

ARIZONA HOUSE OF REPRESENTATIVES
Forty-ninth Legislature – Second Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, January 28, 2010
House Hearing Room 4 -- 9:00 a.m.

Chairman Driggs called the meeting to order at 9:05 a.m. and attendance was noted by the secretary.

Members Present

Mrs. Barto
Mr. Konopnicki
Mr. Miranda B

Mr. Montenegro
Ms. Sinema
Mrs. Tovar

Mr. Ash, Vice-Chairman
Mr. Driggs, Chairman

Members Absent

None

Committee Action

HB2174 – DPA (6-0-0-2)
HB2196 – DP (6-0-0-2)
HB2307 – DP (5-2-0-1)
HB2333 – DPA (5-1-1-1)

HB2384 – DP (4-3-0-1)
HB2426 – DP (7-0-0-1)
HB2429 – DP (8-0-0-0)
HB2435 – DPA (8-0-0-0)

CONSIDERATION OF BILLS:

HB2174 – postjudgment garnishment; attorney’s writ – DO PASS AMENDED

Vice-Chairman Ash moved that HB2174 do pass.

Stacy Weltsch, Majority Research Analyst, explained that HB2174 allows an attorney to issue a writ of garnishment if a judgment has been made and other requirements are met (Attachment 1).

Vice-Chairman Ash moved that the Driggs seven-line amendment dated 1/26/10 to HB2174 be adopted (Attachment 2).

Ms. Weltsch advised that the seven-line amendment states that the written objection and request for hearing shall include a copy of the writ of garnishment and the answer of the garnishee, and clarifies that the writ issued pursuant to this section has the same force and effect as a writ issued pursuant to Article 4 or Article 4.1 of this chapter (Attachment 2).

Question was called on the motion that the Driggs seven-line amendment dated 1/26/10 to HB2174 be adopted (Attachment 2). The motion carried.

Vice-Chairman Ash moved that HB2174 as amended do pass.

Representative Sam Crump, sponsor, advised that the reason for sponsoring this bill is that in a garnishment, after a court grants a creditor the right to collect on a debt, collection of the judgment is the difficult part. The problem is that every jurisdiction has a different process. The intent of his legislation is to streamline and simplify the process for garnishments under \$5,000.

Mr. Konopnicki asked whether an individual will be able to issue a writ of garnishment under this proposal. Representative Crump answered in the negative. He related that this requires an attorney, as an officer of the court, to issue the writ before it is sent to the employer.

Representative Crump explained that the amendment addresses objections to a garnishment and states that the debtor must file papers with the court in order for the court to take jurisdiction over the matter.

In response to Vice-Chairman Ash, Mr. Crump related that this proposal was considered last year but was stalled in the House.

Mr. Konopnicki questioned the difference this will make. Representative Crump replied that if the judgment is under \$5,000, the creditor will not have to go through the court system. An attorney can go directly to the debtor's employer without going through court. He related that this legislation is modeled after other states' legislation. Attorneys, as officers of the court, can issue a writ of garnishment. He advised that a judgment under \$5,000 moves through the Justice of the Peace (JP) court. Mr. Konopnicki asked whether JPs have weighed in on this. Representative Crump said he has not heard any objections from JPs.

Jerry Landau, Government Affairs Director, Arizona Supreme Court, stated that the Court is neutral on HB2174. One of the issues raised relates to objections filed by debtors and the court not having any paperwork to rule on. That issue is addressed by the amendment which puts the burden on the debtor to file paperwork with the court.

Chairman Driggs announced the names of those who signed up in opposition to HB2174 but did not speak:

Seth Apfel, representing self

Question was called on the motion that HB2174 as amended do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 3).

HB2196 – campaign finance reports; penalty – DO PASS

Vice-Chairman Ash moved that HB2196 do pass.

Blake Edwards, Majority Intern, said that HB2196 clarifies references to *days* in campaign financing statute to refer to *business* days or *calendar* days (Attachment 4).

Representative Jerry Weiers, sponsor, testified that his district missed a reporting date relating to district monies and was assessed penalties by the state because payments are not allowed on a Saturday, Sunday or a holiday, and fees add up quickly. The intent of this legislation is to allow for payments to be made “24-7” otherwise no late fees will be charged.

Chairman Driggs announced the names of those who signed up in support of HB2196 but did not speak:

Linda Brown, representing self

Chairman Driggs announced the names of those who signed up as neutral on HB2196 but did not speak:

Amy Bjelland, State Elections Director, Arizona Secretary of State’s Office

Question was called on the motion that HB2196 do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 5).

HB2307 – Arizona manufactured firearms; regulation – DO PASS

Vice-Chairman Ash moved that HB2307 do pass.

Daniel Gonzalez-Plumhoff, Assistant Majority Research Analyst, Appropriations Committee, explained that HB2307 exempts certain Arizona manufactured firearms, firearms accessories and ammunition from federal interstate commerce laws and regulations (Attachment 6).

Representative Nancy McLain, sponsor, testified that similar legislation was passed by Montana and Tennessee and introduced in 21 other states. The purpose of this legislation is to allow states to exercise their sovereignty under the Tenth Amendment. She referenced the Commerce clause in the U.S. Constitution which various government agencies and the courts seem to be using more and more to impose federal restrictions and regulations on interstate commerce.

Mrs. Barto asked whether the Montana Act has been challenged in court by the federal government. Representative McLain advised that there is a federal case pending. The case was filed by the Montana Shooting Sports Association and the federal government has asked that the case be dismissed for lack of standing.

John Wentling, Vice President, Arizona Citizens Defense League, expressed strong support for HB2307. This bill re-establishes Arizona’s sovereignty. He strongly urged Members to support this legislation.

Chairman Driggs announced the names of those who signed up in support of HB2307 but did not speak:

Dave Kopp, President, Arizona Citizens Defense League

Linda Bentley, representing self

Fred Streeter, representing self

Dustin Deppe, representing self

Arno Naeckel, representing self, in support of HB2307, pointed out that *projectile* in Section D.4 should be replaced with *rounds of ammunition* otherwise it will have a detrimental

effect to shotguns. He strongly recommended that this legislation be passed, and said that Arizona will benefit from this legislation by the opening of additional manufacturing opportunities for its citizens. He concurred with the sponsor's statement that this is a step to assert state sovereignty. To the extent that the federal government is using the Commerce clause to override the Bill of Rights, it is blatantly unconstitutional and should be challenged in every state.

In response to Mrs. Barto's query whether the Montana measure is a constitutional measure or a statute, Mr. Naeckel said that it is a statute.

Vice-Chairman Ash announced the names of those who signed up as neutral on HB2307 but did not speak:

Seth Apfel, representing self

Question was called on the motion that HB2307 do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 7).

HB2333 – department of gaming; continuation – DO PASS AMENDED

Vice-Chairman Ash moved that HB2333 do pass.

Blake Edwards, Majority Intern, stated that HB2333 continues the Department of Gaming until July 1, 2020 (Attachment 8).

Vice-Chairman Ash moved that the Ash three-line amendment dated 1/26/10 to HB2333 be adopted (Attachment 9).

Mr. Edwards explained that the three-line amendment clarifies that even if the Department of Gaming is not continued, the state tribal contracts will remain in statute (Attachment 9).

Question was called on the motion that the Ash three-line amendment dated 1/26/10 to HB2333 be adopted (Attachment 9). The motion carried.

Vice-Chairman Ash moved that HB2333 as amended do pass.

Vice-Chairman Ash, sponsor, explained that HB2333 continues the state's ability to supervise gaming in the state to ensure that gaming is handled in a legal, fair and equitable way. He encouraged Members to vote in support of continuing the Department.

Mark Brnovic, Director, Department of Gaming, testified that the Department, in conjunction with the state's tribal partners, works to ensure the integrity of gaming. Historically the need for gaming to be well regulated is because of the potential to attract criminal elements and corrupting influences. He said he appreciates the recommendation that the Department be continued for another ten years.

Chairman Driggs announced the names of those who signed up in support of HB2333 but did not speak:

Tom Dorn, representing San Carlos Apache Tribe

Question was called on the motion that HB2333 as amended do pass. The motion carried by a roll call vote of 5-1-1-1 (Attachment 10).

HB2426 – adult guardianship and protective proceedings – DO PASS

Vice-Chairman Ash moved that HB2426 do pass.

Blake Edwards, Majority Intern, stated that HB2426 adopts the Uniform Adult Guardianship and Protective Proceeding Jurisdictions Act in order to comply with model legislation prepared by the National Conference of Commissioners on Uniform State Laws (Attachment 11).

Jay Polk, representing the Arizona Chapter, National Academy of Elder Law Attorneys, in support of HB2426, reviewed the provisions of the bill. He related that this is a Uniform Act which has been adopted by 13 states and is under consideration by another seven states. This is equivalent to the Uniform Child Custody Act dealing with minor custody disputes.

Lisa Price, Acting President, Arizona Fiduciaries Association, Inc., testified that she is a licensed Fiduciary. She related that the Association supports this legislation. She asked Members to vote in favor of this legislation.

Vice-Chairman Ash announced the names of those who signed up in support of HB2426 but did not speak:

Linda Brown, representing self

Janna Day, representing State Bar of Arizona

Brian Hummell, Project Manager, Arizona Chapter, National Academy of Elder Law Attorneys

Bridget Swartz, Arizona Chapter of National Academy of Elder Law Attorneys

James McDougall, representing self

John Barron, representing self

Stacey Johnson, representing self

Mr. Konopnicki expressed concern about dissension between children. If the caretaker child removes the parent to another state and another child claims that it is a kidnapping, he wondered whether that is a valid concern and whether that could be used against the caretaker child. He said he does not expect an answer today but would like that question to be answered.

Question was called on the motion that HB2426 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 12).

HB2429 – mediation agreements; privileged communications – DO PASS

Vice-Chairman Ash moved that HB2429 do pass.

Blake Edwards, Majority Intern, related that HB2429 states that the terms of an agreement are not confidential in situations where the terms of an agreement are necessary to enforce or obtain approval of an agreement reached by disputing parties in a mediation (Attachment 13).

Art Hinshaw, Arizona State Bar, Alternative Dispute Resolution Section (ADR), in support of HB2429, advised that he specializes in alternative dispute resolution. He stated that this

legislation fills a gap in the mediation confidentiality statute. Currently, the law states that agreements reached in mediation between parties are confidential. This legislation provides that if there is a dispute about what the agreement says, the court will decide on what the parties agreed to.

Vice-Chairman Ash announced the names of those who signed up in support of HB2429 but did not speak:

James McDougall, representing self

Linda Brown, representing self

Janna Day, representing State Bar of Arizona

Question was called on the motion that HB2429 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 14).

HB2435 – repetitive offenders; probation; marijuana offenses – DO PASS AMENDED

Vice-Chairman Ash moved that HB2435 do pass.

Stacy Weltsch, Majority Research Analyst, advised that HB2435 makes technical and clarifying changes to Arizona's sentencing statutes (Attachment 15).

Vice-Chairman Ash moved that the Driggs two-page amendment dated 1/25/10 to HB2435 be adopted (Attachment 16).

Ms. Weltsch explained that the two-page amendment clarifies that the \$20 probation assessment applies to a person convicted of a felony regardless of whether a fine is imposed (Attachment 16).

Question was called on the motion that the Driggs two-page amendment dated 1/25/10 to HB2435 be adopted (Attachment 16). The motion carried.

Vice-Chairman Ash moved that HB2435 as amended do pass.

Jerry Landau, Government Affairs Director, Arizona Supreme Court, in support of HB2435, advised that the bill addresses two unintended substantive changes from the criminal code sentencing bill of two years ago and makes some clarifications to current statute. The amendment clarifies that the assessment applies to all felony cases, not just those in which a fine is imposed.

Vice-Chairman Ash stated concern that in some states the elements of the crime may not be the same as in Arizona. Mr. Landau said that may be a possibility. He explained that there are historical priors and multiple offenses. Before the sentencing code was changed, they were separate statutes but were combined into one statute when the code was reorganized. This legislation brings the law back to the way it was before sentencing code reorganization.

Vice-Chairman Ash announced the names of those who signed up in support of HB2435 but did not speak:

Linda Brown, representing self

Mary Marshall, Public Information Officer/Legislative Liaison, Arizona Criminal Justice Commission

Question was called on the motion that HB2435 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 17).

HB2384 – immigration laws; local law enforcement – DO PASS

Vice-Chairman Ash moved that HB2384 do pass.

Stacy Weltsch, Majority Research Analyst, explained that HB2384 prohibits cities, towns, county boards of supervisors and law enforcement agencies from enacting ordinances, rules, orders or resolutions or adopting policies which prohibit the lawful enforcement of United States immigration laws (Attachment 18).

Representative Tom Boone, sponsor, stated that a similar bill relating to prohibition of the lawful enforcement of immigration laws passed out of this Committee last year, and was sent to the Senate but was not heard because of lack of time. He advised that the intent of this legislation is for the lawful enforcement of the immigration laws. Additionally, the sections regarding sharing of information and training were also in another bill last year which was vetoed by the Governor. He noted that both issues received bipartisan support.

Ms. Sinema asked about the parameters of the training program. Representative Boone said that training is currently being done. Ms. Sinema said she understands there are no state training standards. Mr. Boone replied that this does not change the standards.

Ms. Sinema brought up funding and noted that if no federal funding is available, funding will be paid by the state. She asked whether a fiscal note has been requested. Representative Boone replied in the negative. He said he understands that state funding is available and pointed out that there is nothing in the bill that affects the General Fund.

Ms. Sinema queried the burden this places on local law enforcement. Representative Boone said he would like to defer that question to the cities and towns. He said he does not know if this is a burden on them because he has not heard from any of them on that issue.

Representative Boone disagreed with Mr. Miranda's statement that this removes any restraints on any law enforcement officer from applying immigration law. He said it is very clear that this prohibits the enactment of any resolution that is intended to prohibit the lawful enforcement of U.S. immigration laws. Mr. Miranda said there is the possibility that the language can be interpreted to refer to an individual officer. Representative Boone countered that it refers to a body of rules, not to individual officers. He said he would be happy to change the language to reflect that.

Mr. Miranda said it appears that this jumps several steps. He said it is open ended and does not prioritize crimes by putting violent crimes and drug offenses before enforcing immigration laws. Representative Boone replied that there is nothing in the bill that steers law enforcement in that direction. The bill allows law enforcement to have the latitude to prioritize.

Chairman Driggs stated that local law enforcement should have the ability to set its own priorities because every jurisdiction has its own needs to address. He said he believes it would be a dangerous precedent for the Legislature to set priorities for law enforcement.

Mr. Miranda said it is obvious that the public wants law enforcement to go after the most serious criminal activity. He reiterated that this clearly is open-ended legislation and there is nothing in the bill that addresses serious criminal elements. He again feels that this allows law enforcement to go after illegal immigrants. Representative Boone stated that this does not force any local authority to enforce immigration laws; it prohibits those local jurisdictions from prohibiting officers to go after illegal immigrants.

Ms. Sinema said she would like to see a list of those organizations that are not providing training or enforcement, and what kind of burden this legislation will place on them. Representative Boone said he can get that information. Ms. Sinema pointed out that if some agencies are not doing this now, it will be a new burden and new cost on them.

Mrs. Tovar opined that the intent of this legislation is racial profiling and said that certain people will be targeted. She noted that this is a serious and valid concern for her constituents. She asked that language be included in the bill to help prevent that. Representative Boone said there is no language in the bill that says or contemplates that. Currently, there are both federal and state laws that deal with racial profiling on the books. He does not see how this bill will change anything that is happening now. He reiterated that it does not deal with racial profiling; it deals with law enforcement agencies being able to enforce immigration laws and the prohibition against the enforcement of immigration laws.

Mark Spencer, President, Phoenix Law Enforcement Association (PLEA), testified in favor of HB2384. He said his comments will focus on the presence of *illegal* immigrants in the country. He gave many examples of law enforcement officers who were injured or killed by illegal immigrants over the past years. He revealed that in 2000, the City of Phoenix restricted its officers from partnering with U.S. Immigration and Customs Enforcement (ICE). Law enforcement officers clearly saw a connection between illegal immigration and crime, and felt that the policy was detrimental to the quality of life in Phoenix. He said that PLEA does not believe that ethnicity is indicative of criminality because crime is a choice. In addition, the federal government is failing miserably in protecting the borders, and the Border Patrol needs all the assistance it can get. This legislation does not mandate officers to engage in routine immigration enforcement. Officers want the ability to contact ICE. Any policies that prohibit that have a direct impact not only on the community but on officers as well. He asked for support of this bill.

Mrs. Barto asked whether this is a mandate for law enforcement. Officer Spencer replied in the negative. It would not prohibit officers from contacting ICE when there is reasonable suspicion. He said it is proactive enforcement.

Ms. Sinema noted that in the examples given of officers injured and killed, the offending individuals were apprehended under existing law and she asked why a new law is needed. Officer Spencer answered that this allows officers to enforce existing laws, and if they develop reasonable suspicions, they should share those suspicions with ICE.

Ms. Sinema queried what is needed from the Legislature if this is not a mandate. Officer Spencer said that a small minority of jurisdictions refuse to comply with the rules of law. This proposal targets some agencies that do not allow contact and interaction with ICE. Ms. Sinema commented that if this is not a mandate, it appears to usurp local authority. Officer Spencer again stated that some local authorities want to restrict contact with ICE. This bill clearly promotes equal protection of the law.

Discussion ensued on racial profiling.

Mr. Montenegro said he does not see this as profiling. Mr. Miranda disagreed.

Chairman Driggs mentioned that there has been a lot of conjecture about the impact this will have on Phoenix law enforcement. Officer Spencer said this provides another tool for law enforcement by being able to partner with federal partners. He maintained that the policy of prohibiting or restricting contact with federal partners is unreasonable and dangerous

Discussion ensued on contacting ICE.

Mr. Miranda expressed concern that this adds the element of casting a wider net. Officer Spencer reiterated that the goal is not for officers to engage in routine immigration enforcement. The old policy prevented some local authorities from calling ICE.

Chairman Driggs pointed out that this bill clarifies that an entity cannot prohibit a law enforcement agency from enacting ordinances, rules, orders or resolutions or adopting policies which prohibit the lawful enforcement of United States immigration laws. Officer Spencer concurred. He said it utilizes the federal partnership.

Officer Spencer agreed with Chairman Driggs' comment that this is discretionary for the officer and said he believes discretion is important.

Jennifer Allen, Executive Director, Border Action Network, in opposition to HB2384, advised that the Network works with immigrant families along the border. She advised that there already is collaboration so most of the issues already exist. This legislates what local agencies can do and opined that local government should not be strapped. The reality is that there are less illegal crossings now and she believes this bill is not necessary.

William Straus, Arizona Director, Anti-Defamation League, spoke against HB2384. He said this bill attempts to define what municipalities can or cannot do. In talking to officers, they have told him they believe that their interaction with the Hispanic community has greatly eroded over the years. He insisted that public safety is a priority issue and hopes that law enforcement agencies prioritize and focus on serious crimes. He said he believes this legislation will redirect resources from the real threat of violent crimes.

Christopher Griffin, representing self, testified against HB2384. He referred to Officer Spencer's comment that past history is indicative of future performance. Because of the past history of how the Latino community has been treated in Arizona, racial profiling will continue to exist, especially if there are not policies to address those problems. He disagreed with Officer Spencer's statement that this legislation gives law enforcement agencies another

tool; instead he believes it takes another tool from them because it incurs fear and mistrust of local officers in the Latino community. In conclusion, he opined that this proposal will prevent law enforcement agencies from setting their own priorities.

Vice-Chairman Ash announced the names of those who signed up in support of HB2384 but did not speak:

Clorinda Lozano, advocate for families of Arizona, representing self
Linda Brown, representing self
Brian Livingston, Executive Director, Arizona Police Association
Richard Hanson, representing self
Jamie Wilder, representing self

Vice-Chairman Ash announced the names of those who signed up in opposition to HB2384 but did not speak:

Christopher Griffin, representing self
Liana Rowe, representing self
Martin Quezada, Los Abogados, Hispanic Bar Association of Arizona
Seth Apfel, representing self
Lydia Guzman, representing self
Alessandra Meetze, Executive Director, ACLU of Arizona
Matt Besenfelder, representing self
Kristy Theilen, representing self
Ramon Garcia, representing self

Vice-Chairman Ash announced the names of those who signed up as neutral on HB2384 but did not speak:

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns

Question was called on the motion that HB2384 do pass. The motion carried by a roll call vote of 4-3-0-1 (Attachment 19).

Without objection, the meeting adjourned at 12:01 p.m.

Joanne Bell, Committee Secretary
February 4, 2010

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)