

ARIZONA STATE SENATE

45TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: March 26, 2002 **TIME:** 1:30 p.m. **ROOM:** SHR 1

CHAIRMAN: Senator Richardson **VICE CHAIRMAN:** Senator Bee

ANALYST: Sheryl Rabin **COMMITTEE SECRETARY:** Tracey Moulton

INTERN: Lisa Hird **ASST. ANALYST :** Lace Collins

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	HB 2004	DP
Senator Bundgaard	X			HB 2065	DP
Senator Burns	X			HB 2123	DP
Senator Cumiskey		X		HB 2341	FAILED
Senator Rios	X			HB 2353	DISCUSSION ONLY
Senator Smith	X			HB 2358	DP
Senator Bee, Vice Chairman	X				
Senator Richardson, Chairman	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
James Moeller	Member, Commission on Appellate Court Appointments	Recommend Confirmation
Barbara J. Polk	Member, Commission on Appellate Court Appointments	Recommend Confirmation
Lauro Amezcua-Patino, MD	Member, Psychiatric Security Review Board	Recommend Confirmation
Frank T. Costanzo	Member, Commission on Trial Court Appointment, Maricopa County	Recommend Confirmation
John Joseph Tuchi	Member, Commission on Trial Court Appointment, Maricopa County	Recommend Confirmation
David Mitchell Smith	Member, Commission on Trial Court Appointment, Pima County	Recommend Confirmation

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:40 p.m. and attendance was noted. For additional attendees, see Sign-in Sheet (Attachment A).

EXECUTIVE NOMINATIONS

James Moeller, Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of James Moeller as a Member of the Commission on Appellate Court Appointments. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 1).

Barbara J. Polk, Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of Barbara J. Polk as a Member of the Commission on Appellate Court Appointments. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 2).

Lauro Amezcua-Patino MD, Member, Psychiatric Security Review Board – RECOMMEND CONFIRMATION

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of Lauro Amezcua-Patino MD as a Member of the Psychiatric Security Review Board. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 3).

Frank T. Costanzo, Member, Commission on Trial Court Appointment, Maricopa County – RECOMMEND CONFIRMATION

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of Frank T. Costanzo as a Member on the Commission on Trial Court Appointments, Maricopa County. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 4).

John Joseph Tuchi, Member, Commission on Trial Court Appointment, Maricopa County – RECOMMEND CONFIRMATION

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of John Joseph Tuchi as a Member on the Commission on Trial Court Appointments, Maricopa County. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 5).

David Mitchell Smith, Member, Commission on Trial Court Appointment, Pima County – RECOMMEND CONFIRMATION

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of David Mitchell Smith as a Member on the Commission on Trial Court Appointments, Pima County. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 6).

CONSIDERATION OF BILLS

H.B. 2004 – ~~importing livestock diseases; penalty~~(now: animal and poultry diseases; crimes – DO PASS

Lisa Hird, Research Intern, explained H.B. 2004 creates three new felony classes for knowingly introducing into Arizona an animal disease or parasite that threatens livestock, poultry or humans.

Representative Gleason, bill sponsor, stated that the genesis of the bill was brought to light from a seminar that was held last year on hoof and mouth disease. He remarked that it became evident that if this disease were to ever be introduced in Arizona it would be devastating and not only wipe out the cattle industry but the State's elk, deer, javelina and antelope. He noted that after the September 11th attacks, this disease was identified as a potential threat from foreign powers. He remarked that stronger penalties are needed, as it currently is a class 2 misdemeanor.

Senator Richardson announced the following individuals were present in support of the bill: **John Hunt, Associate Director, Arizona Dept. of Agriculture; Bas Aja, Director Government Relations, Arizona Cattlemen's Association; Barbara Dolan, Legislative Liaison, Arizona Department of Agriculture and Jerry Landau, Lobbyist, Maricopa County Attorney's Office.**

Senator Richardson announced **Margarita Silva, Attorney/Legislative Liaison, Maricopa County Public Defender's Office**, had signed up in opposition to the bill, but was not present.

Senator Bee moved H.B. 2004 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 7).

H.B. 2065 – state department of corrections; continuation– DO PASS

Ms. Hird explained current law states that the Arizona Department of Corrections (ADC) will terminate on July 1, 2002. H.B. 2065 continues the ADC until July 1, 2012.

Senator Richardson announced the following individuals were present in support of the bill: **Terry Stewart, Director, ADC and Liza Genrich, General Counsel/Legislative Liaison, ADC.**

Senator Bee moved H.B. 2065 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 8).

H.B. 2123 – cross-certification; postal inspectors– DO PASS

Ms. Hird explained that cross-certification gives federal peace officers the authority to enforce the laws of Arizona for one year. Currently, U.S. Postal Inspectors are not granted cross-certification

eligibility under the laws of this State. H.B. 2123 permits U.S. Postal Inspectors to be temporarily cross-certified in Arizona in order to confront issues such as postal fraud.

Lyle Mann, Manager, Arizona Peace Officer Standards and Training Board (AZPOST), testified in support of the bill and remarked current state law allows a variety of federal officers to obtain cross-certification. Cross-certification allows a federal officer to enforce the laws of the state of Arizona along with doing a number of process actions, such as booking prisoners, serving search warrants and doing a number of things that a State peace officer can do. Currently there are four counties in Arizona that use this provision, generally in drug related task forces. Over the last few years, postal inspectors did not have the ability to become cross-certified, as they were left off of the laundry list. Mail fraud and mail theft became a large problem in Maricopa and Pima Counties which is why this bill is needed to add postal inspectors, so that those task forces can get the best use of the manpower. He stated that cross-certification is for one year with re-certification needed annually.

Senator Richardson asked what other types of federal officers have this type of status currently. Mr. Mann remarked that Federal Bureau of Investigation investigators, Drug Enforcement Administration Investigators, Naval Investigators, Army Investigators, Customs Service Officers and Air Force Special Investigators are some. He stated that there is a federal statute that allots arrest powers for specific federal officers. These kinds of officers receive further training than Arizona Officers receive.

Senator Richardson announced the following individuals were present in support of the bill: **Doug Cash, Legislative Committee Chairman, Fraternal Order of Police and Jerry Landau, Maricopa County Attorney's Office.**

Senator Bee moved H.B. 2123 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 9).

H.B. 2341 – immigration and nationality law practice – FAILED

Lace Collins, Research Assistant Analyst, explained that H.B. 2341 increases the penalty for violating the Immigration and Nationality Law Practice Act (Act) from a class 1 misdemeanor to a class 6 felony and specifies that the Attorney General (AG) may investigate and prosecute violations in accordance with consumer fraud laws. The State Bar of Arizona believes this legislation is necessary in order to protect consumers who are being taken advantage of by persons who hold themselves out as legal consultants but have no legal training.

Ron Johnson, Director of Government Relations, State Bar of Arizona, testified in support of the bill and remarked that there is a significant problem in the community and specifically in the Hispanic communities. He stated in the Hispanic communities people hold themselves out as being "Notarios", which is a person of high ranking with privileges in the court or a high level attorney. In Arizona, this position is, at best, a notary public, but people in the Hispanic communities view them as attorneys, which becomes a consumer fraud problem. He stated the reason the penalty is being raised is to raise the crime to a level of enforcement.

Senator Rios asked if any colleges of law or any student associations opposed the language referring to law students or law graduates, who appear on behalf of people in immigration cases. Mr. Johnson stated that there was no opposition to the bill and deferred to Judge LeVay to answer

this question. He stated that this legislation was not an attempt to redefine who can and cannot practice law in immigration courts, as this is done in federal law in the code of federal regulations. He stated that the bill's focus is to raise the crime to a level where the AG can take action.

Warren Whitney, Deputy Secretary of State (SOS), SOS's Office, testified in support of the bill and remarked that his comments are focused from the perspective of the Notary Commissioner, as the SOS's office serves as a Notary Commissioner for the State of Arizona, rather than from what the appropriate enforcement measures and penalties should be. He stated that presently there are approximately 80,000 commissioned notaries within the State. He stated that in legislation passed a few years ago the SOS proposed some notary reform legislation, which was adopted and signed by the Governor and intended to limit the ability of Arizona notaries to market themselves as "Notarios." He remarked that it is the Office's understanding that in many countries, including Mexico, there is a civil justice system and the position of notary would be considered judicial in nature. He stated that when the words Notary Public are translated to the spanish "Notario Publico," the U. S. Notary would be perceived to hold a high judicial-like status. The population interacting with a "Notario Publico" in the United States is subject to abuse and fraud by unscrupulous notaries. He stated that this is not a population that is able to seek justice on their own, and there are very few of these notaries that market themselves in this fashion, but they charge high fees to assist with immigration services. Most notaries, however, generally provide important business services to the public. He stated that this bill would limit the provision of immigration services to those that have proper legal training to provide those services because the notary commissioning process does not provide legal training. He urged the Committee to support the bill.

Dean LeVay, U.S. Immigration Judge-Phoenix, testified in support of the bill, and noted that however he was not present as a representative of the Department of Justice, but as a concerned citizen. He stated that because of his position, he is knowledgeable regarding the ramifications of this particular problem.

Judge LeVay remarked that although this problem is perceived to be a federal matter, in reality it is a state problem as only the states have the right to regulate the practice of law.

Judge LeVay commented on the question posed by Senator Bundgaard regarding the terminology about lawsuits. This language was taken directly from the federal code of regulations. He noted that it is possible to have special training to allow people to represent illegal aliens in immigration court, and this language protects these people from the ramifications of this statute.

Judge LeVay stated that these victims are a part of a particularly vulnerable sector of the population, usually frightened, in a country with customs that they do not understand and are vulnerable to various kinds of scams. He opined that they deserve the types of protection that is rendered to any other vulnerable sector of society. Just because they are not citizens, does not mean that they are not important.

Judge LeVay commented that the victims of these crimes are charged thousands of dollars by the "Notarios," expecting legal representation, and not only get deported, but are robbed of their money as well.

Senator Richardson announced the following individuals were present in support of the bill: **Margot Wuebbels, Assistant AG, AG's Office; Margarita Silva, Attorney, Legislative Liaison, Los Abogados Hispanic Bar Association and William DeSantiago, Managing Attorney, representing himself.**

Senator Bee moved H.B. 2341 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 3-3-2 (Attachment 10).

H.B. 2353 – venue change; fee payments; time – DISCUSSION ONLY

Sheryl Rabin, Research Analyst, explained S.B. 2353 changes the date by which a party who requests a change of venue must pay filing fees. Under current law, the filing fee with the new court must be paid within 30 days of the order for change of venue. The bill changes the payment deadline to within 30 days from the date the new court reviews the case file.

Ms. Rabin explained the Richardson amendment (Attachment B) is a strike everything amendment, which modifies Arizona's civil rights statutes related to employment, public accommodations and voting rights. For purposes of employment discrimination statutes, the amendment broadens the term disability to include mental impairments and extends from one to two years the time in which a civil action regarding employment discrimination may be filed. The public accommodation statute is amended to prohibit sex discrimination in places of public accommodation. The voting rights statute is amended to prohibit the exclusion of qualified individuals with disabilities from voting by reason of their disabilities. Furthermore, multiple changes are made regarding enforcement and remedies for public discrimination in public accommodations and voting rights including that the AG's Civil Rights Division may file a charge to investigate discrimination on its own initiative. Additionally, the charging party is given additional time in which to file with the AG, civil penalties for discrimination are increased and the court is permitted to award damages, court costs, injunctions and reasonable attorney fees.

Senator Richardson announced that the Committee would be hearing testimony today and will not be taking a vote on the bill.

Senator Richardson announced the following individuals were present in support of the bill: **Margot Wuebbels, Assistant AG, AG's Office; Tiffany Bock, Assistant Director, The Mental Health Association of Arizona; Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU); Max Dine, M.D., representing himself; Mary Sample, representing herself; Mariam Williams, representing herself; Bobby Vaughn, representing himself; Kathy Bashor, representing herself; Margarita Silva, Attorney/Legislative Liaison, Los Abogados Hispanic Bar; Edward Myers, Attorney, Arizona Technology Access Program; David Carey, representing himself; Mel Hannah, job counselor, representing herself; Michael Ward, Executive Director, Governor's Council on Developmental Disabilities; Jami Snyder, Director of Information and Outreach, Arizona Center for Disability Law and Richinda Sands, representing herself.**

Senator Richardson announced the following individuals were present in opposition to the bill: **Michelle Covel, National Federal of Independent Business; Brent Frazier, Government Affairs Director, Arizona Association of Industries and Jay Kaprosy, Greater Phoenix Chamber of Commerce.**

Robert Shuler, Senior Vice President of Public Affairs, Arizona Chamber of Commerce, testified that the Chamber is not opposed to the expansion of the protected class to include mental disability. He stated the only section of the strike everything amendment that the Chamber is opposed to relates to the statute of limitations. He stated that with the assurances that he has been given regarding this issue, the Chamber would no longer oppose the amendment.

David Selden, Attorney, Morrison and Hecker, Chairman, Arizona Chamber of Commerce Employee Relations Committee, testified that the only portion of the striker amendment that the Chamber is in opposition to is on page 14, lines 42-46, where the statute of limitations for bringing Arizona civil rights claims is increased. The language as it currently exists in the striker amendment would give people twice as long to bring their lawsuit, and on behalf of employers, the Chamber believes that justice is served by encouraging people to bring their claims more promptly. He stated that if this portion of the striker amendment is changed, the Chamber would have no further opposition.

In response to Senator Smith, Mr. Selden stated that alcoholism is a disability and it is protected under federal law. If a person, however, because of their alcoholism, cannot meet the attendance standard of an employer, or does not meet the behavioral standard of the employer, the employer may enforce its standards and take disciplinary action. He stated that this is a difficult situation faced by employers, as it is a fine line that must be tread carefully. He stated that if the hiring of a person who has alcoholism would pose a direct threat to the health or safety of another employee or a member of the public, the employer can lawfully exclude the person on that basis. If a person were to injure themselves or another employee, they would be able to collect workers compensation. If a person were to injure a member of the public or a customer, vender or other third party, the employer could face a lawsuit for negligent hiring.

Senator Smith remarked that if a person with a mental disability fails to take the proper medication and therefore does not act responsibly it would cause a problem for the employer. Mr. Selden stated that this does become a problem. He stated that there is case law that states that an employer cannot mandate that a worker take his or her medicine and cannot supervise this process to ensure that it is being taken. He remarked that the advice that he gives clients is to always attempt to accommodate the worker's condition and make decisions based on the employee's conduct rather than his or her condition.

Senator Smith commented that an employee who is not meeting the job standards and is fired as a consequence could claim that their disability is the reason for their being fired. Mr. Selden stated that the federal law states that an employer does not have to lower the company standards to accommodate a person's disability, and although it is a burden for employers, they can defend their actions in court.

Donna Kruck, Arizona Bridge to Independent Living, testified that Mr. Selden's testimony included many of her comments. She remarked that the amendment would require an employee to be able to perform the essential functions of the job but also would give them protection from employment discrimination as persons with physical disabilities.

Margot Wuebbels, AG's Office, testified in support of the bill and noted that mental disability is protected in the federal law. This means that every private employer in Arizona with 15 or more employees already has to comply with the mental disability law. However, it is not in Arizona State law. Arizona is one of three States that does not have this law, the others being Alabama and

Mississippi. She noted that with the Chairman's assurance to delete the statute of limitations language from the striker amendment, the bill will have the support of the AG and the Arizona Chamber of Commerce. She remarked that a large portion of the business community, as well as the Chinese Chamber, the Hispanic Chamber, the Greater Black Chamber, the Tucson Hispanic Chamber and the Asian Chamber have signed on in support of this legislation. Additionally, several civic and public groups and several different groups that represent the mentally disabled community are also in support of the legislation.

H.B. 2358 – judges pro tempore; terms – DO PASS

Ms. Collins explained H.B. 2358 allows judges pro tempore and justices of the peace pro tempore to serve 12-month terms instead of six-month terms. Judges pro tempore and justices of the peace pro tempore serve on an as needed basis and must submit applications to the appropriate authorities for approval. Currently applications are reviewed every six months. The Administrative Office of the Courts (AOC) opines that 12-month reviews will be more cost-effective and efficient.

Senator Richardson announced the following individuals testified in support of HB 2358: **Todd Adkins, Legislative Intern, Administrative Office of the Court and George Diaz, Administrative Office of the Court.**

**Senator Bee moved H.B. 2358 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 5-0-3 (Attachment 11).**

Without objection, the meeting was adjourned at 2:55 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.)