

ARIZONA STATE SENATE

46TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON COMMERCE

DATE: February 26, 2003

TIME: 8:00 a.m.

ROOM: SHR 3

CHAIRMAN: Senator Leff

VICE CHAIRMAN: Senator Blendu

ANALYST: Todd Madeksza

**COMMITTEE
SECRETARY:** Nancy L. DeMichele

**ASSISTANT
ANALYST:** Brandy Martin

INTERN: Sophie Rigollet

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Allen	X			SB 1009	DPA/SE
Senator Arzberger	X			SB 1028	DP
Senator Chevront	X			SB 1049	DPA/SE
Senator Giffords	X			SB 1092	DPA
Senator Martin	X			SB 1104	DP
Senator Soltero	X			SB 1279	DPA
Senator Tibshraeny	X			SB 1305	DPA
Senator Blendu, Vice Chair	X			SB 1307	DPA
Senator Leff, Chair	X			SB 1310	DP
				SB 1316	DPA
				SB 1340	HELD
				SB 1346	DPA

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Gilbert Jimenez	Director, Department of Commerce	CONFIRMATION

Chairman Leff called the meeting to order at 8:10 a.m., and roll call was taken.

EXECUTIVE NOMINATIONS

Gilbert Jimenez, Director, Arizona Department of Commerce (DOC) – RECOMMEND CONFIRMATION

Mr. Jimenez stated he is a third generation Arizonan and graduate of Arizona State University (ASU) and other schools. He provided background information on his employment and highlighted his career activities in economics, business administration, personnel management, and development. He pointed out that his work experience also included travels to other countries. He said his goal as Director for DOC is to do more with less by setting objectives, and to make DOC the best possible organization. He commented he would like to see DOC bring value-added service and a greater sense of urgency to the work of economic development in this State. He remarked he recently shared the podium with the President of the Greater Phoenix Economic Council (GPEC) and during that presentation the issue of collaboration was discussed. Mr. Jimenez outlined various goals and programs that he would like to implement as Director of DOC.

In response to Senator Allen, Mr. Jimenez outlined the programs he envisions for DOC to work together with the metro areas and the rural communities in the State. Senator Tibshraeny emphasized the need for DOC to work with existing businesses on a retention basis along with continuing efforts to bring new businesses to the State. Mr. Jimenez responded it is very much his intent to use established companies to not only assist in further growth, but to retain those companies within the State as well. Senator Soltero stressed the need for new companies locating in Arizona to pay a decent wage to employees. Senator Blendu stated that the best economy starts with a good job, and Mr. Jimenez clearly understands that concept. He said he feels very comfortable in supporting this nomination.

Senator Blendu moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Gilbert Jimenez as Director of the Arizona Department of Commerce. The motion CARRIED by a roll call vote of 9-0-0 (Attachment 1).

CONSIDERATION OF BILLS

SB 1028 – cable television; access payments – DO PASS

Brandy Martin, Commerce Assistant Research Analyst, explained SB 1028 removes an exemption from the utility cooperatives, requiring those entities to use the Federal Communication Commission (FCC) pole attachment formula when charging other companies for use of their poles. She said the bill requires them to provide nondiscriminatory access to their poles for attachment by other companies, but allows the utility cooperatives to take into account issues such as capacity and safety before attachments are allowed.

Susan Bitter Smith, Arizona Cable Telecommunications Association, testified in support of SB 1028. She said the bill was introduced to respond to a growing problem that various entities are encountering throughout Arizona with electric cooperatives becoming involved in competitive businesses to directly compete with services. She said at the same time the cooperatives are raising the rates charged to the telecommunications industry to attach to the existing poles of those electric

cooperatives. She said the telecommunications industry believes, as the FCC has indicated, that the FCC is an appropriate and fair mechanism to adjudicate the rates charged by the cooperatives. She distributed a chart showing the differentials in rates across the State (Attachment B) and explained the disparities.

Tom Jones, Chief Executive Officer, Grand Canyon State Electric Cooperative Association (Association), testified in opposition to SB 1028. He provided a copy of his prepared testimony (Attachment C) outlining the functions of the Association comprising nine electric cooperatives headquartered in Arizona. He stated that the Association believes SB 1028 is flawed because of its reliance in utilizing the FCC's formula for pole attachments, and he presented background information as highlighted in the handout.

Michael Curtis, Executive Secretary, Arizona Municipal Power Users, testified in opposition to SB 1028. He stated that the Arizona Municipal Power Users consists of 24 publicly-owned electric and water entities throughout the State comprising approximately one million people. He pointed out that the State no longer has jurisdiction over transmission because of control by the federal government. He pointed out that cable company rates are also regulated by the federal government. He urged the Committee to oppose the bill and to not allow any further federal encroachment of rules and regulations to be applied.

Kevin Moran, Cox Communications, referred to a situation in Sulphur Springs regarding pole attachment rates. He said that the consequence of not accepting a \$19 rate would have resulted in not being able to use the poles and would have caused a huge disruption to existing service. He said these issues are becoming major barriers to the employment of broadband services throughout Arizona.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Senator Blendu moved SB 1028 be returned with a DO PASS recommendation.

Senator Arzberger explained her vote. She stated the Legislature should not be involved in regulating this issue, and she will vote "no."

The motion CARRIED by a roll call vote of 5-4-0 (Attachment 2).

SB 1049 – collection agencies; technical correction – DO PASS AMENDED/STRIKE EVERYTHING

Ms. Martin explained the strike-everything amendment being offered makes changes to the Arizona Mobile Home Parks Residential Landlord and Tenant Act. She said the amendment provides the following:

- Specifies when a mobile home park landlord may use the age of a mobile home for the basis of requiring it to remove a restriction from the park.
- Allows tenants who must leave a mobile home park due to a change in use to be able to abandon the mobile home in the park as a second option for displacement.
- Puts in place a process to ensure the restoration of the rental phase after a home is removed.
- Increases the threshold for county assessors to waive assessments on mobile home owners and increases the threshold that triggers the reinstatement of the assessment.

Michael Preston Green, Lobbyist, Manufactured Housing Communities of Arizona, testified in support of SB 1049. He stated that efforts have been made in the past to reach agreement with mobile home park owners and residents without legislation. He said this bill represents a year's work of negotiations and agreements being reached on these important clean-up items, which are self-explanatory.

Senator Blendu moved SB 1049 be returned with a DO PASS recommendation.

Senator Blendu moved the 6-page Leff strike-everything amendment dated 2/17/03 at 2:22 p.m. be ADOPTED (Attachment D). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1049 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 9-0-0 (Attachment 3).

SB 1104 – payment of wages; immigration status – DO PASS

Sophie Rigollet, Senate Commerce Intern, explained SB 1104 clarifies that workers in Arizona are entitled to wages regardless of their immigration status or national origin. She stated that this legislation does not apply to back pay, which was specific to the case of *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*. She noted that the anticipated fiscal impact to the State general fund is unknown at this time.

Senator Chevront, bill sponsor, explained the history of SB 1104. He stated this bill is all about the American value system, in which an employee should be paid the promised wages for work performed.

Senator Leff commented that companies should not be hiring people who are in this country illegally and breaking the law. She said this is a country of laws and this problem needs to be addressed at some point.

Senator Blendu stated that federal laws currently exist with respect to this issue. He commented if an employer hired an illegal worker based on illegal papers presented, this bill would provide that the wages still need to be paid based on the work performed.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Senator Chevront moved SB 1104 be returned with a DO PASS recommendation.

Senator Tibshraeny explained his vote. He stated there are many issues when discussing immigration. He commented it is against the law to hire illegal immigrants, but there is also a standard when someone is hired to pay that worker for work performed. He said he will vote "aye."

The motion CARRIED by a roll call vote of 7-2-0 (Attachment 4).

SB 1307 – weights and measures; penalties – DO PASS AMENDED

Ms. Martin explained SB 1307 makes changes to the civil penalties that may be assessed by the Department of Weights and Measures. She said the measure clarifies that the civil penalties assessed by the Department are for each business location, registered service representative or each

weigh master rather than by corporation. She noted the bill also allows a civil penalty cap to be doubled by the Director in cases where violations are egregious in the impact on consumers or in the case of continual violations. Ms. Martin explained the 3-line Blendu amendment dated 2/25/03 at 1:15 p.m. places a cap on civil penalties that may be assessed to a corporation at \$50,000 per month.

In response to Senator Arzberger, Senator Blendu stated that rather than include broad language in this bill regarding other entities, it appears that certain corporations continually abuse the system. He said this bill would keep this issue in compliance, which costs consumers thousands of dollars every month.

Dennis Ehrhart, Assistant Director, Arizona Department of Weights and Measures, testified in support of SB 1307. He stated that the bill and amendment were drafted with input from the Arizona Food Marketing Alliance, the Arizona Retailers Association and others. He clarified that the Department has the ability to inspect any establishment, and penalties could be assessed for any location that is inspected. He stated that the bill pertains to all entities, not just corporations.

In response to Senator Giffords, Mr. Ehrhart commented on the Tucson Gem and Mineral Show and the requirements and procedures applied to that type of event.

Senator Arzberger asked Mr. Ehrhart to comment on a machine's accuracy, calibration and schedule of maintenance. Mr. Ehrhart responded that the Department does not calibrate the devices, but rather tests the machines. He said the owners of the devices handle the maintenance by hiring registered service agents to test those machines and scales to ensure compliance. He said the Department lacks the necessary resources to inspect every licensed device every year. Senator Blendu stated although there is no law that requires a machine to be calibrated periodically, there is a law that states the owner of the device is responsible for the accuracy of that device. Mr. Ehrhart explained the procedure of violations and penalties assessed. Senator Blendu stated that it is in the owner's best interest to keep their machines and devices properly calibrated.

In response to Senator Arzberger, Mr. Ehrhart stated that all civil penalties and licensing revenues are allocated to the State's general fund.

Senator Blendu moved SB 1307 be returned with a DO PASS recommendation.

Senator Blendu moved the 3-line Blendu amendment dated 2/25/03 at 1:15 p.m. be ADOPTED (Attachment E). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1307 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 5).

SB 1316 – direct shipments of wine – DO PASS AMENDED

Todd Madeksza, Senate Commerce Research Analyst, explained SB 1316 eliminates statute requirements that a holder of a direct shipment license must only ship to a licensed wholesale liquor distributor who would then forward the liquor to a licensed retailer with off-sale privileges in Arizona. He indicated that since 2002 an Arizona consumer present at an out-of-state winery has been allowed to purchase a limited amount of wine from that winery and have that wine shipped via common carrier to their residence for their own consumption. He noted that some Arizonans have expressed their desire to be able to shop for wine via the Internet or have it shipped directly to their home from an out-of-state winery without going through the required three-tiered system or without

having to physically visit the vineyards or wineries. Mr. Madeksza indicated that this bill allows out-of-state wineries to hold a direct shipment license or requires them to be responsible for the appropriate taxes. He said individuals may order alcohol from the direct shipment license holders through a variety of means including the Internet or catalogues. Mr. Madeksza explained a 20-line Leff amendment dated 2/25/03 at 3:56 p.m. is being proposed, which ensures that individuals who are physically present at a winery may have that winery ship up to two cases annually to the individual's residence.

In response to Senator Giffords, Mr. Madeksza stated that currently nine states have a reciprocity agreement with each other that allows shipment over state lines. He said he believes there are additional states without reciprocity agreements that allow one-time shipments to its residents or consumers.

In response to Senator Allen regarding taxes, Mr. Madeksza stated this bill provides that a winery with a direct shipper's license would be obligated to pay appropriate Arizona taxes including a luxury tax. With respect to Senator Allen's question regarding proper identification of age, Mr. Madeksza replied that issue is not included in this measure because it is already provided in statute.

Senator Leff explained why she sponsored the bill. She stated Senator Allen pioneered this measure years ago, but it is too cumbersome in today's world. She said there are too many restrictions when purchasing a particular bottle of wine across state lines to ship home. She indicated that regardless of the method of purchase, a direct shipper's license will be required by the winery and taxes will be paid to the State of Arizona.

Jack Bulkin, Attorney, Scottsdale, testified in support of SB 1316. He said he previously testified on Senator Allen's bill in the House of Representatives. He commented that the impracticability presented upon people by Arizona law has also cost the State millions of dollars of tax collections over the past decade. He stated that wine has become the drink of choice by individuals who enjoy collecting fine wines. He noted that the three-tiered system in the State generally benefits the major hotels or best customers rather than individuals. He said individuals usually end up on a waiting list, and when a wine becomes available arrangements have to be made to receive the wine. Mr. Bulkin stated that Arizona is not a reciprocal State and does not have a consent form that wineries can utilize for shipping wine. He said other states without reciprocity have consent forms and wineries collect taxes on behalf of the states with consent forms. He added reciprocal states are not charged tax. Mr. Bulkin stated that the Tucson wineries would like Arizona to be a reciprocal State. He said that having a consent form with the wineries would provide for a revenue-positive bill. He commented that it is unlikely this privilege would be abused by minors because most of the collector wines are very expensive. Mr. Bulkin strongly recommended that the State support this bill to allow individuals and collectors to be able to purchase the bottles of wine that are not otherwise available. In response to Senator Leff, Mr. Bulkin explained the licensing process of the wineries.

Robert Lynch, Attorney, Phoenix, testified in support of SB 1316. He explained he became interested in this bill because of a personal experience in purchasing wine for a relative. He said the Tucson winery would not ship out of State. He indicated five federal lawsuits were decided in 2002, and decisions were unevenly applied in those cases. In addition, the federal government passed the Justice Department Authorization Act, which included Section 11022 specifically authorizing the interstate shipment of wines from wineries to residents who are physically present at the wineries when ordering. Mr. Lynch commented that SB 1316 is an attempt to bring Arizona into line with the recent court precedence and the new federal law to avoid problems. He said he believes this will not

compete with local establishments, and our State's residents are being penalized by not being able to purchase wines at the wineries.

Michael Preston Green, Lobbyist, Wine Industry, testified in support of SB 1316. He clarified that the Wine Industry is in favor of some of the aspects of this bill. He explained the direct shipment process, and cited various pending court cases in other states. He said the bill that passed last year does not work for Arizona because of federal law. He indicated that currently common carriers will only ship the wines if the person who is shipping the wine has a license. Mr. Green said since the customer is not allowed to ship the wine, the only entity that can ship it is the winery because it is the licensed party.

Senator Leff asked Mr. Green to indicate the portions of the bill not supported by the Wine Industry. Mr. Green responded it is probably premature at this point to fix the occasional shipment of wine directly from the California wineries. He said that is the industry's number one prerogative.

Robert Johnson, Owner, Colibri Vineyard and Winery, in Southeastern Arizona, testified in support of SB 1316. He said he is also currently President of the Arizona Winegrowers Association; however, he is speaking for himself today. He said the bill is well balanced for both retailers, wholesalers, consumers and the wine industry throughout the State of Arizona. He noted that the current legislation in the State does not allow his winery to ship wines. He said the legislation being proposed would allow shipment and would be beneficial for the State. In response to Senator Arzberger, Mr. Johnson said this bill would only allow shipment of wines within the State. Senator Arzberger said she would like to see the issue of shipping Arizona wines out of the State addressed in the future. Senator Leff stated this is a very important industry in Arizona and would like to work with Mr. Johnson and other wineries in the State to ship wines out of the State. Mr. Johnson said his winery is in the growth stage and he would welcome the opportunity to work with the Committee on future legislation.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Don Isaacson, Lobbyist, Arizona Licensed Beverage Association (Association), testified in opposition to SB 1316. He explained that the Association is a trade association of Arizona liquor retailers. He said this is one of several bills proposed in the past, and the impetus was the Internet and the immediate ability to order products from out of state. He said there are several court cases pending and at some point a final decision will most likely be reached by the United States Supreme Court. He provided background information on the process as it exists today for purchasing wine. He emphasized that any kind of age enforcement is "out the window" with this bill. He commented that the State collects approximately \$60 million in wholesale taxes, which is in addition to sales taxes. He said this bill would allow a multitude of national wineries to have a relationship with the Arizona Department of Revenue (DOR) and its customers. He added that this bill would eliminate a very efficient tax collection mechanism that was included in Senator Allen's previous legislation. He commented that when a bottle of wine is purchased through the mechanism that currently exists, that price has the same tax-embedded rate as wine purchased at another establishment because the tax has been paid. He pointed out that this bill allows an order to be placed over the Internet without knowing whether the tax has been paid by a winery, and the purchaser would receive the wine at a cheaper price because the tax is not embedded. He remarked that SB 1316 does not contain any significant provision for the collection of luxury tax, and all the sales taxes would be lost to the State. Mr. Isaacson stated the issue of precedence is also a factor and this bill will present a problem in the future because of the desire to include other liquors in addition to wine. He said this bill has the effect of taking the sale and delivery of liquor away from a licensed retailer and handing it over to a common

carrier individual. Senator Leff stated the common carriers testified that the special forms those carriers use have the ability to do all of the things that Mr. Isaacson indicated were taken out of this bill.

Senator Chevront commented that the statement presented by Mr. Isaacson regarding the purchase of wine on the Internet is not a legitimate argument because it is no different than other items being purchased on the Internet with respect to paying sales taxes. He said the Internet sales tax issue needs to be addressed in future legislation.

Mr. Isaacson stated he agrees with Mr. Green's comments, and this bill would need a correction only of page 3, lines 17 through 32, which was passed last year. He said that item should be clarified and the remainder of the bill should be left alone until the federal litigation is resolved. He said Arizona law has not been declared unconstitutional and there is the possibility of losing State and local taxes as well as a loss of control at the sale of the retail item. Senator Leff asked Mr. Isaacson whether he would support Section "J" of the amendment. Mr. Isaacson said that item provides a basis for compromise, and it clarifies the legislative policy of last year. He indicated that the remainder of the bill should be put in a study committee until after the federal litigation is concluded. He said he would be willing to discuss this issue with the people in Cochise County.

Phil MacDonnell, representing the Beer and Wine Distributors of Arizona, testified in opposition to SB 1316. In response to Senator Soltero, he said approximately six to ten states allow a direct shipment from out-of-state entities direct to consumers.

Senator Chevront commented that to put barriers on a lawfully sold product over the Internet is against our free enterprise system. He said this issue has been presented many times and it is basically all about losing market share.

Senator Arzberger commented she views the Internet as competition with local businesses. She said she would like Arizona to move toward being able to charge sales tax on the Internet.

Senator Leff commented that this legislation would help those people who cannot find a specific wine product locally and would like to purchase it at the wineries.

Senator Blendu moved SB 1316 be returned with a DO PASS recommendation.

Senator Blendu moved the 20-line Leff amendment dated 2/25/03 at 3:56 p.m. be ADOPTED (Attachment F). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1316 be returned with an AS AMENDED, DO PASS recommendation.

Senator Allen explained her vote. She said this looks like "deja vu" all over again. She said she will vote "aye."

Senator Chevront explained his vote. He said people should not fear the Internet because it is the future. He said he will vote "aye."

Senator Giffords explained her vote. She said she is hopeful that these issues can be resolved, and to move the bill along she will vote "aye."

Senator Soltero explained his vote. He stated there are too many gray areas in this bill, and he will vote “no.”

Senator Tibshraeny explained his vote. He stated he has had many concerns in the past regarding tax revenues and especially in these times when these revenues are necessary to support important programs. He said the Internet taxation issue is a major concern, and Congress currently has a moratorium on Internet taxation. He said he will vote “no.”

Senator Blendu explained his vote. He said he does not believe it is the government’s job to tax at every single opportunity. He stated it appears industry is on one side of the issue and the people are on the other side. He indicated he will vote “aye” to move the bill along.

The motion CARRIED by a roll call vote of 5-4-0 (Attachment 6).

SB 1009 – technical correction; health services – DO PASS AMENDED/STRIKE EVERYTHING

Mr. Madeksza explained SB 1009 is a technical correction regarding health services. He said a 16-page Allen strike-everything amendment dated 2/21/03 at 1:56 p.m. is being proposed, which raises the maximum weekly benefit amount and provides some clarifying language regarding unemployment benefit application and appeal protocol. He indicated that unemployment insurance is offered in the State as an economic safety net program to individuals who find themselves through no fault of their own out of work for a period of time. In such cases individuals must meet certain criteria such as availability to work, the ability to work and they must be registered to work. He said if qualified to receive benefits, individuals are given a proportion of their wage from a trust fund funded by the employers of the State. Mr. Madeksza stated that the strike-everything amendment raises the maximum weekly benefit to \$240 over a two-year period and clarifies procedure and protocol of different aspects of the unemployment administration. He said the State of Arizona is considered a pay-as-you-go employer, which means it reimburses the unemployment trust fund when an eligible former employee claims unemployment benefits. As such, the fiscal impact to the State general fund is indeterminable at this time, and the impact to the State’s unemployment trust fund is expected to occur although the Arizona Department of Economic Security (DES) is still reviewing the extent of that impact. He noted that members of DES are present today and may be able to address those concerns.

Senator Allen stated that current law sets the maximum weekly benefits that individuals are eligible to receive at \$205, and this measure will increase that amount to \$240. She provided background information on the unemployment benefits during the past several years. She said this bill would increase the unemployment benefit amount by \$35 or 17% over two years. She indicated that comments are continually heard that Arizona is at the bottom regarding unemployment benefits. She urged the Committee’s support on this measure because she believes it is the right thing to do.

Robert Shuler, Senior Vice President of Public Affairs, Arizona Chamber of Commerce, testified in support of SB 1009. He stated that Senator Allen accurately described the changes to the unemployment system over the years, which increased the benefits on a somewhat regular basis. He said the Chamber agrees with Senator Allen that it is time for another increase. He commented that Arizona is often criticized for being “last” in the maximum weekly benefit of \$205; however, he believes it is the wrong number to focus on in this issue. He said the cost-of-living factor should be considered when calculating these benefits, and with this bill unemployment benefits will replace 32% of the average weekly wage of someone who is unemployed. Mr. Shuler pointed out that Arizona is moving toward the national average as far as replacement number, and urged the Committee to

support this measure. In response to Senator Allen, Mr. Shuler stated that the Chamber has approximately 300 members and most are the larger employers in the State.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Elizabeth Hudgins, Children's Action Alliance, testified in support of SB 1009. She stated this bill raises the benefit over a course of two years, which is a very positive step in the right direction to help families.

Michelle Bolton, State Director for the National Federation of Independent Business (NFIB), testified in opposition to SB 1009. She stated that NFIB represents 8,700 business owners in the State. She said NFIB members are concerned with how the rates will be affected because of the current situation. She said if DES could confirm that the benefit increase will not affect rates, she will be happy to poll her members again. Senator Allen stated it is not her intent to harm small businesses. She said that if nothing is done, sooner or later something else will happen that will harm the small business community. She suggested that discussions continue on this issue with all parties. Ms. Bolton agreed, and indicated she could process a special ballot with her members in the next couple of weeks.

Pat Harrington, Assistant Director for Employment and Rehabilitation Services, DES, testified as neutral to SB 1009. He stated that DES has concerns with some of the provisions in the bill and would like to meet with the appropriate people to discuss those issues. He referred to the cost, and said research conducted indicates that for the years 2004 and 2005, DES estimates the average employer effective tax rate (ETR) would not increase with this change. He noted that for 2006 and 2007, the ETR would increase by two cents on average for each year. Mr. Harrington commented that he had additional information to share, and noted that the unemployment trust fund is in no danger whatsoever with respect to solvency based on these proposed changes.

Senator Martin pointed out that the size of the surplus in the unemployment trust fund is calculated in the ETR. Mr. Harrington replied that is correct. He said the degree to which there is more money in the unemployment trust fund than needs to be paid out is a limiting factor on upward pressure on the ETR. He commented that he could share the information regarding the projected balance of the unemployment trust fund for future years. In response to Senator Soltero, Senator Martin said the unemployment trust fund earns whatever percentage the federal government is receiving on funds maintained in the United States Treasury because that is where it is kept.

Senator Blendu moved SB 1009 be returned with a DO PASS recommendation.

Senator Blendu moved the 16-page Allen strike-everything amendment dated 2/21/03 at 1:56 p.m. be ADOPTED (Attachment G). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1009 be returned with an AS AMENDED, DO PASS recommendation.

Senator Chevront explained his vote. He said as a small business owner, he understands the concern of attempting to increase any kind of taxes or fees that the owner would have to pay. He said in a time of economic uncertainty, it is important that unemployment benefits be increased for people who are unemployed. He said he will vote "aye."

Senator Martin explained his vote. He stated that the possible impact in future years on the surplus is a concern, and he will continue to work with NFIB regarding a special ballot. At this time, he will respectfully vote “no.”

Senator Soltero explained his vote. He stated this is something that is needed, particularly since Arizona lags other states on this issue. He said he will vote “aye.”

Senator Leff explained her vote. She said she is concerned about an ETR increase and for now she will vote “no.”

The motion CARRIED by a roll call vote of 7-2-0 (Attachment 7).

Senator Leff requested Mr. Harrington to provide written copies of the information outlined in his testimony to the Committee.

SB 1279 – state compensation fund; assets – DO PASS AMENDED

Mr. Madeksza explained SB 1279 codifies that the State Compensation Fund (SCF) for workers’ compensation is available to all employers in the state. He indicated that the bill specifies that SCF acts as an insurer of last resort and that assets held by SCF are private in nature and not available for appropriation. He said the measure also specifies the distribution procedure upon the SCF’s dissolution. Mr. Madeksza noted that there is no anticipated fiscal impact associated with the State general fund. He explained a 2-page Leff amendment dated 2/25/03 at 9:58 a.m. is being proposed, which adds clarifying language that SCF is an insurer of last resort and that the State has no proprietary interest in SCF. The amendment also clarifies the purpose of SCF is to provide workers compensation to employers of the State, clarifies the reporting requirements to the Joint Legislative Budget Committee (JLBC), and clarifies liquidation distribution requirements and procedures.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Michelle Bolton, State Director, NFIB, testified in support of SB 1279 and the Leff amendment. She stated that Michael Preston Green wanted her to state that the Professional Employers Association and the Arizona Restaurant Association also supports the measure. Ms. Bolton explained that this bill modernizes the SCF language, and she provided historical background information. Senator Leff stated that a bill recently passed in the House of Representatives, which is the exact opposite of this bill, and she asked Ms. Bolton to explain the differences. Ms. Bolton said the small business community is mainly served by SCF, and she highlighted key points in the bill and amendment.

- The measure will codify into law that the SCF is a carrier of last resort.
- The measure clarifies the private trust for a public purpose concept.

Senator Blendu moved SB 1279 be returned with a DO PASS recommendation.

Senator Blendu moved the 2-page Leff amendment dated 2/25/03 at 9:58 a.m. be ADOPTED (Attachment H). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1279 be returned with an AS AMENDED, DO PASS recommendation.

Senator Chevront explained his vote. He stated that as an SCF insuree, he will vote “aye.”

The motion CARRIED by a roll call vote of 9-0-0 (Attachment 8).

SB 1092 – contractors; advertising – DO PASS AMENDED

Ms. Rigollet explained SB 1092. She stated that the Arizona Registrar of Contractors (ROC) requires contractors to place their license number or the words “not a licensed contractor” in print on all advertising, written bids and other documents. She said the question has been raised as to whether telephone and trade association directories are considered advertising and whether this additional text is required, which increases the size of the directories and may subsequently increase costs. She said SB 1092 clarifies that telephone and trade association directories are not considered advertising for the purpose of displaying contractors’ status of licensure. Ms. Rigollet explained the 5-line Chevront amendment dated 2/20/03 at 11:08 a.m. exempts trade association directories which are distributed only to membership and not to the general public, from being considered advertising. The amendment also states that telephone directories will adhere to advertising requirements.

Senator Chevront, bill sponsor, stated the concern is that legitimate contractors have their licenses to display to the public. He said it is important that registered contractors were not harmed if they failed to include their license number in print.

Suzanne Gilstrap, Arizona Multihousing Association, testified in support of SB 1092. She stated that all questions previously raised in the drafting of the bill have been satisfied. She said this is primarily a money issue for trade associations because of the additional lines that would be used to show the ROC number.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Brian Tassinari, American Subcontractors Association of Arizona, stated that Linda Tweten registered as opposing SB 1092 in error. He said that on behalf of Ms. Tweten and himself, the Association supports SB 1092.

Senator Chevront moved SB 1092 be returned with a DO PASS recommendation.

Senator Chevront moved the 5-line Chevront amendment dated 2/20/03 at 11:08 a.m. be ADOPTED (Attachment I). The motion CARRIED by a voice vote.

Senator Chevront moved SB 1092 be returned with an AS AMENDED, DO PASS recommendation.

The motion CARRIED by a roll call vote of 8-0-1 (Attachment 9).

SB 1305 – cigarettes; delivery sales – DO PASS AMENDED

Ms. Rigollet explained SB 1305 refers to the Jenkins Act, which allows the State to collect taxes from consumers purchasing cigarettes sold and shipped across State lines. She said the liability for these taxes generally arises once the cigarettes enter the jurisdiction of each state. She indicated at the federal level there is no specific office or agency dedicated to regulating the delivery of cigarette sales, and she highlighted the various items relating to this measure. Ms. Rigollet explained two amendments are being proposed. Senator Leff stated that only the Leff amendment will be offered because the proposed Giffords amendment dated 2/25/03 at 11:37 a.m. (Attachment J) is

incorporated in the Leff amendment. Ms. Rigollet explained the 4-page Leff amendment dated 2/25/03 at 4:59 p.m. includes clarifying language that retailers do not need to be licensed unless they are also distributors. She said age verification requirements apply only to first-time delivery sales, and she itemized the various items included in the Leff amendment.

John Mangum, Attorney, representing Philip Morris, Inc., testified in support of SB 1305. He stated that in the interest of fair disclosure, he also represents most retail grocers and convenience stores in the State. He stated this legislation was designed to do something regarding the importation of cigarettes into Arizona without the payment of taxes. He said this bill attempts to ensure that the people who ship cigarettes into Arizona for consumers or retailers pay the excise tax to the State. Mr. Mangum said the amendment represents a consensus with DOR. He said it is his understanding that the Arizona Attorney General's Office (AG) supports the bill as well as most of the retailers. He said some people are unhappy with the bill because shippers outside the State are required to make an effort to determine whether or not the people receiving the cigarettes are of legal minimum purchase age. He outlined the shipper provisions for purchasing cigarettes. He said SB 1305 is a good bill that may help stop some of the access of tobacco to minors.

Senator Blendu stated that he sponsored this bill for one reason. He said Arizona law prohibits the sale of cigarettes to anyone under the age of 18.

Jeffrey Kros, Legislative Liaison, DOR, testified as neutral to SB 1305. He said DOR appreciates the Committee and staff for undertaking this very complex bill and area of the law. He said DOR will need to shift some resources in order to properly implement this measure. He indicated that a couple of propositions in the past few years has put a strain on the Tobacco Enforcement Unit. He noted that DOR will re-evaluate the utilization of resources and may have to address that issue in the future.

Kevin Demenna, Cancer Society, Heart and Lung Association, testified in opposition to SB 1305 and the amendment. He said it appears that the proposed amendment would create a mechanism that if an underage youth purchases cigarettes over the Internet, that same individual would essentially be given a "license" to continue to purchase additional tobacco products for an unlimited period of time because there are no regular crosschecks. He urged caution with respect to this amendment.

Senator Blendu asked Mr. Demenna to suggest possible language that would be agreeable to his clients. Mr. Demenna responded that the language could be along the lines of "sales of tobacco products over the Internet in Arizona are prohibited."

Mr. Mangum referred to the delivery of cigarettes and said the delivery agent is required to check age cards, which is the same process as is done in grocery stores and other establishments. He said the checking of age cards by delivery agents on behalf of the shipper would adequately protect the State's interest in terms of purchasing tobacco products by underage individuals.

Senator Blendu moved SB 1305 be returned with a DO PASS recommendation.

Senator Blendu moved the 4-page Leff amendment dated 2/25/03 at 4:59 p.m. be ADOPTED (Attachment K). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1305 be returned with an AS AMENDED, DO PASS recommendation.

The motion CARRIED by a roll call vote of 8-0-1 (Attachment 10).

SB 1310 – tobacco; nonparticipating manufacturers – DO PASS

Ms. Rigollet explained SB 1310 is an emergency measure that codifies model non-participating manufacturers legislation from the National Association of Attorneys General and coordinates the role of the DOR and the AG. She noted that this bill establishes notification and oversight requirements for participating and nonparticipating manufacturers regarding product sales in Arizona and payments to escrow accounts for nonparticipating tobacco product manufacturers. She said any impact to the State general fund is indiscernible at this time.

Barry Aarons, Consultant, representing Single Stick, testified in opposition to SB 1310. He said he has worked with the AG on this important bill, and some small amendments will be presented by the AG in the Appropriations Committee. He understands it is a model bill; however, other states have passed similar bills. He commented his client is an Arizona corporation that pays its fair share of taxes and is in compliance with the laws and other requirements. However, there are three significant issues, which he has discussed with various parties.

- He said this bill would confer upon the AG the power to require quarterly payments to be made, which is an unnecessary and expensive requirement for his client. He indicated his client has made its payments on an annual basis.
- He said there is concern of due process, especially with disputes of additional escrow that the AG may suggest be made if there is a discrepancy.
- He said there is a concern with the certification deadline of new products. He said he would like to see a specific deadline such as 30 or 45 days in order to deal with the deadline period.

Mr. Aarons said he will continue to work with the appropriate parties on possible amendments. He said he wanted to ensure that this Committee was aware of his objections.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Senator Blendu moved SB 1310 be returned with a DO PASS recommendation.

Senator Martin explained his vote. He said he most likely will sponsor any amendments in the Appropriations Committee. He said in anticipation of any amendments he will vote “aye” in this Committee and on the floor.

The motion CARRIED by a roll call vote of 7-0-2 (Attachment 11).

SB 1340 – dog racing; distribution of revenues – HELD

Senator Leff announced that SB 1340 will be held.

SB 1346 – loan originator licensing – DO PASS AMENDED

Mr. Madeksza explained SB 1346 is a Proposition 108 measure that establishes loan originator licensing programs within the State Banking Department. He stated currently the State Banking Department regulates three mortgage-lending entities: (1) commercial mortgage bankers, (2) mortgage bankers, and (3) mortgage brokers. He said this legislation seeks to add a fourth class, which would be called “loan originators.” He indicated this bill establishes the independent licensing

and fee structure for loan originators and authorizes the Superintendent to establish rules as necessary to enforce and administer the licensing program. Mr. Madeksza explained two amendments are being proposed. Senator Leff stated that the 4-page Martin amendment will not be offered (Attachment L). Mr. Madeksza explained the 26-line Leff amendment dated 2/18/03 at 9:27 a.m. removes mortgage bankers from the bill so that only loan originators who work for mortgage brokers are affected (Attachment M).

Bill Howe, Mortgage Broker, representing the Arizona Association of Mortgage Brokers, testified in support of SB 1346. He stated that the overall intent of the bill is to mirror the regulations that exist for residential real estate sales. He explained the process for education and licensing requirements for mortgage brokers. He said passage of this bill will bring more professionalism to the industry.

Senator Leff announced the individuals who registered their position on the bill (Attachment A).

Todd Hulm, Loan Originator and Loan Officer, testified in support of SB 1346. He stated he is an individual who will be directly impacted by this bill. He said he supports the bill for consumer protection, particularly relating to predatory lending. He noted that continuing education is very important as is evidenced by other licensed professionals. He commented that the purchase of a home is the greatest financial asset as well as the greatest financial risk for most consumers in the State, and he questioned why the person in the forefront of this transaction should not be educated or licensed.

John Burton, Arizona Commercial Mortgage Bankers, testified in opposition to SB 1346. He stated he is past president of the Commercial Mortgage Bankers Association and currently serves on its board and legislative committee. He stated he is a licensed mortgage broker. He said while his group supports the bill and its goals, they do not believe SB 1346 is the proper vehicle. He commented on a previous problematic issue and said his group does not wish to be placed in a situation where the loan originators who do not deal in residential lending are forced into an educational and licensing provision. He said the original bill created a problem in that it required a license based upon the security instrument, which is a note and deed of trust. He said his group represents a small segment, but they bring billions of dollars of capital into the State each year and do not wish to be painted with the same brush.

Kevin McCullough, Assistant Superintendent of Banks, Arizona State Banking Department, testified in opposition to SB 1346. He stated this bill represents a major shift in the way the Department regulates the mortgage industry, and it would require significantly more resources than are currently available. He said the ultimate impact cannot be measured at this time regarding appropriation and regulatory issues. Secondly, the bill will present a significant financial and regulatory burden on the industry. Finally, this bill will decrease the overall regulatory authority of the Department in the mortgage lending area. Mr. McCullough highlighted the key points, and stated that the Department estimates this bill will require \$480,000 additional appropriations for the bureaucracy required to administer the licensing program. He said the Department licenses and regulates 3,000 entities, and this bill could potentially add 6,000 to 10,000 more licensees to the Department creating significant paperwork and consumer affairs issues. He said ten full-time employees would be required to administer the program. Mr. McCullough stated this bill would also create a disconnect between the loan originator who works independently and the mortgage broker, and the Department would not have the resources to investigate any discrepancies. He indicated that the Department estimates this bill will also impose a regulatory burden of approximately \$2.5 million initially for licensing applications with \$1 million in fees thereafter. He noted those amounts do not include the

educational requirements of loan originators. Mr. McCullough stated this bill represents a change from regulatory relief efforts over the last ten years, and will be less effective.

Senator Cheuvront said it appears from the testimony that the Department is basically concerned with not having enough resources. Mr. McCullough responded the resource and appropriation issue would also decrease the authority of the Department by spreading out thousands of loan originator licenses versus 800 licenses of mortgage brokers. He said he is not opposed to an educational requirement, but the Department does not wish to become involved in the bureaucracy of administering that training program.

Senator Cheuvront wanted to know how this would differentiate from a real estate broker who has sales people and both are licensed and controlled, but still separate entities. Mr. McCullough responded that is a good point, and he explained the differences. He said unlike the real estate broker situation, a number of individuals are usually involved in the mortgage broker process. If something goes wrong, it is sometimes very difficult to find out who is at fault or whose license should be pulled.

Kevin Demenna, Arizona Mortgage Lenders Association, testified as neutral on SB 1346. He stated that the Leff amendment dated 2/18/03 at 9:27 a.m. is essential to the bill, and the Association's neutral position is predicated on that amendment. He said Senator Martin is moving effective legislation dealing with the issue of predatory lending. He commented that the Association does not believe it is a correct characterization that this bill is an effective means of dealing with predatory lending. He stated the Association is also concerned with the issue of Department resources. Another concern is simple compliance because new rules will be created for the lending community to potentially break. Mr. Demenna strongly urged the adoption of the Leff amendment if this bill moves forward.

Dan Huss, Arizona Association of Mortgage Brokers, testified in support of SB 1346. He stated he is also a mortgage broker and on the board as legislative liaison. He said he has worked with Bill Howe and their feeling is that the loan officer spends more time with the customer than the realtor and makes less money. However, he said that is not the point. He stated the point is the loan officer has more valuable information than the realtor, and the realtor is licensed whereas the loan officer is not. He said they bring in millions of dollars to the State and he does not understand why the Department is not able to obtain the proper appropriations to do what it needs to do.

Joseph Kruchek, Attorney, and member of the Arizona Commercial Mortgage Bankers Association, testified in opposition to SB 1346. He said the main opposition is that the bill goes beyond the scope intended because the intent is to address the issue of residential lending. He said his group consists of commercial mortgage brokers; however, they are licensed under the same licensing sections as the residential mortgage brokers and would be affected by this bill.

Senator Leff asked Mr. Madeksza whether this bill should have gone through the sunrise process. Mr. Madeksza said he would research that issue and report back to the Committee. He noted that this bill is also assigned to the Appropriations Committee.

Senator Blendu moved SB 1346 be returned with a DO PASS recommendation.

Senator Blendu moved the 26-line Leff amendment dated 2/18/03 at 9:27 a.m. be ADOPTED (Attachment M). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1346 be returned with an AS AMENDED, DO PASS recommendation.

Senator Arzberger explained her vote. She said she will hear the bill again in Appropriations, but for now will vote “aye.”

Senator Chevront explained his vote. He stated that this is an important issue that needs to move forward. He said if the bill was not assigned to the Appropriations Committee he would vote “no” because he believes there are not sufficient resources. However, at this time he will vote “aye.”

Senator Giffords explained her vote. She said she does not feel comfortable with this bill at this time and will vote “no.”

Senator Martin explained his vote. He stated he is not sure whether he will support the bill in Appropriations, but for now will vote “aye.”

Senator Soltero explained his vote. He stated he is not sure whether the Banking Department will be able to handle the requirements outlined in this bill, and he has other concerns. He said he will vote “no.”

Senator Blendu explained his vote. He stated that one of his concerns is the issue of stolen information. He said he will vote “aye” to move the bill along, but agrees that it needs more work.

The motion CARRIED by a roll call vote of 6-3-0 (Attachment 12).

There being no further business, the meeting adjourned at 11:41 a.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.)