ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature – Second Regular Session
COMMITTEE ON COMMERCE
Report of Regular Meeting
Wednesday, January 20, 2016
House Hearing Room 1 -- 9:30 a.m.

Convened 9:32 a.m.
Recessed
Reconvened
Adjourned 10:49 a.m.

Members Present
Mr. Espinoza
Mr. Lawrence
Ms. Mach
Ms. Plumlee
Mr. Rivero
Mr. Shope
Mrs. Norgaard, Vice-Chairman
Mr. Petersen, Chairman

Members Absent

Agenda
Original Agenda – Attachment 1

Request to Speak
Report – Attachment 2

Committee Action

Bill	Action	Vote	Attachments (Summaries, Amendments, Roll Call, Attendance)
HB2035	HELD		
HB2047	DPA	7-0-0-1	3, 4, 5
HB2112	DPA	7-1-0-0	6, 7, 8
HB2113	HELD		
HB2114	DPA	7-1-0-0	9, 10, 11
Committee Attendance			12

Heather Covert, Chairman Assistant
January 22, 2016

(Original attachments on file in the Office of the Chief Clerk; video archives available at http://www.azleg.gov)

Conv: 9:32 am
Adj: 10:49 am

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session
REGULAR MEETING AGENDA
COMMITTEE ON COMMERCE

DATE Wednesday, January 20, 2016 ROOM HHR 1 TIME 9:30 A.M. NOTE TIME CHANGE ~~9:00 A.M.~~

Members:

Mr. Espinoza	Ms. Plumlee	Mrs. Norgaard, Vice-Chairman
Mr. Lawrence	Mr. Rivero	Mr. Petersen, Chairman
Ms. Mach	Mr. Shope	

1. Call to Order
2. Introduction of Members and Staff
3. Consideration of Bills
4. Public Testimony
5. Closing Remarks
6. Adjourn

Bills		Short Title	Strike Everything Title
HB2035	HELD	cosmetology; omnibus	
		(Gowan)	
		COM, RULES	
HB2047	DPA	trade names; trademarks; online registration	
		(Stevens)	
	7-0-0-1	COM, RULES	
HB2112	DPA	technical event production services; exemption	
		(Petersen: Allen J, Cobb, et al)	
	7-1-0-0	COM, RULES	
HB2113	HELD	employment security; time frames; appeals	
		(Petersen, Cobb, Fann, et al)	
		COM, RULES	
HB2114	DPA	independent business status; declaration	
		(Petersen, Cobb: Allen J, et al)	
	7-1-0-0	COM, RULES	

ORDER OF BILLS TO BE SET BY THE CHAIRMAN

HC
1/13/16

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

Attachment 1

Information Registered on the Request to Speak System

House Commerce (1/20/2016)

HB2047, trade names; trademarks; online registration

Support:

Eric Emmert, East Valley Chambers Of Commerce Alliance ; Lee Miller, Arizona Secretary Of State's Office

HB2112, technical event production services; exemption

Support:

Farrell Quinlan, State Director, NATIONAL FEDERATION OF INDEPENDENT BUSINESS; Justin Niedzialek, representing self

Neutral:

Kathy Ber, DES Director of Legislative Services, Arizona Department Of Economic Security

HB2113, employment security; time frames; appeals

Support:

Farrell Quinlan, State Director, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Oppose:

ellen katz, William E. Morris Institute For Justice

All Comments:

ellen katz, William E. Morris Institute For Justice: This bill violates federal law. It requires that if an employer files an appeal and the board does not issue a decision within a certain time, then the employer wins. Unemployment insurance is for the benefit of the employees.

HB2114, independent business status; declaration

Support:

Farrell Quinlan, State Director, NATIONAL FEDERATION OF INDEPENDENT BUSINESS; Susan Brenton, MANUFACTURED HOUSING COMMUNITIES OF AZ INC; Justin Niedzialek, representing self

Neutral:

Tom Farley, Arizona Association Of Realtors; Marc Osborn, PROPERTY CASUALTY INSURERS ASSOC OF AMERICA; Wendy Briggs, UBER TECHNOLOGIES, INC; Kathy Ber, DES Director of Legislative Services, Arizona Department Of

Economic Security; Barbara Meaney, LYFT; Tony Bradley, President and CEO, Arizona Trucking Association; Nicole LaSlavic, AZ ASSOCIATION OF REALTORS

Oppose:

Brian Clymer, representing self; Brian Tassinari, ARIZONA MASONRY CONTRACTORS ASSOCIATION; Mike Sutter, representing self; ellen katz, William E. Morris Institute For Justice

All Comments:

Brian Clymer, Self: This bill allows a business to contract out the core of it business to "independent contractors" and deny workers' compensation to those workers. This contradicts Anton v. ICA, 144 Ariz. 566 (Ct. App. 1984). Expect more lawsuits if this bill passes.; Tom Farley, Arizona Association Of Realtors: The AZ Association of Realtors is neutral with the amendment.; Marc Osborn, PROPERTY CASUALTY INSURERS ASSOC OF AMERICA: We have concerns about making the declaration match the language in workers comp statute. Working with NFIB on a solution.; ellen katz, William E. Morris Institute For Justice: Bill intent is to make more persons ineligible for UI. Employers often misclassify employees so they can avoid paying UI taxes. DES claims they will go behind these declarations but the statute creates a rebuttable presumption--very high burden.; Wendy Briggs, UBER TECHNOLOGIES, INC: We think the bill needs some language chnages; Tony Bradley, Arizona Trucking Association: We are supportive of the concept but concerned about some of its aspects. Willing to work with sponsor to address our concerns.

HOUSE OF REPRESENTATIVES

HB 2047

trade names; trademarks; online registration
Prime Sponsor: Representative Stevens, LD 14

X Committee on Commerce

Caucus and COW

House Engrossed

OVERVIEW

HB 2047 directs the Secretary of State's (SOS) office to utilize its website for any person or business to file initial registrations and renewals for trade names, trademarks, or service marks.

PROVISIONS

1. Permits online registration of trade names, trademarks, and service marks through the SOS website.
2. Clarifies that a renewal must be filed and the appropriate fee paid within six months before the registration expires.
3. Makes technical and conforming changes.

CURRENT LAW

A.R.S. § 44-1443 outlines the process to register trade names, trademarks and service marks at the SOS's office. Applications for the various registrations may be obtained from the SOS's office or downloaded from their website. Completed applications must be notarized and submitted to the SOS with the appropriate filing fee listed in the Trade Name and Trademark Handbook. Trademarks and service marks must be renewed every 10 years and trade names every 5 years.

Registration filings include the name and business address of the person applying. A trade name, title or designation to be registered must list the general nature of the business conducted by the applicant, and length of time the name, title or designation has been used. A trademark or service mark registration must describe the goods or services and manner with which the mark is used in connection with those goods and services, the date of its first use, and a statement that the applicant is the owner and that no other person has a right to use the mark.

ADDITIONAL INFORMATION

According to the SOS's website:

Filing a trade name registers a business name for public record. A trade name is similar to a *doing business as* ("DBA") name, and is not legally required but is an acceptable business practice. Customers should perform an extensive and independent search for name availability. Once filed, the names are checked against the state's database of over 300,000 names.

Filing a trademark registers a logo or slogan to be displayed on goods or services for public record. Trademarks are also referred to as service marks. These are also not required to be registered, but are an acceptable business practice.

Fifty-second Legislature
Second Regular Session

Commerce
H.B. 2047

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2047

(Reference to printed bill)

Page 3, after line 8, insert:

"Sec. 5. Effective date

This act is effective from and after December 31, 2016."

Amend title to conform

THOMAS R. SHOPE, JR.

2047SHOPE
01/19/2016
08:27 AM
H: dc/ajh

Attachment 4

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session

ROLL CALL VOTE

COMMITTEE ON COMMERCE BILL NO. HB 2047

DATE January 20, 2016 MOTION: DPA

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Espinoza		✓			
Mr. Lawrence		✓			
Ms. Mach		✓			
Ms. Plumlee		✓			
Mr. Rivero					✓
Mr. Shope		✓			
Mrs. Norgaard, Vice-Chairman		✓			
Mr. Petersen, Chairman		✓			
		7	0	0	1

COMMITTEE SECRETARY

APPROVED:

WARREN H. PETERSEN, Chairman
JILL NORGAARD, Vice-Chairman

ATTACHMENT

Attachment 5

HOUSE OF REPRESENTATIVES

HB 2112

technical event production services; exemption
Prime Sponsor: Representative Petersen, et al., LD 12

X Committee on Commerce

Caucus and COW

House Engrossed

OVERVIEW

HB 2112 exempts technical event production services personnel from the definition of *employee* for purposes of the unemployment insurance (UI) program administered by the Department of Economic Security (DES).

PROVISIONS

1. Excludes from the definition of *employee*, individuals who perform technical event production services if they meet all of the following requirements: have the option to accept/reject assignments; have the right to work for multiple businesses; are not otherwise employed by the entity that coordinates or sponsors the events; are not otherwise employed by the entity that is coordinating, organizing or sponsoring the conference, convention, trade show, business, professional, charitable or similar event (Event).
2. Asserts that all qualifying persons who perform technical event production services are exempt, whether there is a direct contract or third party contract.
3. Defines *technical event production services* as all services to plan, coordinate, set-up, operate or breakdown the stages, tables, seating, displays, signs, audio/video equipment for an Event.

CURRENT LAW

DES administers Arizona's UI Program. Employers pay into the UI Trust Fund on behalf of their employees, and benefits are based on wages the employees earn in Arizona from employers who pay the unemployment insurance tax. Employees who lose their job through no fault of their own may receive monetary benefits while searching for another job. The current maximum benefit amount is $240 per week, and eligible workers must be able to work, available for work and actively seeking work.

A.R.S. § 23-613.01 defines an *employee* as any person performing services for an employer, and subject to the direction, rule or control of the employer in both method and final result performing a job. Statute describes control as setting the employee's work hours, work location, right to perform services for other employers, use of certain tools, equipment, materials, expenses and using other workers. Statute also lists a description of individuals that do not fall into the category of *employee*, such as independent contractors, business people, agents or consultants, or those working in an independent trade, skill or occupation, including sports officials, among others.

Fifty-second Legislature
Second Regular Session

Commerce
H.B. 2112

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2112

(Reference to printed bill)

Page 2, line 3, strike "PREFORMED" insert "PERFORMED"

Amend title to conform

WARREN H. PETERSEN

2112PETERSEN
01/19/2016
02:59 PM
H: dc/ajh

Attachment 7

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session

ROLL CALL VOTE

COMMITTEE ON COMMERCE BILL NO. HB 2112

DATE January 20, 2016 MOTION: DPA

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Espinoza		✓			
Mr. Lawrence		✓			
Ms. Mach			✓		
Ms. Plumlee		✓			
Mr. Rivero		✓			
Mr. Shope		✓			
Mrs. Norgaard, Vice-Chairman		✓			
Mr. Petersen, Chairman		✓			
		7	1	0	0

Kathy Covert
COMMITTEE SECRETARY

APPROVED:

WARREN H. PETERSEN, Chairman
JILL NORGAARD, Vice-Chairman

ATTACHMENT

Attachment 8

HOUSE OF REPRESENTATIVES

HB 2114

independent business status; declaration

Prime Sponsor: Representative Petersen, et al., LD 12

X Committee on Commerce

Caucus and COW

House Engrossed

OVERVIEW

HB 2114 establishes the Declaration of Independent Business Status (Declaration), which prescribes the relationship between the employer and the independent contractor.

PROVISIONS

1. Creates a new chapter of law entitled *Employment Relationships,* which outlines the criteria for the Declaration form that serves as proof of an independent contractor relationship between the employer and the contractor.
2. States that an independent contractor may assert the relationship with an employer by executing the Declaration, if both parties consistently follow its provisions.
3. Creates a rebuttable presumption of the business relationship by executing the Declaration between the independent contractor and the employer.
4. Requires the Declaration be signed/dated by the independent contractor and that the form substantially contain the following statements:
   The contractor:
   a. Operates an independent business to provide services for the contracting party as an independent contractor.
   b. Is not an employee of the contracting party and any services or work performed do not create a right to unemployment benefits or any other benefits resulting from an employment relationship.
   c. Is not insured by the contracting party's insurer, including workers' compensation.
   d. Is responsible for all tax liability, and is authorized to accept work from other business entities and individuals besides the contracting party.
   e. Acknowledges that the contracting party expects the contractor to provide services to other business entities and is not solely dependent on the contracting party.
   f. Has the right to accept or refuse requests for services by the contracting party.
   g. Reserves the right to subcontract services to qualified employees or subcontractors.
   h. Recognizes that the contracting party does not determine the time, day, method, or process to perform services; however, does have the right to enforce quality standards and deadlines to complete services.
   i. Is responsible for all required registrations and licenses to operate the business.
   j. Understands the contracting party will make payments according to the contract, but not pay a regular salary or payment.
   k. Is responsible for all tools, equipment and expenses incurred while performing the services for the contracting party.

   l. Acknowledges that the terms and conditions of the Declaration apply to the contractor, all employees and independent contractors.

5. Acknowledges that a Declaration does not solely constitute an independent contractor status.
6. States any supervision or control exercised by a business to comply with state or municipal laws, ordinances, rules or regulations may not be considered for the purposes of determining the independent contractor or employment status of any relationship.

CURRENT LAW

Although no current law exists that detail the specific independent business status and relationship between an employer and a contractor, the various statutory definitions and descriptions are utilized by state agencies to determine the work relationship.

For example, A.R.S. § 23-613.01 defines an *employee* as any person performing services for an employer, and subject to the direction, rule or control of the employer in both method and final result performing a job. Statute describes control as setting the employee's work hours, work location, right to perform services for other employers, use of certain tools, equipment, materials, expenses and using other workers. Statute also lists a description of individuals that do not fall into the category of *employee*, such as independent contractors, business people, agents or consultants, or those working in an independent trade, skill or occupation, including sports officials, among others.

Fifty-second Legislature
Second Regular Session

Commerce
H.B. 2114

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2114

(Reference to printed bill)

1 Page 1, strike lines 33 and 34, insert "INSURED UNDER THE CONTRACTING PARTY'S
2 HEALTH INSURANCE COVERAGE OR WORKERS COMPENSATION INSURANCE COVERAGE."
3 Page 2, between lines 39 and 40, insert:
4 "C. THE EXECUTION OF A DECLARATION OF INDEPENDENT BUSINESS STATUS AND
5 COMPLIANCE WITH THE DECLARATION PURSUANT TO THIS ARTICLE SHALL OPERATE TO THE
6 SAME EFFECT AS A DECLARATION EXECUTED PURSUANT TO SECTION 23-902, SUBSECTION
7 D."
8 Line 42, after "BY" insert "THE FEDERAL GOVERNMENT OR"
9 Amend title to conform

WARREN H. PETERSEN

2114PETERSEN
01/19/2016
03:39 PM
H: DC/rca

Attachment 10

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session

ROLL CALL VOTE

COMMITTEE ON COMMERCE BILL NO. HB 2114

DATE January 20, 2016 MOTION: DPA

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Espinoza		✓			
Mr. Lawrence		✓			
Ms. Mach			✓		
Ms. Plumlee		✓			
Mr. Rivero		✓			
Mr. Shope		✓			
Mrs. Norgaard, Vice-Chairman		✓			
Mr. Petersen, Chairman		✓			
		7	1	0	0

Heather Carter
COMMITTEE SECRETARY

APPROVED:

WARREN H. PETERSEN, Chairman
JILL NORGAARD, Vice-Chairman

ATTACHMENT

Attachment 11

ARIZONA STATE LEGISLATURE

Fifty-second Legislature - Second Regular Session

COMMITTEE ATTENDANCE RECORD

COMMITTEE ON **COMMERCE**

CHAIRMAN: Warren H. Petersen VICE-CHAIRMAN: Jill Norgaard

DATE	1/20/16	/16	/16	/16	/16
CONVENED	932am	m	m	m	m
RECESSED					
RECONVENED					
ADJOURNED	1049am				
MEMBERS					
Mr. Espinoza	✓				
Mr. Lawrence	✓				
Ms. Mach	✓				
Ms. Plumlee	✓				
Mr. Rivero	✓				
Mr. Shope	✓				
Mrs. Norgaard, Vice-Chairman	✓				
Mr. Petersen, Chairman	✓				

√ Present --- Absent exc Excused

Attachment 12