progressed in a bi-partisan fashion to move the bill, and he is hopeful of favorable consideration from the Committee to begin to provide protection for consumers regarding unsolicited calls.

Julie Szperling, Commerce Research Analyst, explained SB 1296 establishes an Arizona no-call list program. She stated that the legislation requires the Secretary of State to adopt rules by July 1, 2003, describing the method by which Arizona residential subscribers can register with the Secretary of State to indicate that they do not wish to receive telephone solicitations. It will also include the method by which businesses soliciting Arizona consumers can obtain access to the no-call list. The bill also authorizes the Attorney General to enforce violations of the Arizona no-call list and allows consumers to bring civil action, if they receive calls in violation of the no-call list law. She pointed out that the bill also provides for certain exemptions to the no-call list law. She indicated that three amendments are being offered:

- A 4-line Mitchell amendment dated 2/25/02, 2:25 p.m.
- An 8-page Hamilton amendment dated 3/12/02, 1:14 p.m.
- An 8-page Burns amendment dated 3/12/02, 2:21 p.m.

Ms. Szperling stated that the Hamilton and Burns amendments are conflicting, and she clarified the differences.

Betsey Bayless, Secretary of State, testified in support of SB 1296. She stated as Secretary of State, it is her responsibility to accept telemarketer registrations. She pointed out that in 1997 there were four telemarketers registered in Arizona. After researching the statutes at that time, she noted that the vast majority of telemarketers were exempt. Since 1997 her office has been moving against

unwanted telemarketing calls, and noted that the industry has become very reasonable regarding the process by working with her office to achieve a solution. She noted that numerous reforms have been adopted since 1997:

- Telemarketing companies maintain a do-not-call list.
- Telemarketers are prohibited from deliberately blocking telephone numbers and identities from caller identification (ID) devices.
- Telemarketers are prohibited from the use of prerecorded messages without the consent of the person being called.
- Telemarketers are restricted in the use of automatic dialers.

Secretary Bayless stated that there are currently over 60,000 registered telemarketers in Arizona. She commented that SB 1296 would allow her office to maintain an Arizona do-not-call list. She pointed out this process has worked in other states, such as Missouri. She indicated that Arizonans have made requests for years about the possibility of adopting a State do-not-call list. She stated SB 1296 is good legislation, and she asked for favorable consideration from the Committee.

Senator Burns stated that the Burns amendment was a compilation of the work between the Office of the Secretary of State, the Attorney General's Office (AG), and Democrat and Republican sponsors' staff. Secretary Bayless stated that her office supports and approves the permissive language in the Burns amendment. She said her office believes the implementation and ongoing responsibility will cost approximately \$60,000, which should be covered through collection of fees for the list.

Rory Hays, representing Dehart and Darr, testified in support of SB 1296 with the Hamilton amendment. She indicated that Dehart and Darr is a consulting firm, which represents the national Direct Marketers Association (DMA). She pointed out that the Association has maintained the longest national no-call list in the history of this country for over 20 years. She said a no-call list makes sense in terms of marketing, and her firm supports the concept. However, there are concerns that she would like to address. She believes requiring that a list be distributed to national non-profit organizations maintaining no-call lists is in the best interest of consumers. In addition, the intention of returning the Arizona version of the list as maintained by those national organizations to the Secretary of State's Office would be helpful because it would have the affect of enlarging the no-call list, which is a good thing.

Ms. Hays commented on the established business relationship. She pointed out that the one-year provision is insufficient and problematic for certain entities and businesses. She noted that after September 11, 2001, many resorts were struggling due to lack of tourists. There were instances when those resorts reviewed lists to call people who had visited within the past couple of years and lived within driving distance of those facilities. She emphasized that there is nothing in SB 1296 that changes the need for individual companies to maintain no-call lists. She said the desire is to provide more flexibility in the established business relationship area and to consider contract terms.

Senator Burns asked whether there is any cost associated with the list being sent by the Secretary of State to the DMA. Ms. Hays responded she believes DMA would be prepared to pay whatever any business would pay for the list. Senator Burns wanted to know what preventive action the DMA would take from distributing the list to its members. Ms. Hays replied the point is to distribute the list as much as possible so that as many callers throughout the country would be observing the list. Senator Burns said it is important that the Secretary of State has the flexibility to ensure that a system is provided to distribute the list and be able to collect proper fees for maintenance purposes. At the same time it is important to protect the consumer from having to pay any fees. Ms. Hays responded she believes the key is to get as many people as quickly as possible to start using the no-call list.

Philip MacDonnell, Arizona Newspapers Association, testified in support of SB 1296. Senator Verkamp asked for clarification on the individuals signed up for SB 1296 as to their positions because there appeared to be conflicts within the newspaper industry. Mr. MacDonnell responded that people were confused as to which box to check when signing in on the kiosk. He clarified that individuals from the newspaper industry are present in support of the bill with the Mitchell amendment. He added that without the Mitchell amendment, they are opposed to the bill. Mr. MacDonnell stated the newspapers are present in support of the Mitchell amendment, which creates an exemption for newspapers from the "no call" list when they are seeking subscribers. He explained that newspapers are unique in terms of providing a forum, and that role is dependent upon the ability to have subscribers. Arizona presents a particular challenge because it is an incredibly mobile State and it is difficult to maintain a subscriber base. Approximately 65% of subscribers are obtained through telephone contacts. He said an exemption is preferred in order to reach out to subscribers and to maintain a role in the community.

Senator Burns asked Mr. MacDonnell why the newspapers are supporting the bill. Mr. MacDonnell responded that if the Mitchell amendment is approved, the newspapers would be happy with the bill. Senator Burns asked Mr. MacDonnell how he would feel if the political party exemption was removed from the bill. Mr. MacDonnell responded that if a statute provided for no calls unless there was compliance with the list, the newspapers would then have less of an argument.

Senator Hamilton asked whether exemptions are being proposed for magazines. Mr. MacDonnell replied he does not represent magazines and; therefore, has not proposed any exemptions for magazines although it is a similar issue.

Ellen Poole, Executive Vice President, Arizona Bankers Association, testified the Association supports SB 1296, but only with the Hamilton amendment. She stated the Association is concerned with the exemptions. She said exemptions for commercial speech are inappropriate and could lead to a challenge of the legislation. She noted that political speech should not be judged by the same standards as commercial speech. She commented that she is not a First Amendment attorney; however, she urged the Committee to be concerned regarding that issue. Senator Verkamp remarked that the points Ms. Poole mentioned are very complicated issues in the law and are not clear-cut one way or the other. Senator Hamilton asked Ms. Poole to provide some of the information to which she referred to assist him in his role as Rules Committee Chairman. Ms. Poole responded she would provide that information. Senator Burns asked whether there was anything in the list of exemptions in the bill that would qualify under the commercial category. Ms. Poole replied she would be happy to provide any information she had and suggested that perhaps the Rules Attorneys could evaluate those issues.

Ms. Poole referred to another issue included in the bill and provided in the Burns amendment, which is the ability for the individual consumer to sue if there is a violation. She said the Association does not have a problem with a provision being included that allows the AG to assess a penalty for violation of the bill. However, creating an opportunity for individual consumers to sue could lead to a lawsuit bonanza. She pointed out that a major difficulty with many industries regarding the bill is the ability to store information regarding practices to be used later in a defense. She indicated there is no statute of limitations to institute a claim, and the consumer could merely indicate that a couple of calls were received. The financial institutions tend to be seen as "deep pockets," and easy targets in lawsuits. She noted there is nothing in the bill that indicates that a claim cannot be brought in small claims court. She said the Association is deeply concerned because of the difficulty in being able to

store the volume of call information to defend against any possible claim in the future. She said the Association urges consideration of the Hamilton amendment, which removes the opportunity for individual consumers to sue for violations and allows the AG to assess penalties for any violation of the law.

Randy Cross, Vice President of Circulation, Tucson Newspapers, testified as neutral toward SB 1296. He stated that the *Arizona Daily Star* turns over 50% of its subscriber base each year, and the *Tucson Citizen* turns over 70% of its subscriber base. He indicated that the newspapers rely on telemarketing in order to break even and increase circulation. He said the argument is being made that a person in Arizona who elects to be on the statewide do-not-call list would probably not subscribe to a newspaper, if called by one of the Tucson newspapers. He stated that based on the economic impact and freedom of speech issues, the Tucson Newspapers are encouraging the Committee to consider the Mitchell amendment to exempt newspapers.

Mara Kelly, MCI WorldCom, testified that the Burns and Hamilton amendments have significant differences, but also have much in common. She indicated her clients support the bill with the Hamilton amendment, and oppose the Burns & Mitchell amendments. She stated she is speaking on behalf of telecommunication companies, insurance companies, financial service companies, retailers, and other groups that have worked on this bill for a period of time. Senator Verkamp stated he has been informed by staff that the Committee cannot adopt both amendments, and he asked Ms. Kelly for her preference. Ms. Kelly responded that her clients prefer the Hamilton amendment. She stated that her clients oppose the Mitchell amendment for all the foregoing reasons. She stated one of the major problems is that her group has worked in good faith on a bill that works for businesses. She said she thought Mr. MacDonnell was going to speak about the First Amendment, but the issues that are true for his client are the same issues that hold true for everyone else. She commented on the Hamilton amendment and the issue of mandated language. She said her clients feel that without the mandated language, allowance is being given to the Secretary of State to create 50 different no-call lists. She explained that it would not work, especially for larger companies such as those she represents with national business relationships to be able to use the DMA list. She pointed out that the overall purpose of the bill is to ensure that people are on the no-call list. She indicated that if the Secretary of State is required to hand over the no-call list to DMA, the list should only be used for that purpose by DMA. She emphasized that the bill is too narrow as currently drafted, and the 18 months and additional language in the Hamilton amendment covers that problem. She noted that the private cause of action issue was deleted by her clients. She said her clients believe that any company not following the current law or any new law should be penalized by the AG as the primary enforcer.

Ms. Kelly addressed the federal do-not-call list, and pointed out the differences in the Burns and Hamilton amendments. She said her clients support the concept of a no-call list, and would like the bill to go forward with reasonable mechanisms for businesses attempting to comply with the law to do so.

Senator Burns asked Ms. Kelly whether it is her intent to work with the group of sponsors, Secretary of State and AG, or specifically only with Senator Hamilton. Ms. Kelly responded she would like to work with the group; however, she would like to see the remaining issues resolved. Senator Burns commented that most people would like to have a way to be informed, but the question is how it would work. She said her amendment provides for an opportunity for individuals to opt out of a call list. Ms. Kelly responded her group agrees with the opt-out provision.

Michael Haener, Director of Legislative Affairs, AG, testified in support of SB 1296 and the Burns amendment. He noted that Ms. Karen Treon of his office, who is responsible for endorsement of the statute, is present to discuss the issue from the AG's perspective.

Karen Treon, Staff, AG, addressed several issues:

- The first issue is mandatory versus permissive provision of the list to non-profit agencies, such as DMA. She said the AG favors the permissive approach in the Burns amendment because of the AG's ability to address enforcement issues more thoroughly at the front end rather than at the back end.
- The second issue is the Federal do-not-call list. She said currently the Federal Trade Commission (FTC) has the telephone sales rule in effect. The FTC has published a notice of proposed rulemaking in which it is also considering establishing a nationwide do-not-call list. She said it is currently in the preliminary stages, and the AG is not certain of the contents of that document. She expressed the AG's concerns regarding this issue.

TAPE 1, SIDE B

- The third point relates to the established business relationship issue. She pointed out that the AG has attempted to address the industry's concerns. She said any consumer is able to give consent for businesses to call them at a later date, such as with the example of emails.

Michelle Ahlmer, Executive Director, Arizona Retailers Association (opposed to original bill, supportive of Hamilton amendment, if offered, and opposed to Burns and Mitchell amendments), testified in opposition to SB 1296. She stated the Association supports the Hamilton amendment. She commented that many Arizona retailers have a national presence; however, there are also many small members. She referred to the established relationship portion of the amendment, and noted that many retailers review past records to call upon customers for certain events. She said in order to comply with the need for the bill, this section would constitute a concession for the Association. She said from an Association membership standpoint, the billing is handled on an anniversary date. If that date falls during a legislative session, that function will not be accomplished. She said if a 12-month period is utilized, it would be damaging for membership organizations. She pointed out that an 18-month period would be preferable. She emphasized that retailing is a competitive field, and retailers are very concerned with retaining customers.

Chris Christian, Vice President of Circulation, Arizona Republic/Phoenix Newspapers, Inc., testified in support of SB 1296 with the Mitchell amendment. He pointed out that newspapers are not considered in the category of commercial speech. He said newspapers receive the broadest protection of the First Amendment rights and the ability to disseminate and share information with the public. He indicated if that right is limited in a manner where the newspapers will be unable to achieve the same type of customer base, then it results in a less informed public at that point. He said the Mitchell exemption fairly recognizes that the newspapers are attempting to protect their rights to free speech first and foremost. He indicated the newspapers have received support from the AG, as well as from Senator Cumiskey, one of the sponsors. He said the Secretary of State's office has indicated it has no opposition to the Mitchell amendment. He asked for the Committee's consideration.

Senator Verkamp announced the following individuals were present in support of SB 1296: **Steve Duffy, Attorney, Sprint (supports bill with Hamilton amendment, opposes Mitchell and Burns amendments); Lupe Baysinger, Director of Business Services, Secretary of State; Wendy Briggs, Lobbyist, American Express, Arizona Bankers Association (supports bill only with**

Hamilton amendment); John Thomas, Lobbyist, Arizona Competitive Telecommunications Coalition (supports bill with Hamilton amendment and opposes the Mitchell and Burns amendments); Barbara Meaney, Lobbyist, XO Communications (supports bill with Hamilton amendment only and opposes all other amendments); and Donald Vance, Designated Lobbyist, Arizona Association of Retired Persons-Arizona (AARP AZ).

Senator Verkamp announced the following individuals were present in opposition of SB 1296: **John Fearing, Executive Director, Arizona Newspapers Association (will support bill with newspaper exemption amendment); Joseph Abate, Lobbyist, AT&T (opposes bill as introduced - supports with Hamilton amendment – opposes Mitchell and Burns amendments); and John MacDonald, Partner, Jamieson and Gutierrez, Inc., representing Cox Communications (opposes Mitchell and Burns amendments).**

Senator Arzberger moved SB 1296 be returned with a DO PASS recommendation.

Senator Mitchell moved the 4-line Mitchell amendment dated 02/25/02, 2:25 p.m., be ADOPTED (Attachment B). The motion CARRIED by a voice vote.

Senator Burns moved the 8-page Burns amendment dated 03/12/02, 2:21 p.m., be ADOPTED (Attachment C).

Senator Burns commented that there is always work in progress as bills move through the process, and she appreciates everyone who has worked on the issues. She stated that whether 12 months is the exact time for a previous relationship is unknown; however, she looks forward to continuing to work with all parties as the bill moves through the process.

Senator Hamilton stated he is hopeful that the parties will work through the process. He said he will allow Senator Burns' amendment to be voted first, and if it passes, he would withdraw his amendment. He said he hopes that the issues in his amendment will continue to be discussed and worked through in the bill.

The motion CARRIED by a voice vote.

Senator Hamilton stated that he would withdraw the 8-page Hamilton amendment dated 3/12/02, 1:14 p.m. (Attachment D).

Senator Arzberger moved SB 1296 be returned with an AS AMENDED, DO PASS recommendation.

Senator Burns stated she was not aware that the Mitchell amendment had been voted, and she would like to go on record as opposing the Mitchell amendment.

The motion CARRIED by a roll call vote of 5-0-1 (Attachment 7).

SB 1342 – homeowners' associations – DO PASS AMENDED

Ms. Szperling explained SB 1342 makes numerous changes to the planned community and condominium homeowner association (HOA) statutes relating to open meeting laws, voting and elections, fines and fees, assessments and liens, document disclosure, prospective purchaser notice

requirements and developer control. She noted the bill also creates an internal HOA appeals process. She stated two amendments are being offered.

- A 1-page Mitchell amendment dated 03/12/02, 10:20 a.m.
- A 2-page Mitchell amendment dated 03/11/02, 4:55 p.m.

Senator Gerard, bill sponsor, explained SB 1342 is based upon the efforts of Senator Smith last year. She commented he spent a significant amount of time working on a proposal, and much time was spent in the Government Committee on this effort. She indicated that last year it was rather frustrating because neither side on this issue was pleased with the results. However, after spending time in the interim period, Senator Smith appeared to be heading in the right direction. She noted that the 2-page Mitchell amendment is based on suggestions by Senator Smith to improve the bill and protect individuals' rights. The 1-page Mitchell amendment narrows the scope of the bill and removes all sections regarding the declarant, also known as the developer or homebuilder. She said by making those changes, it helps alleviate some of the complications on this issue.

Senator Gerard explained that many jurisdictions will not issue a building permit for a project unless an agreement is reached to establish an HOA. The infrastructure of the project then becomes the responsibility of the developer. She said this problem needs to be addressed or it will continue to grow. She commented that the major problem for homeowners includes access to information, open meeting laws, ability to review documents, notification, and the right to vote. Another major issue includes resolving a problem without going to court. One of the proposals is to allow access to justice of the peace courts to resolve problems. She pointed out that another issue involves a court case in Tucson, where a judge ruled that a homeowner could not sue an association of which the homeowner is a member. She said SB 1342 is not a perfect bill, but her hope is to move it out of this Committee in order to continue working on improvements. She added there are many amendments that both sides wished to include; however, the individual from Legislative Counsel is out of town and work will continue on the additional amendments upon her return. Senator Gerard stated that homeowners' rights are being violated and the horror stories are unbelievable. On the other hand, the HOAs are confronted with problems with homeowners who violate the rules and do not pay their fees. She said this bill is a beginning to help protect the basic rights of homeowners, and she indicated that work will continue on this issue.

Senator Arzberger stated she belongs to an HOA, and there are many different situations with HOAs. Senator Gerard responded that one of the major differences is that some HOAs are not incorporated, and SB 1342 only deals with HOAs that are incorporated. In response to Senator Arzberger, Senator Gerard explained she would be agreeable to a floor amendment regarding certain issues, for example, the open meetings. Senator Gerard pointed out that other areas of concern relate to management companies, bonding requirements and liens.

George Staropoli, representing himself, founder of Citizens Against Private Government HOAs, a non-profit organization supporting principles of democratic government, testified in support of SB 1342. He indicated he receives at least one email each week from homeowners with a complaint. He said he has to respond to them that under the current statutes the Board of Directors of a non-profit corporation or HOA has broad powers and there is no bill of rights to protect that homeowner as a citizen. He said although the bill does not include everything desired, it is a great step in the right direction.

Pat Haruff, representing herself, testified as neutral towards SB 1342. She thanked Senator Gerard and all the hard work that has been done on this issue. She said although she signed as a neutral party, after listening to Senator Gerard, she is leaning towards the support side because of

the many good items contained in the bill. She commented that the individuals and organizations opposing the bill do not represent the best interests of homeowners, and in many instances do not even reside in an HOA. She pointed out that homeowners are at a disadvantage because Arizona does not require licensing and oversight of management companies by a State entity. She thanked everyone who worked on the bill and urged the Committee to consider all the homeowners living in HOAs.

Laura Ziff, President, Associated Asset Management, representing herself, testified in opposition to SB 1342. She distributed a handout (Attachment E) highlighting certain concerns. She stated her firm manages over 170 communities containing over 50,000 homeowners within those communities. She said she lives in an HOA and is very pleased. She indicated that she appreciates the intent of the bill, but does not believe there should be legislation for the million homeowners living in HOAs because of the problems regarding a certain few HOAs. She questioned the need for the creation of a separate class of homeowners by requiring them to go to the justice of the peace rather than Superior Court. She said that process would lead to double litigation. She also questioned how the Legislature would propose funding the extra judges that will be required to hear the cases. She emphasized the difficulty that would ensue on an appeals board, and suggested the process would be costly. She opposed the open meeting issue, and said that it would remove the ability or right of a homeowner to be heard in private by an HOA board of directors regarding personal financial or other private matters. She referred to the bonding requirements and stated it should be the right of the HOA, and not the Legislature, to determine the proper level of bonding for the HOA or management company. Ms. Ziff pointed out that there are 10,000 HOAs in the State, and 99% of them manage their finances correctly. She urged the Committee not to pass legislation based on the few horror stories. She said the proposed legislation will only penalize and cost additional expense to those who serve their HOA communities.

In response to Senator Arzberger, Ms. Szperling clarified the issue of a performance bond as outlined in item 34 in the fact sheet.

Peter Reiss, Attorney, President, Scottsdale Council of Homeowners Associations, testified in opposition to SB 1342. He referred to a "blue sheet" that was had been distributed to the Committee detailing the reasons against the legislation. He commented he was responsible for the "fine" requirement being adopted into State law. He said many small associations cannot afford the litigation expense; therefore, the monetary penalty system is good for both an association and a violator. He pointed out that the proposed legislation is okay except for the approval portion of the appeals committee. He said this process creates a bonanza for the legal profession because monetary penalties will no longer be possible. Mr. Reiss said he is an attorney, but also a professor of emeritus at Arizona State University, and the result is a balanced presentation.

Mr. Reiss stated that the amendment was just presented to him, and if adopted, would require two-thirds of the entire HOA membership to approve the budget. He pointed out that it is almost impossible to have two-thirds approve any budget, and bankruptcy could then ensue. He emphasized if the desire is to support a good bill that corrects many of the existing problems, he would suggest supporting HB 2604.

Spencer Kamps, Deputy Director, Homebuilders Association of Central Arizona, testified in opposition to SB 1342. He stated that reform is needed, and the Association is interested in declarant control. He said there is also a vested interest in future developments because those properties are typically built, sold and managed during the time when the Association controls those developments in a community. He said that residents expect the community to endure into the future

and dissension results when an imbalance is created within the community. He emphasized the Association would be happy to work on the issues; however, he opposes the bill as currently drafted.

Brigitta Lamer, representing herself, testified as neutral to SB 1342. She stated she lives in an HOA, and she provided a handout including recommendations to the Committee regarding certain issues (Attachment F).

Mika Sadai, representing herself, testified in opposition to SB 1342. She stated she is the individual from Tucson previously mentioned. She indicated she has spent over \$200,000 to cover litigation regarding certain HOA issues. She commented on her personal situation relating to Arizona Revised Statutes §10-3304. She said she is supportive of the comments of Senator Gerard, and that changes are badly needed. She pointed out that despite signing in as opposing the bill, she would like the bill to go forward with amendments. She said there is an outcry from homeowners for their rights. She remarked she would like to support the bill so that it has an opportunity to go forward with the proper amendments to do those things that the sponsor intended.

Roland Kelly, representing himself, testified in opposition to SB 1342. He distributed a handout (Attachment G), and stated that originally he opposed the bill. However, he acknowledged his appreciation that Senator Gerard, Senator Smith, and others are interested in the plight of the homeowners. He said that the first obligation of Legislators is to the people and not the businesses. He urged the Committee to provide some relief and consideration for the homeowners.

Senator Verkamp announced the following individuals were present in opposition to SB 1342: **Mara Kelly, Lobbyist, Valley Partnership; Tom Dorn, Lobbyist, Community Associations Institute; Elaine Anghel, General Manager, CAI; and Jim Hanley, Chief Operating Officer, Rossmar and Graham Community Association Management Company.**

Senator Gerard stated that everyone needs to work together to resolve the issues. She indicated she will continue to work on the legislation to have the basic rights protected.

Senator Arzberger moved SB 1342 be returned with a DO PASS recommendation.

Senator Mitchell moved the 2-page Mitchell amendment dated 03/11/02, 4:55 p.m., be ADOPTED (Attachment H). The motion CARRIED by a voice vote.

TAPE 2, SIDE A

Senator Mitchell moved the 32-line Mitchell amendment dated 03/12/02, 10:20 a.m., be ADOPTED (Attachment I). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1342 be returned with an AS AMENDED, DO PASS recommendation.

Senator Hamilton explained his vote. He stated from a total of 79 emails received, 4 were in support and 75 opposed the legislation. He said he realizes that the vast majority of HOAs are well managed for the betterment of the community. However, under the circumstances he believes the bill goes too far, and he will vote "no."

The motion CARRIED by a roll call vote of 4-1-1 (Attachment 8).

SB 1262 – covenants dissolved, residential property – DO PASS AMENDED/STRIKE EVERYTHING

Ms. Szperling explained SB 1262 dissolves the covenants, conditions and restrictions (CCRs) recorded against a subdivision that does not have an HOA established 30 years after its recording unless a majority of the owners agree to continue the CCRs and meet the recording requirements with the County Recorder's Office. She indicated there are two amendments:

- The 7-line Hamilton amendment dated 2/12/02 at 3:23 p.m. has been withdrawn by Senator Hamilton (Attachment J).
- A 3-page Mitchell strike-everything amendment dated 2/22/02 at 3:46 p.m.

Senator Gerard, bill sponsor, explained the bill originated from constituents who live in a particular area with CCR requirements. She said there was lack of consistency because the CCRs had been violated in the past. As a result, the individuals hired an attorney to help resolve the problem. Senator Gerard explained the situation and voting requirements regarding this building permit issue. She said if the Committee determines that it cannot vote for the bill with the two-thirds voting change, she would like it removed but would like to include the notice requirement to help avoid any similar problems in the future for homeowners.

Tom Heineman, representing himself, testified in opposition to SB 1262. He stated he lives in an older neighborhood, which includes CCRs. He said it is the responsibility of a new homeowner to read the CCRs and live under those rules. He pointed out in some older neighborhoods, perhaps purchasers are not always given a copy of the CCRs. He commented on his opposition to certain provisions in SB 1262.

Paul Barnes, representing himself, testified in opposition to SB 1262. He stated he resides in an informal HOA that is not incorporated, and the protection offered by the CCRs was a major reason he purchased property in that area. He considers the CCRs as his property rights. He urged the Committee to either vote down the bill or accept Senator Gerard's suggestion that the bill be passed eliminating the voting requirement and simply having it serve as a notification bill.

Senator Gerard stated she wanted to clarify that the original bill is gone, and there is no requirement in the strike-everything for an affirmative vote to continue CCRs. She said the most important item in the bill is that notice is required when homeowners seek a building permit. She said a title company provides a copy of the CCRs when the homeowner closes escrow, but unfortunately some people do not thoroughly read the CCRs.

Senator Verkamp announced the following individuals were present in support of SB 1262: **George Staropoli, representing himself (supports bill with amendment); and Mika Sadai, representing herself.**

Senator Verkamp announced the following individuals were present in opposition to SB 1262: **Spencer Kamps, Deputy Director, Homebuilders Association of Central Arizona; and Tom Dorn, Lobbyist, Community Associations Institute.**

Senator Arzberger moved SB 1262 be returned with a DO PASS recommendation.

Senator Mitchell moved the 3-page strike-everything amendment dated 02/22/02, 3:46 p.m., be ADOPTED (Attachment K). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1262 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 9).

Senator Verkamp announced the Committee would recess for five minutes and reconvene at 11:05 a.m. Senator Verkamp reconvened the meeting at 11:12 a.m.

SB 1261 – swimming pool contractors; bonds – DO PASS AMENDED

Senator Gerard, bill sponsor, commented on recent events concerning swimming pool contractors going out of business. She said she understands there is a bill regarding the consumer side of those events. She indicated she was contacted by the subcontractors, who have no protection or recovery fund in this type of situation. She commented that a major swimming pool contractor in Arizona is required to have only a \$5,000 bond, which is very minimal. She said the amendment provides for an increase in the bond requirement to \$50,000.

Senator Burns asked Senator Gerard to comment on the recovery fund. Senator Gerard responded there is another bill regarding raising the maximum amount that any consumer could obtain from the recovery fund. However, she noted that subcontractors do not have access to the recovery fund.

Kent McMillan, representing himself, testified in support of SB 1261. He stated he owns K.M. Concrete and has been in the pool industry for over 20 years. He described how his company lost a significant amount of money because of a pool company that went out of business. He pointed out that contractors are only required to carry a \$5,000 bond with the Registrar of Contractors (ROC), which is absurd. He indicated he contacted ROC recently and discovered that there is only one pool company in Arizona out of the top ten that is bonded for \$17,500. The other top pool companies are only bonded for \$5,000. He noted that when his company lost money, he was forced to lay off 30 employees. He said his employees had to seek unemployment, which does not help the budget deficit situation in Arizona. He pointed out that most subcontractors are small family-owned businesses and are the entities that suffer when contractors go out of business. He said subcontractors do not have any lien rights or other protections in this type of situation.

Senator Verkamp announced the following individuals were present in support of SB 1261: **Robert Mate, representing himself**; and **Gregg Garrett, representing himself**.

Mike Goldwater, ROC, was present to speak if necessary, and is neutral to SB 1261.

Senator Arzberger moved SB 1261 be returned with a DO PASS recommendation.

Senator Arzberger moved the 16-line Verkamp amendment dated 02/21/02, 1:30 p.m., be ADOPTED (Attachment L). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1261 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 10).

SB 1066 – community health centers; taxation; exemption – DO PASS AMENDED/STRIKE EVERYTHING

Ms. Szperling explained that the Hamilton strike-everything amendment is an emergency measure that expands the definition of “projects” eligible to receive financing through industrial development authorities.

Senator Verkamp stated he has been advised that there is no need for the proponents to speak unless there is a request by someone to do so.

Senator Verkamp announced the following individuals were present in support of SB 1066: **Russell Rau, Senior Vice President, Correctional Services Corporation; Kristen Boilini, Lobbyist, Correctional Services Corporation; James Palmer, Graham County Supervisor, Graham County; and Alan Stephens, Executive Director, County Supervisors Association.**

Senator Verkamp announced the following individuals were present but neutral on SB 1066: **Liza Genrich, General Counsel/Legislative Liaison, Arizona Department of Corrections (ADC); Scott Smith, Bureau Administrator, ADC.**

Senator Arzberger moved SB 1066 be returned with a DO PASS recommendation.

Senator Hamilton moved the 5-page Hamilton strike-everything amendment dated 02/18/02, 11:34 a.m., be ADOPTED (Attachment M). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1066 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 11).

SB 1190 – emergency aid; technical correction – DO PASS AMENDED/STRIKE EVERYTHING

Senator Gerard, bill sponsor, explained SB 1190 is a unique case involving athletic trainers. She stated this bill eliminates the requirement that athletic trainers from other jurisdictions who perform athletic training services in this State under specified circumstances for a temporary period of time from meeting Arizona requirements. It also requires athletic trainers to possess the required licensure, certification or registration necessary to practice athletic training in the jurisdiction where they are employed.

Senator Verkamp stated that no individuals signed up to speak on this issue.

Senator Arzberger moved SB 1190 be returned with a DO PASS recommendation.

Senator Arzberger moved the 2-page Verkamp strike-everything amendment dated 03/11/02, 11:52 a.m., be ADOPTED (Attachment N). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1190 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 6-0-0 (Attachment 12).

SB 1339 – state agencies; administrative procedures; rules – DO PASS AMENDED

Ms. Szperling explained SB 1339 codifies the recommendations as opted by the Ad Hoc Regulatory Reform and Enforcement Study Committee. It makes various changes to the Arizona Administrative Procedures Act regarding practices and procedures in the rulemaking process relating to effective dates of rules, substantive policy statements, and other provisions. The bill also establishes a Regulatory Reform and Enforcement Study Committee to review various regulatory issues. In addition, the legislation applies licensing time frame rules requirements to the State Land Department. She indicated there are two amendments to the bill; however, there is a major difference in these amendments.

- The 5-page Burns amendment dated 3/12/02 at 12:10 p.m. restores current law with respect to including the economic small business and consumer impact statement as a summary statement and the preamble of rulemaking as a separate document, when an agency submits a rule. The amendment also makes conforming changes relating to the elimination of the requirement that an agency prepare and submit a concise explanatory statement as a separate document when it submits a rule. Ms. Szperling described the other provisions contained in the amendment.
- The 3-page Burns amendment dated 03/12/02 at 9:45 a.m. provides for all the items in the previous Burns amendment, but strikes all provisions relating to the licensing time frame rules for the State Land Department.

Senator Burns explained this legislation is an ongoing regulatory reform process. She commented that the majority of the provisions outlined were supported in an interim committee. She pointed out one issue will be opposed and she described that issue. She pointed out that every State agency is required to have time frames for issuance of permits. She referred to the 5-page Burns amendment and noted that the only exemptions in statute are itemized on page 4, paragraph D. She commented that the State Land Department has not complied and has asked for a continued exemption. She said the interim committee voted unanimously that an exemption should not be granted to the State Land Department.

Richard Bark, Attorney, Gallagher & Kennedy, Arizona Chamber of Commerce, Greater Phoenix Chamber of Commerce, testified in support of SB 1339. He stated that the bill streamlines the rulemaking process and opens up the rulemaking process to the public. He addressed the issue regarding the State Land Department and the permit time frames, and commended Senator Burns for her work and contributions over the years on these issues.

Kenneth Rozen, Legislative Liaison, Arizona State Land Department, testified in opposition to SB 1339 on statutory and possible Constitutional grounds. He stated that the AG advised the Department that most of the instruments by which the Department conveys interest in State trust land are not licenses even as that term is defined in the Administrative Procedures Act on at least two points. He commented that the definition of that term in the Act expressly excludes licenses that are required solely for revenue purposes. He referred to the statute regarding exemptions and indicated that there is a provision that expressly states the chapter does not apply to any rule or other matter relating to agency contracts. He said the AG has advised that most of the Department's functions relate to contracts. He said aside from the foreseeable legal difficulties, there are several factors that would lead the Department to believe that the imposition of time frames would be largely ineffective and counterproductive. He commented on two elements of concern: the tremendous diversity of uses that the Department allows on State trust land, and the various diverse instruments in terms of cash sales, term sales, long-term leases, rights-of-ways, and special land use permits. He

emphasized that the function of the Department is to serve the best interest of the trust beneficiaries, and not necessarily to serve the best interest of the business community. Mr. Rosen referred to the amendment and said the Department recognizes that the provision exempting the auctions is helpful. The Department also recognizes that the amendment cross-references the statutory exemption for agency contracts.

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter, testified in opposition to SB 1339 as currently drafted. She referred to a key issue on page 7 of the bill, lines 26 and 27. She said if the regulated community needs 60 days to adapt to a rule that is more stringent, her organization believes it would be appropriate for the public to have 60 days to respond to a rule that is less stringent to decide on whether any action or appeal is appropriate. She indicated that this provision should be removed from the bill. She indicated her organization supports the provision in the bill requiring agencies to provide a calendar of regulatory actions, which is very helpful for the public. Ms. Bahr pointed out another concern relates to the committee itself, and believes a representative either from the AG's office or someone with particular expertise should be included on the committee.

Senator Burns asked whether Jeanne Hahn could speak on the time frame issue.

Jeanne Hahn, Administrator, Governor's Regulatory Review Council, addressed some of the concerns of SB 1339. She noted that on page 7, there is an insertion between lines 32 and 33 that is problematic. She proposed the following solutions in order of preference in this section:

- Omit the provision because a law is enforceable until changed, and a law that is not effective is not enforceable.
- Shorten the provision to read "this section does not affect the enforceability of an existing rule."
- Change the provision to read "this section does not affect the enforceability of an existing rule until that rule is changed in accordance with the procedures in this chapter."

Ms. Hahn addressed page 8, lines 28 through 31. She noted that this provision requires a two-thirds vote from the Council to have rules of an agency become effective immediately rather than after the 60-day delay. She questioned whether the Legislature would want to add a similar provision regarding rules that are not subject to the Council's review and approval.

Ms. Hahn addressed page 8, lines 23 through 34. She said as written the provision is problematic because it references studies on which the agency proposes to rely. She suggested that the provision be amended as follows: "The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule."

Ms. Hahn referred to the comment by Ms. Bahr regarding the 60-day rule. She said she understands Ms. Bahr's concerns and indicated that the Council looks at all rules from the perspective of not only the regulated community, but also of the protected community.

Senator Verkamp announced the following individuals were present in support of SB 1339: **Michelle Covel, Lobbyist, National Federation of Independent Business; Jay Kaprosy, Lobbyist, Greater Phoenix Chamber of Commerce; Rip Wilson, Lobbyist, FARE Committee; WalMart Stores, Inc.; Charlie Stevens, Legislative Counsel, Western States Petroleum; Russell Smoldon, Lobbyist, Salt River Project (SRP) (supports both Burns amendments); Brent Frazier, Government Affairs Director, Arizona Association of Industries (AAI); Judith Allen, President, AAI.**

Senator Burns moved SB 1339 be returned with a DO PASS recommendation.

Senator Burns stated she has two amendments. She said she would move the amendment dated 3/12/02 at 12:10 p.m., and if that passes, she would withdraw the Burns amendment dated 3/12/02 at 9:45 a.m. (Attachment O).

Senator Burns moved the 5-page Burns amendment dated 03/12/02, 12:10 p.m. be ADOPTED (Attachment P). The motion CARRIED by a voice vote.

Senator Burns moved SB 1339 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 4-2-0 (Attachment 13).

Senator Verkamp announced that Senator Mitchell has a Conference Committee to attend; therefore, this Committee would recess until after Caucus this afternoon. The meeting will reconvene and continue for approximately one hour. Senator Verkamp recessed the meeting at 11:55 a.m.

TAPE 2, SIDE B

Senator Verkamp reconvened the meeting at 5:45 p.m. and stated the meeting would last approximately one hour.

SB 1018 – credit reports; copies to consumer – DO PASS AMENDED/STRIKE EVERYTHING

Todd Madeksza, Research Banking and Insurance Analyst, explained the strike-everything amendment to SB 1018 establishes disclosure requirements for providing consumers with information regarding the use of credit information for insurance underwriting purposes. He stated that concerns regarding the use of credit information to determine insurance scores and the impact on insurance premium rates have been raised by numerous constituents. He noted that advocates for the current system countered that the information is proprietary and the information offers a predictor across classes as to the amount of risk each individual holds. He said the measure establishes protocol for insurance companies to provide consumers with information regarding the use of credit data for insurance underwriting purposes. He stated there is no anticipated fiscal impact associated with this measure.

Senator Verkamp announced the following individual was present, but DOI is taking no position on the underlying bill and is neutral on the striker: **Vista Brown, Legislative Liaison, Arizona Department of Insurance (DOI)**.

Senator Verkamp announced the following individuals were present in support of SB 1018: **David Childers, Lobbyist, Farmers Insurance, National Association of Independent Insurers (NAII); Donald Vance, Designated Lobbyist, Arizona Association of Retired Persons-Arizona (AARP-AZ); and Gretchen Jacobs, Attorney, Allstate Insurance.**

Senator Verkamp announced the following individual is in opposition of SB 1018, but not present at this time: **Charlie Stevens, Legislative Counsel, Arizona Credit Union League.**

Senator Arzberger moved SB 1018 be returned with a DO PASS recommendation.

Senator Arzberger moved the 11-page Verkamp strike-everything amendment dated 02/21/02, 1:15 p.m., be ADOPTED (Attachment Q). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1018 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 14).

SB 1430 – victims' rights; orders of protection – DO PASS AMENDED

Ms. Spzerling explained SB 1430 adds hearings for orders of protection to the list of events in which a victim of crime has a right to leave work in order to attend. She stated the Hamilton amendment to this bill requires an employee who is exercising the right to leave work to provide the employer with written verification of a proceeding issued by the court in the event law enforcement documentation is not applicable.

Senator Verkamp announced the following individuals were present in support of SB 1430: **Riann Balch, Executive Director, Arizona Coalition to End Homelessness; Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence; Tara Plese, Legislative Liaison, Arizona Corporation Commission (ACC) Basic Needs Coalition; Karen Novachek, Director, Lutheran Advocacy Ministry in Arizona; Ginny Hildebrand, Executive Director, Association of Arizona Food Banks; Eddie Sissons, Executive Director, Morris Institute for Justice; and Jennie Gorrell, Lobbyist, Business and Professional Women's Association-Arizona.**

Senator Arzberger moved SB 1430 be returned with a DO PASS recommendation.

Senator Hamilton moved the 6-line Hamilton amendment dated 03/12/02, 9:05 a.m., be ADOPTED (Attachment R). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1430 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 15).

SB 1278 – employment; equal wages – DO PASS AMENDED

Dallas Gold, Research Commerce Assistant Analyst, explained SB 1278 adds compensatory and punitive damages to the damages which may be recovered by an employee in a wage discrimination lawsuit, and expands such lawsuits to cover discrimination based on race. He stated the bill also creates an Equal Pay Study Committee to study and report on the factors for wage disparity based on gender and race in the both public and private sectors. He said a Valadez amendment is being offered that removes everything from the bill except the Equal Pay Study Committee.

Robert Shuler, Senior Vice President of Public Affairs, Arizona Chamber of Commerce, testified in opposition to SB 1278. He clarified that this is not a study committee, but rather a permanent commission that is created. He pointed out there would be ongoing costs and expenses for the commission as well as support staff and services. He said an annual report is required to be submitted to the Governor's office and terms of office. Mr. Shuler voiced his concerns regarding the makeup of the committee because it only contains one individual position from the business community.

Senator Elaine Richardson, bill sponsor, stated the bill is a study committee that is very much needed. She said it has had national attention and Arizona will be in the forefront in looking at these issues.

Jennie Gorrell, Lobbyist, Business and Professional Women's Association of Arizona, indicated support for SB 1278. Senator Arzberger stated she believes it was her fault that Ms. Gorrell left because of the length of the meeting. She indicated she would speak on her behalf. She stated that this has been a long-standing issue that the Professional Women's Association has worked toward. She said this study committee could provide a way to define the duties and responsibilities of employees so that companies would have some kind of definition to allow for more equal pay.

Senator Verkamp announced the following individual was present in opposition of SB 1278: **Michelle Ahlmer, Executive Director, Arizona Retailers Association.**

Senator Arzberger moved SB 1278 be returned with a DO PASS recommendation.

Senator Valadez moved the 6-line Valadez amendment dated 03/12/02, 12:31 p.m., be ADOPTED (Attachment S). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1278 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 4-1-1 (Attachment 16).

SB 1429 – retail electricity; competition – DO PASS

Ms. Sperzling explained SB 1429 makes technical corrections to the statutes governing electric power competition.

Senator Verkamp announced the following individuals were present in support of SB 1429: **Molly Greene, Lobbyist, SRP;** and **Russell Smoldon, Lobbyist, SRP.**

Senator Arzberger moved SB 1429 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 17).

SB 1402 – cigarette retailers and manufacturers; contracts – DISCUSSION/HELD

Ms. Sperzling explained SB 1402 allows a cigarette retailer and manufacturer to enter into contractual relationships for a retailer to purchase cigarettes or receive payments, participate or be compensated for space relating to the manufacturer's cigarette merchandising, advertising, displays or promotions. She said the legislation prohibits contracts from requiring a retailer to contract an absolute amount or percentage of the retailer's space or cigarette category space to a manufacturer for product displays, signage or advertising in order to qualify for a manufacturer's promotions. She indicated the bill prohibits a manufacturer from limiting a retailer's ability to enter into promotional programs of another manufacturer. She stated a Valadez amendment is being offered, which makes technical changes, and allows a retailer and a cigarette manufacturer to enter into contractual relationships for any of the four reasons listed in the bill rather than limiting it to one of the reasons as currently drafted.

Donald Isaacson, Brown & Williamson Tobacco Company and Lorillard Tobacco Company, testified in support of SB 1402. He stated that this bill is controversial. He explained the bill would stop anti-competitive practices by certain cigarette manufacturers who monopolize limited space to

retailers to display cigarettes and provide cigarette advertising. He said contrary to popular belief, this nation is not based on "free market" but rather on a policy of "pro-competition." Therefore, the State has enacted legislation on various entities, such as car dealers, which limits the economic power of a large provider. He described the uniqueness and the limited opportunity for advertising in the tobacco world, which results in a premium for point-of-sale advertising. He emphasized that this bill does not do anything with respect to traditional advertising and promotional practices. He explained the results of the Phillip Morris program that began in 1999 called "Retail Leaders," which controls the way the product is handled. As a result, a retailer does not have the ability to control advertising or product display without limitations. Mr. Isaacson read some quotes from a 1999 anti-trust case that is still pending in North Carolina, which describes the seriousness of this issue. Mr. Isaacson indicated he would like to reserve some time for an attorney, Mr. Alfonso from Washington, D.C., and another individual, Mr. Gharib, who is a retailer in Phoenix.

Al Alfano, Attorney, Bassman, Mitchell and Alfonso law firm, Washington, D.C., outside counsel representing Brown & Williamson Tobacco Company, testified in support of SB 1402. He stated he would speak on why existing laws are insufficient to deal with the type of problems that are addressed in the bill. He commented that the purposes of the bill are to eliminate the type of unfair trade practices and to promote a competitive marketplace in the tobacco industry, which ultimately benefits the consumer. He said this bill is a preferable approach to the suggestion by others of prosecution of those practices under the anti-trust laws. He pointed out prosecution under the anti-trust laws takes too long to provide the type of expeditious relief necessary, when other companies and retailers are confronted with these practices. He explained that anti-trust lawsuits are also notorious for being extremely expensive and resource intensive. He noted that those reasons contribute to why there are few successful anti-trust actions in this country. As a result, many states have enacted industry-specific legislation that is narrowly focused to provide a specific solution to a specific problem in a specific industry to deal with the problem rather than reverting to anti-trust laws. He urged the Committee to seriously consider SB 1402.

Sami Gharib, representing himself, testified in support of SB 1402. He stated he has a small business, in which his product is tobacco. He commented he would like a fair share of the market, and described how he is prohibited by major companies from placing his own signs in his store.

Richard Jennings, President, Arizona Food Marketing Alliance, testified in opposition to SB 1402. He stated the Alliance represents major food retailers, manufacturers, distributors and brokers in Arizona, and represents approximately 1,200 individual stores throughout the State. He noted he has been associated with the grocery retailing industry for over 32 years. He commented that his industry, respectfully, believes that the State Legislature should not become involved in the dynamic, multi-faceted business process of the products that belong on the shelves of the stores. He said this bill is also not a good idea because of the factor of neighborhood marketing. He stated that the Alliance respectfully declines the Legislature's offer to dictate to the Alliance the language of sales and promotional contracts between grocery retailers and manufacturers.

Senator Verkamp announced the following individuals were present in support of SB 1402: **Sal Mohamed, Owner (convenience store), representing himself; Mike Chang, representing himself; Curtis Jackson, representing himself; and Henry Lizano, representing himself.**

Senator Verkamp announced the following individuals were present in opposition of SB 1402: **Michelle Ahlmer, Executive Director, Arizona Retailers Association; Philip MacDonnell, Lobbyist, R.J.Reynolds Tobacco Co.; Robert Collins, owner/operator, representing himself; Vern Stover, President, representing himself; Susie Stevens-Matthews, Lobbyist, Western**

States Petroleum Association; Jim Norton, Lobbyist, British Petroleum/Arco; Charlie Stevens, Legislative Counsel, Western States Petroleum; and John Mangum, Lobbyist, Arizona Food Marketing Alliance.

Senator Verkamp stated that SB 1402 appears to be a complicated issue, and needs more work. He would like to hold the bill, and asked Mr. Isaacson if holding the bill is amenable to him. Mr. Isaacson responded that would be okay. Senator Verkamp stated SB 1402 will be held.

SB 1258 – release of information; written authorization – DO PASS AMENDED/STRIKE EVERYTHING

Ms. Szperling explained there are two strike-everything amendments to SB 1258; however, at the request of the sponsor the Valadez striker amendment (Attachment T) is being withdrawn in place of the Mitchell striker. She explained the Mitchell striker prohibits a financial institution, local telecommunications service provider and long-distance telecommunications service provider from releasing certain nonpublic personal customer information without prior consent from the customer. The striker also establishes a consumer privacy information study committee to examine issues relating to private consumer information purchased and sold by government entities for commercial purposes. She indicated there is a 1-page Hamilton amendment, but it is her understanding that Senator Hamilton is withdrawing that amendment (Attachment U).

Senator Hamilton explained the reason he is withdrawing his amendment is because additional work is needed on the bill. He said he had discussions with Senator Cummiskey, whose intent is to limit the bill to only those areas where there is a monopoly-type business relationship with a customer, and to continue the study committee. Under those circumstances, Senator Hamilton stated he indicated to Senator Cummiskey that he would agree to pull his amendment and allow the legislation to move forward with any changes to be made on the floor.

Michelle Ahlmer, Executive Director, Arizona Retailers Association, testified in opposition to SB 1258. She stated her Association is opposed to the original bill, and it is her understanding that work is being done as Senator Hamilton indicated. She relinquished the balance of her time to Ellen Poole to testify.

Ellen Poole, Executive Vice President, Arizona Bankers Association, testified in opposition to SB 1258 (striker) in its current form. She stated that the Association appreciates that Senator Cummiskey would like to work further on these issues and Senator Hamilton's willingness to work together. She said this bill does not solve any problems. She pointed out that financial institutions are currently regulated; however, many other entities and organizations are not regulated. She noted that this legislation does not address those entities; therefore, they will continue to be unregulated. She added she is not suggesting that they should be regulated, but no problem has been identified that this legislation in its current form would be solving. Ms. Poole emphasized that the major customer concern regarding information sharing is identity theft, and this legislation does nothing to address that issue. She indicated the legislation places an enormous burden on their financial institutions to become mini publishing houses.

Senator Verkamp asked Ms. Poole if she could address her remarks more specifically to Senator Hamilton's amendment.

Senator Hamilton reiterated that he is withdrawing his amendment, but Senator Cummiskey acknowledged that the bill would be in the form as Senator Hamilton described earlier. Senator

Hamilton asked Ms. Poole to comment on the portion of the bill regarding utilities and those with a monopolistic relationship with customers. Ms. Poole responded she cannot speak to the businesses that Senator Cumiskey plans to address. However, the distinction that can be made is someone can choose to not do business with a financial institution, a long-distance provider, or store, if those entities have information-sharing practices that are unwanted. She said under current law, an individual has the opportunity to inform those entities to not share information and those entities have to abide by that directive. She said that procedure is known as the opt-out system. She said it is her understanding that it is not the case in a monopolistic scenario. She understands that the study committee will address information sharing practices in multiple areas, and not only with respect to financial institutions. She commented she would like to convey to the Committee the enormous complexity of these issues, how those issues have been addressed at the federal level, and that no legislation should go forward without being evaluated in a study committee.

Senator Mitchell asked Ms. Poole if she is okay with the bill going forward. Ms. Poole responded based on Senator Cumiskey's assurances along with those of Senator Mitchell and Senator Hamilton, she is okay with the bill going forward.

Senator Verkamp announced the following individuals were present in support of SB 1258: **Donald Vance, Designated Lobbyist, AARP AZ, (supports Mitchell strike-everything without amendment).**

Senator Verkamp announced the following individuals were present in opposition to SB 1258: **Robert Shuler, Senior Vice President of Public Affairs, Arizona Chamber of Commerce; Mara Kelly, Lobbyist, MCI Worldcom; Diane Heuel, Publisher, representing herself; Steve Duffy, Attorney, Sprint; Pat Bodnar, Vice President Public Affairs, Arizona Credit Unions; Gregory Harris, Lobbyist, Alliance of American Insurers; Wendy Briggs, Lobbyist, Arizona Bankers Association; John Thomas, Lobbyist, Arizona Competitive Telecommunications Coalition; Barbara Meaney, Lobbyist, XO Communications; John MacDonald, Partner, Jamieson and Gutierrez, Inc., Cox Communications; Michelle Covell, Lobbyist, National Federation of Independent Business; Jason Isaak, Lobbyist, Toyota Motor Sales USA; Janna Day, Lobbyist, Consumer Data Industry Association; Susie Stevens-Matthews, Lobbyist, Arizona Credit Union League (opposes bill -- but would support Hamilton amendment creating study committee and would like to participate in study committee); Bobbi Sparrow, Government Relations Director, Arizona Auto Dealers Association (needs interim study committee); Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona; Larry Richmond, Lobbyist, Arizona Auto Dealers Association; Jay Kaprosy, Lobbyist, Greater Phoenix Chamber of Commerce; Brent Frazier, Government Affairs Director, AAI; Judith Allen, President, AAI; Kenneth Scruggs, Lobbyist, Household Financial Group; representing himself; Charlie Stevens, Legislative Counsel, R L Polk & Company/Arizona Credit Union League.**

Senator Arzberger moved SB 1258 be returned with a DO PASS recommendation.

Senator Mitchell moved the 11-page Mitchell strike-everything amendment dated 03/11/02, 1:58 p.m., be ADOPTED (Attachment V). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1258 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 18).

SB 1340 – youth tobacco act - HELD

Senator Verkamp announced due to the time element today, he will ask the President to grant a further extension for this Committee to discuss SB 1340. He stated he would hold SB 1340 in the meantime.

SB 1399 – residential contractors' recovery fund – DO PASS AMENDED

Ms. Szperling explained SB 1399 increases the maximum amount that may be paid from the residential contractors' recovery fund from \$20,000 to \$30,000 to a person for recovery of losses incurred due to poor workmanship or non-performance by a licensed residential contractor. She stated that a Mitchell amendment is being offered, which increases the minimum level of the fund from \$100,000 to \$200,000, increases the residential recovery fund maximum payout per license from \$100,000 to \$200,000, and increases the alternate bond for dual licensed contractors and residential contractors from \$100,000 to \$200,000. She said the amendment also increases the amount a claimant can collect from the fund from up to \$20,000 to up to \$30,000 in addition to any amount received from the contractor's license bond or other sources provided the claimant is damaged in an amount equal to or greater than the fund award plus the bond and/or other sources. Lastly, the amendment requires the Registrar to contract the contractor with a notice informing him or her of the amount claimed or to be awarded. If the contractor contests that amount, that person is given ten days to respond by requesting a hearing to determine the amount of any payment and failure to do so is a waiver by a contractor of the individual's right to contest.

Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona, testified as neutral toward SB 1399. He stated that the Association has not fully reviewed the Mitchell amendment, but it appears as though the Association may have some concerns and would like the option to comment on it later if it moves to the floor. He indicated the concern is not with the amounts, but with the fund and the solvency of the fund. He explained that within the increases in the amounts, the Association would like documentation from the Registrar's office that the fund will stay solvent without a huge increase in license fees. He said the Association's concern is how the fund is managed to ensure it exists as a vehicle for homeowners when contractors file bankruptcy.

Senator Gerard, bill sponsor, stated that a constituent brought this issue to her attention. She said upon checking, she found that the last time there was an increase in the amount was 1994. She indicated that if people have problems, there may not be adequate protection with the recovery fund, which is the reason for the increase. She said the Registrar is aware of the bill, and asked if anyone is present to speak.

Senator Verkamp replied that Mr. Poindexter is present from the Registrar's office.

Senator Gerald stated that she believes this bill is appropriate to protect the public.

Ken Poindexter, Assistant Director, Registrar of Contractors, testified in support of SB 1399. He said the Registrar supports the Mitchell amendment and believes that increasing the fund will lead to a minor increase in the recovery fund fees, approximately \$20 per year per contract. The Registrar does not foresee any problems with the fund balance, and the total amount expended above and beyond this item would be less than \$500,000.

TAPE 3, SIDE A

Senator Verkamp announced the following individuals were present but neutral on SB 1399: **John Mangum, Lobbyist, National Spa and Pool Institute.**

Senator Arzberger moved SB 1399 be returned with a DO PASS recommendation.

Senator Mitchell moved the 16-page Valadez amendment dated 02/22/02, 11:52 a.m., be ADOPTED (Attachment W). The motion CARRIED by a voice vote.

Senator Arzberger moved SB 1399 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 19).

There being no further business, the meeting adjourned at 6:47 p.m.

Respectfully submitted,

Nancy L. DeMichele
Committee Secretary

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