



Convened 9:37am  
adjourned 11:36am

ADDENDUM #2- 02/08/16 ADDENDUM #2- 02/08/16 ADDENDUM #2- 02/08/16

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

REGULAR MEETING AGENDA

COMMITTEE ON JUDICIARY

DATE Wednesday, February 10, 2016

ROOM HHR 3

TIME 9:30 A.M. NOTE TIME CHANGE  
9:00 A.M.

Members:

Mr. Friese  
Mr. Hale

Mr. Kern  
Mr. Mesnard

Mr. Borrelli, Vice-Chairman  
Mr. Farnsworth E, Chairman

Bills	Short Title	Strike Everything Title
*HB2446	<u>dpas/E</u> prohibited weapon; definition; exclusions (Livingston, Barton, Borrelli, et al)	S/E: same subject
	<u>4-1-0-1</u> JUD held 0-0-0-0-0, RULES	

ADDENDUM #1 - 02/05/16

HB2221 dpa attorney regulation; assessments; membership dues  
(Kern: Finchem, Lawrence, et al)

4-1-0-1 JUD, RULES

HB2261 dp electronic benefit transfers; prohibitions; violations  
(Brophy McGee, Borrelli, Coleman, et al)

4-1-0-1 JUD, RULES

HB2382 dpa property; declaration amendment; procedure  
(Farnsworth E)

5-0-0-1 JUD, RULES

HB2386 dpa patent troll prevention act  
(Farnsworth E)

5-0-0-1 JUD, RULES

Bills	Short Title	Strike Everything Title
HB2537	<u>dp</u> supreme court justices; number (Mesnard)	
	<u>4-1-0-1</u> JUD, RULES	
HB2539	<u>dpa</u> sex offender registration; petition; termination (Bowers)	
	<u>50-0-1</u> JUD, RULES	
HCM2002	<u>dpa</u> state bar; rules; first amendment (Kern: Campbell, Finchem, et al)	
	<u>4-1-0-1</u> JUD, RULES	

**ADDENDUM #2 - 02/08/16**

HB2219	<u>dp</u> supreme court; attorney licensing (Kern: Finchem, Leach, et al)
	<u>4-1-0-1</u> JUD, RULES

\* On previous agenda

**ORDER OF BILLS TO BE SET BY THE CHAIRMAN**

jm  
2/5/16  
2/8/16

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.

# Information Registered on the Request to Speak System

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*House Judiciary (2/10/2016)*

## **HB2446, prohibited weapon; definition; exclusions**

### **Testified in support:**

Todd Rathner, Arizona State Rifle And Pistol Association

### **Support:**

George Moriarty, representing self; Cheryl Caldararo, representing self; robert tomich, representing self; Ellen Shea, representing self; Donald Scott, representing self; Willie Stubbs, representing self; Ronald Yospur, representing self; larry berger, representing self; Steven Baranowski, representing self; JoAnn Dutton, representing self; Daniel Salerno, representing self; Randal Totten, representing self; Sean Baguley, representing self; Edward Bluma, representing self; Dave Kopp, Manager, AZ CITIZENS DEFENSE LEAGUE INC; Purdy Hart, representing self; Michael Gibbs, representing self; William Jonas, representing self; Daniel Reid, National Rifle Association

### **Oppose:**

Maureen Tozzi, representing self

### **All Comments:**

George Moriarty, Self: Do not accept hostile amendments.; Cheryl Caldararo, Self: Do not accept hostile amendments; robert tomich, Self: do not accept hostile amendments; Ellen Shea, Self: Do not accept hostile amendments; Donald Scott, Self: Please do not accept hostile amendments.; Willie Stubbs, Self: Do not accept hostile amendments; Steven Baranowski, Self: Do not accept hostile amendments.; Daniel Salerno, Self: Please vote for this bill. Also, please do not accept any amendments that would weaken this bills legislative intent. Thank You; Randal Totten, Self: I urge you to support this bill. Would remove an outdated reference to the U.S. Department of Treasury when referencing the National Firearms Act in regards to the definition of prohibited weapons.; Edward Bluma, Self: Do Not accept hostile amendments...; Michael Gibbs, Self: This bill makes an important correction to Arizona statute. As currently written, ARS refers to a non-existent federal registry.; William Jonas, Self: Do not accept hostile amendments.

## **HB2221, attorney regulation; assessments; membership dues**

### **Testified in support:**

David Alger, representing self; Jack Levine, representing self

### **Testified as opposed:**

John Phelps, representing self

### **Support:**

Vicki Alger, representing self; Martin Lynch, representing self; Wesley Harris, representing self; Patricia Cummins, representing self; Michael Gibbs, representing self; Dave Hollenbeck, representing self; Michael Hunter, BARRY

GOLDWATER INSTITUTE FOR PUBLIC POLICY RESEARCH; Terry Decker, representing self; Jared Blanchard, representing self; James Caskey, representing self; Troy Cantor, representing self; Wade Singleton, representing self; Ann Blanchard, representing self; Jenny Kayat, representing self; Lynn Handsaker, representing self; Larry Lynch, representing self; Ken Higginbotam, representing self; Al Tracy, representing self; Renee Moore, representing self; Ray Farzan, representing self; Greg Roberts, representing self; Angela Sweeny, representing self; Joe Phillips, representing self; Brent Miller, representing self; Edwin Pizarro, representing self; Lisa Aubuchon, CITIZENS 4 CLEAN COURTS-AZ, Self; Cara Nicole Trujillo, representing self; Alfredo Trujillo, representing self; James Manley, representing self; Timothy Holt, representing self; Rachel Alexander, representing self; Mauricio Hernandez, representing self; Paul Avelar, representing self; Eleanor Miller, representing self

### **Oppose:**

Jerry Landau, Arizona Judicial Council; Geoffrey Trachtenberg, representing self; Janna Day, State Bar Of Arizona; Jason Barraza, Associate Director, LOS ABOGADOS HISPANIC BAR ASSOCIATION

### **All Comments:**

Vicki Alger, Self: Operating as both a regulator and a mandatory trade association, the Bar has not served the public or attorneys well--far from it. This bill restores some much-needed transparency and common sense.; Martin Lynch, Self: This bill will be supported to the hilt. Yes we need regulation of the Attorneys and the State Bar is a private club of attorneys so no wonder they don't provide effective oversight; Wesley Harris, Self: Because every lawyer in our state is required to be a member of the State Bar Association, this bill goes hand in glove with HB2219 and eliminates the lack of freedom under the First Amendment of the Bill of Rights so attorneys may speak freely.; Patricia Cummins, Self: I appreciate this bill, please pass this bill!; Michael Gibbs, Self: Arizona is a right-to-work state. No one should be required to join a union or trade association involuntarily in order to practice their trade or profession.; Terry Decker, Self: 60 minutes We Run the Country video at <http://www.cbsnews.com/news/anonymous-inc-60-minutes-steve-kroft-investigation/>. "One of the lawyers who provided suggestions on how to move the funds was James Silkenat, the President of the American Bar Associ; Jared Blanchard, Self: Representing Goldwater Institute; James Caskey, Self: Support legal reform.; Troy Cantor, Self: Please Support; Wade Singleton, Self: Yes Yes Yes; Lynn Handsaker, Self: This too.; Joe Phillips, Self: We need oversight of attorneys. This is not rocket science.; James Manley, Self: Senior Attorney, Goldwater Institute; Jack Levine, Self: 85-90% of Lawyers favor this.; Paul Avelar, Self: also hcm2002 and hb2219

## **HCM2002, state bar; rules; first amendment**

### **Support:**

Vicki Alger, representing self; David Alger, representing self; Terry Decker, representing self; Martin Lynch, representing self; Patricia Cummins, representing self; James Caskey, representing self; Troy Cantor, representing self; Wade Singleton, representing self; Ann Blanchard, representing self; Jenny Kayat, representing self; Lynn Handsaker, representing self; Larry Lynch, representing self; Ken Higginbotam, representing self; Al Tracy, representing self; Renee Moore, representing self; Ray Farzan, representing self; Greg Roberts, representing self; Angela Sweeny, representing self; Joe Phillips, representing self; Edwin Pizarro, representing self; Cara Nicole Trujillo, representing self; Alfredo Trujillo, representing self; Timothy Holt, representing self; Mauricio Hernandez, representing self; Paul Avelar, representing self

## **Oppose:**

Geoffrey Trachtenberg, representing self; Janna Day, STATE BAR OF AZ; John Phelps, representing self; Jason Barraza, Associate Director, LOS ABOGADOS HISPANIC BAR ASSOCIATION

## **All Comments:**

Vicki Alger, Self: HCM 2002 strengthens needed protections of core First Amendment rights and urges much-needed transparency concerning the State Bar's use of membership dues.; David Alger, Self: It is unconscionable how the AZ Bar abuses its power to persecute attorneys who disagree with it.; Terry Decker, Self: We have a corruption problem with the BAR and the good attorneys have little voice in the matter. I will give examples of the corruption, lack of oversight, and political considerations in office when their job is legal protection of the citizens.; Martin Lynch, Self: SUPPORT I; Patricia Cummins, Self: Support I; James Caskey, Self: Support I; Troy Cantor, Self: Please Support; Wade Singleton, Self: Yes Yes Yes; Lynn Handsaker, Self: YES I want this too. Attorneys need to be regulated by SOMEBODY!; Paul Avelar, Self: also hb 2221 and 2219

## **HB2261, electronic benefit transfers; prohibitions; violations**

### **Testified in support:**

Scott Smith, City Of Phoenix

### **Testified as neutral:**

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

## **HB2382, property; declaration amendment; procedure**

### **Testified in support:**

Meghaen Dell'Artino, TIFFANY & BOSCO

### **Testified as neutral:**

Jason Barraza, Associate Director, ROBSON COMMUNITIES

## **HB2386, patent troll prevention act**

### **Testified in support:**

Jay Kaprosy, Arizona Bankers Association

### **Support:**

Dave Kopp, Manager, AZ CITIZENS DEFENSE LEAGUE INC; Garrick Taylor, Arizona Chamber Of Commerce And Industry; Mike Huckins, GREATER PHOENIX CHAMBER OF COMMERCE; Susie Stevens, Allergan; Dianne McCallister, Arizona Technology Council; Steven Zylstra, representing self; Marilyn Purvis, Arizona Bankers Association; Michelle Ahlmer, AZ RETAILERS ASSN

### **Neutral:**

Amanda Rusing, Arizona Bio Industry Association

## **HB2537, supreme court justices; number**

### **Support:**

Attorney General Mark Brnovich, representing self; Rebecca Baker, Maricopa County Attorney's Office

### **Oppose:**

Rivko Knox, representing self; Gini McGirr, League of Women Voters of Arizona, Legislative Chair, representing self; Alice Stambaugh, representing self; Teri Farneti, representing self; Barbara Jean Robertson, representing self; Robyn Prud'homme-Bauer, representing self; Nancy Pfafflin, representing self

### **All Comments:**

Gini McGirr, Self: Vote No on HB2537. The number should remain the same and judges should NEVER be elected.; Barbara Jean Robertson, Self: Oppose! Election of judges is a terrible idea as proven in other states.; Nancy Pfafflin, Self: I strongly support the current system of selecting judges from a list of qualified nominees submitted by a bi-partisan commission, with voter approval for retention.

## **HB2539, sex offender registration; petition; termination**

### **Testified in support:**

Kimberly MacEachern, AZ PROSECUTING ATTORNEYS ADVISORY COUNCIL

### **Support:**

kathleen mayer, Pima County Attorney's Office; Rebecca Baker, Maricopa County Attorney's Office; Shannon Rich, AZ COALITION TO END SEXUAL AND DOMESTIC VIOLENCE

### **Neutral:**

Austin Hoopes, PINAL COUNTY ATTORNEY'S OFFICE

## **HB2219, supreme court; attorney licensing**

### **Testified in support:**

Martin Lynch, representing self; Terry Decker, representing self; Mauricio Hernandez, representing self; Paul Avelar, representing self

### **Testified as opposed:**

John Phelps, representing self

### **Support:**

Wesley Harris, representing self; Patricia Cummins, representing self; Michael Gibbs, representing self; James Caskey, representing self; Troy Cantor, representing self; Wade Singleton, representing self; Ann Blanchard, representing self; Jenny Kayat, representing self; Lynn Handsaker, representing self; Larry Lynch, representing self; Ken Higginbotam, representing self; Al Tracy, representing self; Renee Moore, representing self; Ray Farzan, representing self; Greg Roberts, representing self; Angela Sweeny, representing self; Joe Phillips, representing self; Lisa Aubuchon, CITIZENS 4 CLEAN COURTS-AZ, Self; Rachel Alexander, representing self

## **Oppose:**

Jerry Landau, Arizona Judicial Council; Rick DeBruhl, representing self; Geoffrey Trachtenberg, representing self; Janna Day, State Bar Of Arizona; Jason Barraza, Associate Director, LOS ABOGADOS HISPANIC BAR ASSOCIATION

## **All Comments:**

Martin Lynch, Self: This bill will be supported to the hilt. We want background checks for all attorneys, not just new attorneys. Why can't we also have drug screening like so many other professions including airline pilots using existing protocols?; Wesley Harris, Self: Arizona is a right to work state and a mandatory membership in the State Bar Association (a Guild) in contrary to that policy. Additionally the State Bar holds sway over all attorneys because it has a mandatory monopoly which breeds contempt.; Patricia Cummins, Self: Please pass this bill.; Michael Gibbs, Self: Arizona is a right-to-work state. No one should be required to join a union or trade association involuntarily in order to practice their trade or profession.; James Caskey, Self: I support this.; Troy Cantor, Self: Support; Wade Singleton, Self: Yes Yes Yes; Lynn Handsaker, Self: Do it.; Larry Lynch, Self: Please regulate Attorneys for a change.; Ken Higginbotam, Self: My experience in court was horrific due to abuse of the judicial system by attorneys.; Al Tracy, Self: Myself and friends and family have all had problems with Attorneys who seem to be unregulated. Please help.; Renee Moore, Self: Please regulate these people. My family has paid the price for this unruly behavior.; Greg Roberts, Self: Unregulated attorneys is a recipe for disaster.; Angela Sweeny, Self: Please act to protect our families and children from this unregulated predatory profession. Not all of them are bad but it only takes a few to wreck many lives.; Joe Phillips, Self: Oversight of attorneys is an absolute must. Anybody who says the current State Bar is effective is not paying attention.; Paul Avelar, Self: also hb2221 and hcm2002

PLEASE COMPLETE THIS FORM FOR THE PUBLIC RECORD



HOUSE OF REPRESENTATIVES

Please PRINT Clearly

Committee on JUDICIARY Bill Number 2221 2219  
 Date 2/9/2014  Support  Oppose  Neutral  
 Name LAURA HALL Need to Speak?  Yes  No  
 Representing \_\_\_\_\_ Are you a registered lobbyist? N  
 Complete Address PO Box 510 PHX  
 E-mail Address LHALL@AZLEGIS.GOV Phone Number 602-423-5003  
 Comments: \_\_\_\_\_

\*\*\*FIVE-MINUTE SPEAKING LIMIT\*\*\*

LAURA HALL



# HOUSE OF REPRESENTATIVES

HB 2219

supreme court; attorney licensing

Prime Sponsor: Representative Kern, LD 20

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X Committee on Judiciary

Caucus and COW

House Engrossed

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## OVERVIEW

HB 2219 requires the Arizona Supreme Court (Court) to license attorneys.

## PROVISIONS

1. Requires the Court to license attorneys for the practice of law in Arizona.
2. States that the Court must adopt rules to carry out licensure that include:
  - a. Minimum qualifications;
  - b. Testing requirements;
  - c. Requirements for background investigations;
  - d. Attorney discipline; and
  - e. Disbarring attorneys.
3. States that an attorney shall not be required to be a member of any organization to become or remain a licensed attorney in Arizona.

## CURRENT LAW

The State Bar of Arizona (SBA) was officially created by the Legislature in 1933 through the State Bar Act, which made membership in the SBA mandatory for lawyers practicing in Arizona. In 1973, the Supreme Court adopted rules concerning the governance of the SBA. From 1973 until the State Bar Act was allowed to sunset in 1984, the regulation of attorneys was accomplished through both court rules and statutes. Since the sunset, the Supreme Court has held through Rule the authority to regulate attorneys and exercise oversight over the SBA. Specifically, Rules 31-74 of the Arizona Supreme Court outline the authority of the Court, the organization of the SBA, attorney licensure, requirements for attorneys and the discipline process.

## ADDITIONAL INFORMATION

According to the SBA, the first statewide bar association was created in 1895. The Arizona Bar Association was later incorporated in 1906 and in 1912 it began admission procedures for the practice of law. The SBA currently oversees 18,250 attorneys (SBA).

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

**ROLL CALL VOTE**

COMMITTEE ON JUDICIARY BILL NO. HB 2219

DATE February 10, 2016 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	1	0	1

*Jan Mullenaux*  
 COMMITTEE SECRETARY

APPROVED:   
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

ATTACHMENT \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HB 2221

attorney regulation; assessments; membership dues  
Prime Sponsor: Representative Kern, LD 20

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X Committee on Judiciary  
Caucus and COW  
House Engrossed

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## OVERVIEW

HB 2221 makes changes to the regulation of attorneys in Arizona.

## PROVISIONS

1. Affirms that to the extent provided in the Arizona Constitution, the Supreme Court has authority over regulatory functions relating to the practice of law, including the regulation of attorneys.
2. Permits the Supreme Court to charge a mandatory assessment from each attorney for purposes of supporting the Court's regulatory functions.
3. Limits the use of the mandatory assessment collected by the Supreme Court to the following regulatory functions for attorneys under active Supreme Court supervision:
  - a. Admitting an attorney to the practice of law;
  - b. Maintaining attorney records;
  - c. Enforcing the ethical rules that govern attorneys;
  - d. Regulating continuing legal education;
  - e. Maintaining attorney trust accounts; and
  - f. Preventing the unauthorized practice of law.
4. Allows the State Bar of Arizona (SBA) to collect and use voluntary membership dues for activities not outlined above.
5. Mandates that the collection of voluntary dues be separate from mandatory assessments.
6. Requires the Supreme Court to incorporate mandatory assessment monies into its budget.
7. Prohibits any other entity in Arizona from collecting mandatory assessment from an attorney.
8. States that if the SBA accepts any mandatory assessment monies collected by the Supreme Court to carry out any of the mandatory functions listed above, it must:
  - a. Comply with the open records law (A.R.S. Title 39, Ch. 1);
  - b. Make a list of all expenditures made with mandatory assessment monies available to the public; and
  - c. Provide an independent audit of the expenditures.

## CURRENT LAW

The SBA was officially created by the Legislature in 1933 through the State Bar Act, which made membership in the SBA mandatory for lawyers practicing in Arizona. In 1973, the Supreme Court adopted rules concerning the governance of the SBA. From 1973 until the State

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Second Regular Session

Judiciary

## HB 2221

Bar Act was allowed to sunset in 1984, the regulation of attorneys was accomplished through both court rules and statutes. Since the sunset, the Supreme Court has held through Rule the authority to regulate attorneys and exercise oversight over the SBA. Specifically, Rules 31-74 of the Arizona Supreme Court outline the authority of the Court, the organization of the SBA, attorney licensure, requirements for attorneys and the discipline process.

### ADDITIONAL INFORMATION

According to the SBA, the first statewide bar association was created in 1895. The Arizona Bar Association was later incorporated in 1906 and in 1912 it began admission procedures for the practice of law. The SBA is governed by a Board of Governors comprised of 30 individuals: four public members (non-attorney), three at-large members appointed by the Supreme Court; 19 attorney members elected by SBA members (by district) and four ex-officio members who are the immediate past president and the three deans of Arizona law schools. The SBA currently oversees 18,250 attorneys (SBA).

Pursuant to Administrative order 2014-79, in 2014 the Supreme Court created the Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona to examine the rules of the Supreme Court on the mission and governance of the SBA. The Task Force's final report can be found here.

The House Ad-Hoc Committee on Mandatory Bar Associations (Ad-Hoc Committee) met during the 2015 interim and adopted the following recommendations at its final meeting on December 7, 2015:

- The process to determine how SBA member dues are spent in reference to political activity should be more transparent.
- The SBA should adopt an opt-in policy for attorneys who wish to have any portion of their dues used beyond attorney regulation and discipline.
- The Ad-Hoc Committee noted that the Legislature created the SBA with the State Bar Act of 1933. In 1973, the Supreme Court adopted its own rules concerning the governance of the SBA. From 1973 until the State Bar Act was allowed to sunset in 1984, the regulation of attorneys was accomplished through both court rules and the statutory framework. Since that time, the Arizona Supreme Court has asserted a claim to exclusive authority over the regulation of attorneys and the governance of the SBA.
- That legislation be drafted to call on the Arizona Supreme Court to:
  - Modify its rules related to the SBA to further respect and protect the First Amendment freedoms of Arizona attorneys; and
  - Establish improved transparency measures with relation to SBA practices and policies.

COMMITTEE ON JUDICIARY  
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2221  
(Reference to printed bill)

- 1 Page 1, line 5, strike "public"; after "records" insert ": definition"  
2 Line 9, strike "AS A CONDITION OF PRACTICING LAW IN THIS STATE,"  
3 Line 10, after "ATTORNEY" insert ", AS A CONDITION OF PRACTICING LAW IN THIS  
4 STATE,"  
5 Line 26, after "COLLECT" insert "A"  
6 Line 30, strike "SHALL:"  
7 Strike lines 31 and 32  
8 Line 33, strike "2." insert a comma  
9 Line 34, after the comma insert "SHALL"  
10 Line 35, after "PROVIDE" insert "FOR"  
11 Line 38, after the period insert "ANY PERSON MAY REQUEST TO EXAMINE OR BE  
12 FURNISHED COPIES, PRINTOUTS OR PHOTOGRAPHS OF ANY RECORD DURING REGULAR  
13 OFFICE HOURS OR MAY REQUEST THAT THE STATE BAR OF ARIZONA MAIL TO THE PERSON  
14 A COPY OF ANY RECORD NOT OTHERWISE AVAILABLE ON THE STATE BAR'S WEBSITE. THE  
15 STATE BAR OF ARIZONA MAY REQUIRE ANY PERSON REQUESTING A COPY OF ANY RECORD  
16 TO PAY IN ADVANCE FOR ANY COPYING AND POSTAGE CHARGES. THE STATE BAR OF  
17 ARIZONA SHALL PROMPTLY FURNISH, AND MAY CHARGE A FEE FOR, THE COPIES,  
18 PRINTOUTS OR PHOTOGRAPHS. IF REQUESTED, THE STATE BAR OF ARIZONA SHALL  
19 FURNISH AN INDEX OF RECORDS OR CATEGORIES OF RECORDS THAT HAVE BEEN WITHHELD  
20 AND THE REASONS THE RECORDS OR CATEGORIES OF RECORDS HAVE BEEN WITHHELD FROM  
21 THE REQUESTING PERSON. THE STATE BAR OF ARIZONA MAY NOT INCLUDE IN THE INDEX  
22 INFORMATION THAT IS EXPRESSLY PRIVILEGED OR CONFIDENTIAL BY LAW. ANY PERSON  
23 WHO HAS REQUESTED TO EXAMINE OR COPY RECORDS PURSUANT TO THIS SUBSECTION AND

1 WHO HAS BEEN DENIED ACCESS TO OR THE RIGHT TO EXAMINE OR COPY SUCH RECORDS  
2 MAY APPEAL THE DENIAL THROUGH A SPECIAL ACTION IN THE SUPERIOR COURT,  
3 PURSUANT TO THE RULES OF PROCEDURE FOR SPECIAL ACTIONS AGAINST A PUBLIC BODY.  
4 THE COURT MAY AWARD ATTORNEY FEES AND OTHER LEGAL COSTS THAT ARE REASONABLY  
5 INCURRED IN ANY ACTION UNDER THIS SUBSECTION IF THE PERSON SEEKING RECORDS  
6 SUBSTANTIALLY PREVAILS. THIS SUBSECTION DOES NOT LIMIT THE RIGHTS OF ANY  
7 PARTY TO RECOVER ATTORNEY FEES, EXPENSES AND DOUBLE DAMAGES PURSUANT TO  
8 SECTION 12-349. ANY PERSON WHO IS WRONGFULLY DENIED ACCESS TO RECORDS  
9 PURSUANT TO THIS SUBSECTION HAS A CAUSE OF ACTION AGAINST THE STATE BAR OF  
10 ARIZONA FOR ANY DAMAGES RESULTING FROM THE DENIAL.

11 F. FOR THE PURPOSES OF THIS SECTION, "RECORD" MEANS ANY RECORD OR  
12 OTHER MATTER IN THE CUSTODY OF THE STATE BAR OF ARIZONA RELATED TO MANDATORY  
13 ASSESSMENT MONIES THAT ARE COLLECTED BY THE SUPREME COURT AND THAT ARE  
14 ACCEPTED BY THE STATE BAR OF ARIZONA PURSUANT TO SUBSECTION E OF THIS  
15 SECTION."

16 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH  
CHAIRMAN

2221JUDICIARY  
02/10/2016  
11:00 AM  
H: KP/rca

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

**ROLL CALL VOTE**

COMMITTEE ON JUDICIARY BILL NO. HB 2221

DATE February 10, 2016 MOTION: dpa

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale					1
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	1	0	1

*Jan Mallonau*  
 COMMITTEE SECRETARY

APPROVED:  
  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

ATTACHMENT: \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HCM 2002

state bar; rules; first amendment

Prime Sponsor: Representative Kern, LD 20

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X Committee on Judiciary

Caucus and COW

House Engrossed

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## OVERVIEW

HCM 2002 requests that the Arizona Supreme Court modify its rules related to the State Bar of Arizona (SBA).

## PROVISIONS

1. Asks the Supreme Court to ensure compliance with the *Keller v State Bar of California* decision by modifying its rules to protect the First Amendment freedoms of Arizona attorneys.
2. Directs the Secretary of State to transmit copies of the HCM to each Arizona Supreme Court Justice.

## CURRENT LAW

The SBA was officially created by the Legislature in 1933 through the State Bar Act, which made membership in the SBA mandatory for lawyers practicing in Arizona. In 1973, the Supreme Court adopted rules concerning the governance of the SBA. From 1973 until the State Bar Act was allowed to sunset in 1984, the regulation of attorneys was accomplished through both court rules and statutes. Since the sunset, the Supreme Court has held through Rule the authority to regulate attorneys and exercise oversight over the SBA. Rule 32 of the Arizona Supreme Court specifically outlines the organization of the SBA.

## ADDITIONAL INFORMATION

In *Keller v State Bar of California*, 496 U.S. 1 (1990), the United States Supreme Court found that California's integrated bar interfered with the First Amendment freedoms of bar members by using dues for political and ideological activities. The Court held that dues could only be used for the regulation of attorneys or the improvement of legal systems.

The House Ad-Hoc Committee on Mandatory Bar Associations was created during the 2015 interim. The Committee held four meetings and adopted the following relevant recommendations at its final meeting on December 7, 2015:

- The Committee found that the process to determine how SBA member dues are spent in reference to political activity should be more transparent.
- The Committee recommended that the SBA adopt an opt-in policy for attorneys who wish to have any portion of their dues used beyond attorney regulation and discipline.
- The Committee recommended that legislation be drafted to call on the Arizona Supreme Court to:

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Second Regular Session

Judiciary

## HCM 2002

- Modify its rules related to the SBA to further respect and protect the first amendment freedoms of Arizona attorneys;
- Establish improved transparency measures with relation to SBA practices and policies.

COMMITTEE ON JUDICIARY  
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.C.M. 2002  
(Reference to printed memorial)

1 Page 1, strike lines 3 through 8, insert:

2 "Whereas, the United States Supreme Court has long recognized that the  
3 First Amendment protects the right not to be associated with certain beliefs.  
4 *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Wooley v.*  
5 *Maynard*, 430 U.S. 705 (1977); and"

6 Line 10, after "Court" strike remainder of line

7 Strike lines 11 through 14, insert "upheld a claim by California mandatory bar  
8 members that the use of compulsory dues to finance political and ideological  
9 activities with which the members disagree violates the members' First  
10 Amendment rights. The Court further found that compulsory dues could not be  
11 used for activities that are not germane to the purpose for which compelled  
12 association was justified. In the case of the mandatory bar, the Court found  
13 compelled association justified only by the state's interest in regulating  
14 the legal profession and improving the quality of legal services.  
15 Furthermore, only if challenged expenditures were "necessarily or reasonably  
16 incurred" for those limited purposes could they be funded with compulsory  
17 dues; and

18 Whereas, the Court in *Keller* also saw "a substantial analogy between  
19 the relationship of the State Bar and its members . . . and the relationship  
20 of employee unions and their members": and

21 Whereas, "[c]ompulsory subsidies for private speech are . . . subject  
22 to exacting First Amendment scrutiny and [are rarely] sustained . . ." *Knox*  
23 *v. Serv. Employees Int'l Union, Local 1000*, 132 S. Ct. 2277, 2282 (2012); see  
24 also *Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014). In *Knox*, the Supreme  
25 Court also said that "in the rare case where a mandatory association can be  
26 justified, compulsory fees can be levied only insofar as they are a  
27 "necessary incident" of the "larger regulatory purpose which justified the  
28 required association"; and"

1 Line 15, strike "an integrated" insert "a mandatory"; after "bar" insert  
2 "association"; after "influence" insert ", takes policy positions"

3 Line 18, strike "state" insert "mandatory"

4 Page 1, line 19, strike "behaviors" insert "activities that are not reasonably  
5 related to the regulation of the legal profession or improving the quality of  
6 legal services"

7 Line 20, strike "its" insert "their"

8 Between lines 21 and 22, insert:

9 "Whereas, despite *Keller's* narrow boundaries of regulating the legal  
10 profession and improving the quality of legal services, the State Bar of  
11 Arizona has adopted Article XIII of its bylaws to set its own criteria of  
12 political or ideological permissibility. Thereby, it has unilaterally deemed  
13 itself "*Keller-pure*" to consequently fund political speech, including  
14 lobbying and electioneering, and ideological activities with compulsory  
15 member dues so long as it alone says the expenditures are "reasonably  
16 related" to, among others, "matters relating to the improvement of the  
17 functioning of the justice system" or to "increasing the availability of  
18 legal services to the public" or "any other activity authorized by law"; and"

19 Line 28, after "Arizona's" insert "judicial"

20 Strike lines 33 through 35, insert:

21 "Whereas, the process to determine how the State Bar of Arizona spends  
22 member dues in reference to political activity lacks transparency; and

23 Whereas, to the extent provided by the Constitution of Arizona, all  
24 regulatory functions relating to the practice of law, including the  
25 regulation of attorneys in this state, are within the authority of the  
26 Arizona Supreme Court."

27 Between lines 40 and 41, insert:

28 "2. That the Arizona Supreme Court establish improved transparency  
29 measures with respect to the practices and policies of the State Bar of  
30 Arizona in spending member dues."

31 Renumber to conform

32 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH  
CHAIRMAN

HCM2002JUDICIARY

02/10/2016

11:06 AM

H: HN/rca

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

**ROLL CALL VOTE**

COMMITTEE ON \_\_\_\_\_ JUDICIARY \_\_\_\_\_ BILL NO. HCM 2002

DATE February 10, 2016 MOTION: dpa

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale					/
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	1	0	1

*Jan Mullenau*  
COMMITTEE SECRETARY

APPROVED:

*Eddie Farnsworth*

EDDIE FARNSWORTH, Chairman  
SONNY BORRELLI, Vice-Chairman

ATTACHMENT \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HB 2261

electronic benefit transfers; prohibitions; violations  
Prime Sponsor: Representative Brophy McGee, LD 28

---

X Committee on Judiciary  
Caucus and COW  
House Engrossed

---

## OVERVIEW

HB 2261 establishes a penalty for the unlawful use of cash assistance electronic benefit transfer (EBT) cards at specific locations.

## PROVISIONS

1. Makes it a Class 1 misdemeanor (up to six months in jail, \$2,500 fines plus surcharges) for any of the following businesses to operate on their licensed premises an automatic teller machine (ATM) or a point-of-sale terminal (POS terminal) that accepts cash assistance EBT cards and processes cash assistance EBT card transactions:
  - a. A liquor store;
  - b. A commercial horse racing or dog racing facility;
  - c. An adult oriented entertainment establishment (AOB).
2. Prohibits the use of cash assistance EBT cards at medical marijuana dispensaries. Makes a violation a Class 1 misdemeanor.
3. Removes municipal licensing and permitting requirements for AOBs.
4. Clarifies that having an ATM or POS terminal that accepts cash assistance EBT cards at an AOB is a license violation, instead of both a license and a permit violation.
5. Makes technical and conforming changes.

## CURRENT LAW

Laws 2013, Chapter 207 added A.R.S. § 46-297, which prohibits the use of cash assistance EBT cards at the following locations:

- A liquor store;
- A commercial horse racing or dog racing facility;
- A casino, gambling casino or gaming establishment, or a gaming facility; or
- An AOB.

A.R.S. § 46-297 also outlines specific requirements for municipalities that license or regulate AOBs. An AOB that violates the prohibition on the placement of an ATM or POS terminal that accepts EBT card transactions subject to licensing or permit action. A.R.S. § 46-297 defines both *AOBs* and *EBT card transactions*.

A.R.S. Title 46, Article 5 governs the Temporary Assistance for Needy Families Program. Cash assistance is administered by the Department of Economic Security. To be eligible for cash assistance, a person must meet the specific criteria outlined in A.R.S. § 46-292.

Fifty-second Legislature  
Second Regular Session

Judiciary

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

**ROLL CALL VOTE**

COMMITTEE ON \_\_\_\_\_ JUDICIARY \_\_\_\_\_ BILL NO. HB 2261

DATE February 10, 2016 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	1	0	1

*Jan Mullenaupt*  
 \_\_\_\_\_  
 COMMITTEE SECRETARY

APPROVED:  
*Eddie Farnsworth*  
 \_\_\_\_\_  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

ATTACHMENT \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HB 2539

sex offender registration; petition; termination

Prime Sponsor: Representative Bowers, LD 25

---

X Committee on Judiciary

Caucus and COW

House Engrossed

---

## OVERVIEW

HB 2539 allows a sex offender who was convicted of sexual conduct with a minor to be relieved of the duty to register if specific conditions are met.

## PROVISIONS

1. Allows a sex offender who was convicted of sexual conduct with a minor (A.R.S. § 13-1405) to petition the court to terminate his or her duty to register. Applies if the offender has completed a term of probation.
2. Requires the defendant to include in the petition a statement that none of the following apply to the offender:
  - a. Defendant was 22 years old or older at the time of the offense;
  - b. The victim was under 15 years of age at the time of the offense;
  - c. The conduct was not consensual;
  - d. The defendant was found at any time to have violated any sex offender terms of probation;
  - e. The defendant committed another felony offense or any sexual offense or any offense involving the sexual exploitation of children;
  - f. There is probable cause to believe that the defendant is a sexually violent person or a sexually violent person proceeding is currently pending;
  - g. There was more than one victim; and
  - h. The defendant was sentenced to prison for the offense.
3. Requires the court to set a hearing once the petition is received.
  - a. Court must provide sufficient notice to the state for notifying the victim.
  - b. The state has the burden of establishing by preponderance of the evidence that any of the factors outlined above exist.
  - c. Any party may introduce reliable and relevant evidence (including hearsay).
  - d. All parties must be given the opportunity to be heard (including the victim).
4. Requires the court to deny the petition if the court finds that any of the factors outlined above apply.
5. Allows the court to deny the petition if denial is:
  - a. In the best interests of justice, or
  - b. Tends to ensure the safety of the public.

## HB 2539

### CURRENT LAW

A.R.S. Title 13, Ch. 38, Article 3 governs the registration and monitoring of sex offenders. A.R.S. § 13-3821 outlines which offenses require a person to register as a sex offender and includes the crime of sexual conduct with a minor (A.R.S. § 13-1405). Sex offender registration is a lifetime duty in Arizona, except in the following situations:

- If the offender was adjudicated delinquent for the offense requiring registration, the duty to register ends when the offender reaches age 25 (A.R.S. § 13-3821(D)).
- If the offender is on probation, under 22 years of age and was convicted of an offense that occurred before the offender turned 18, the offender can ask the court to consider ending the offender's duty to register. (A.R.S. § 13-923)

Sexual conduct with a minor pursuant to (A.R.S. § 13-1405) is a Class 6 felony if the victim is 15, 16 or 17 years of age and the offender was not in a *position of trust* (defined in A.R.S. § 13-1401). It is a defense to prosecution if the victim is 15, 16 or 17 years of age, the conduct was consensual and the defendant is:

- Under 19 years of age or attending high school, and
- No more than 2 years older than the victim.

### ADDITIONAL INFORMATION

According to the Arizona Department of Public Safety, there are approximately 15,438 registered sex offenders in Arizona.

Fifty-second Legislature  
Second Regular Session

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2539

(Reference to printed bill)

- 1 Page 1, line 11, strike "THAT NONE" insert "ALL"; strike "FACTORS APPLY"
- 2 Line 12, after "WAS" insert "UNDER" strike "OR OLDER"
- 3 Line 14, strike "UNDER"; after "FIFTEEN" insert ", SIXTEEN OR SEVENTEEN"
- 4 Line 16, strike "NOT"
- 5 Line 17, strike ", AT ANY TIME, WAS FOUND IN VIOLATION OF" insert "DID NOT
- 6 VIOLATE"
- 7 Line 19, after "DEFENDANT" insert "HAS NOT"
- 8 Line 21, after "HAS" insert "NOT"
- 9 Line 22, after "OR" insert "THAT"
- 10 Line 23, after "IS" insert "NOT"
- 11 Line 25, strike "INVOLVED" insert "DID NOT INVOLVE"
- 12 Line 26, after "WAS" insert "NOT"
- 13 Line 31, strike the third "THE"
- 14 Line 32, strike "EXISTENCE OF ANY" insert "THAT A"; after "SECTION" insert "HAS
- 15 NOT BEEN MET"
- 16 Line 36, strike "OF"
- 17 Line 37, strike "THE FACTORS" insert "FACTOR"; strike "APPLIES" insert "IS NOT
- 18 MET"
- 19 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH  
CHAIRMAN

2539JUDICIARY  
02/10/2016  
11:14 AM  
H: KP/rca

2539FARNSWORTH E\*  
02/09/2016  
11:38 AM  
C: SP

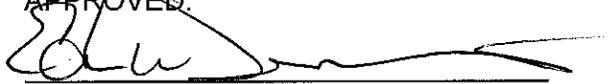
**ARIZONA HOUSE OF REPRESENTATIVES**  
**Fifty-second Legislature - Second Regular Session**

**ROLL CALL VOTE**

COMMITTEE ON \_\_\_\_\_ JUDICIARY \_\_\_\_\_ BILL NO. HB 2539

DATE February 10, 2016 MOTION: Spa

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		5	0	0	1

APPROVED:  
  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

  
 COMMITTEE SECRETARY

ATTACHMENT \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HB 2537

supreme court justices; number

Prime Sponsor: Representative Mesnard, LD 17

---

X Committee on Judiciary

Caucus and COW

House Engrossed

---

## OVERVIEW

HB 2537 adds two Justices to the Arizona Supreme Court.

## PROVISIONS

1. Increases the number of Supreme Court Justices from five to seven.
2. Makes technical changes.

## CURRENT LAW

Article 6 § 2 of the Arizona Constitution states that the Supreme Court shall consist of no less than five Justices. The number of Justices on the Supreme Court was last increased in 1960. Prior to that, Article 6 § 2 allowed the Supreme Court to have three Justices and permitted the number to be increased or decreased from time to time by law.

A.R.S. § 12-101 states that the Supreme Court shall consist of five judges. The term of office of each judge is six years.

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

**ROLL CALL VOTE**

COMMITTEE ON JUDICIARY BILL NO. HB 2537

DATE February 10, 2016 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	1	0	1

*Jan Mullenau*  
 COMMITTEE SECRETARY

APPROVED:  
  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

ATTACHMENT \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HB 2382

property; declaration amendment; procedure  
Prime Sponsor: Representative Farnsworth E, LD 12

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X Committee on Judiciary  
Caucus and COW  
House Engrossed

---

## OVERVIEW

HB 2382 creates a process for amending a community declaration.

## PROVISIONS

1. Allows a community declaration to be amended by the association or a property owner by an affirmative vote or written consent of the number of eligible voters required under the declaration. This option is only applicable after the period of declarant control.
2. Allows an amendment to apply to fewer than all of the lots or less than all of the property, if:
  - a. The amendment receives the affirmative vote or written consent of the number of voters required by the declaration, and
  - b. The amendment receives the affirmative vote or written consent of all of the owners that the amendment applies to.
3. Requires the association or an owner to prepare, execute and record a written instrument outlining the amendment within 30 days of adoption.
4. Makes an amendment to the declaration effective immediately when the instrument is recorded in the county where the property is located, regardless of any other provision in the declaration requiring periodic renewal.
5. Applies this process to planned communities and private covenants.

## CURRENT LAW

A.R.S. Title 33, Chapter 4 outlines requirements for conveyances and deeds. Under A.R.S. § 33-440, a property owner may enter into a private covenant that is valid and enforceable as long as specific conditions are met. The statute defines a *private covenant* as any uniform or non-uniform covenant, restriction or condition regarding real property that is contained in any deed, contract, agreement or other recorded instrument affecting real property.

A.R.S. Title 33, Chapter 16 governs planned communities. A.R.S. § 33-1802 defines relevant terms, including an *association*, *planned community* and a *declaration*. *Declaration* is defined as any instruments, however denominated, that establish a planned community and any amendment to those instruments. A.R.S. 33-440 uses the same definition of a *declaration* as is provided in A.R.S. § 33-1802.

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2382

(Reference to printed bill)

- 1 Page 1, line 23, after "CONTROL" insert "OR, IF DURING THE PERIOD OF DECLARANT  
2 CONTROL, EXCEPT WITH THE WRITTEN CONSENT OF THE DECLARANT IN EACH INSTANCE"  
3 Line 25, after "ASSOCIATION" insert ", IF ANY,"; strike "AN OWNER" insert "THE  
4 OWNERS"; after "OF" insert "THE"  
5 Line 27, after the second "OF" insert "OWNERS OR"; strike "AS PRESCRIBED" insert  
6 "SPECIFIED"; after "DECLARATION" insert ", INCLUDING THE ASSENT OF ANY  
7 INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION"  
8 Line 33, after "OF" insert "OWNERS OR"; strike "AS PRESCRIBED" insert  
9 "SPECIFIED"; after "DECLARATION" insert ", INCLUDING THE ASSENT OF ANY  
10 INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION"  
11 Line 37, after "OWNER" insert "THAT IS AUTHORIZED BY THE AFFIRMATIVE VOTE ON OR  
12 THE WRITTEN CONSENT TO THE AMENDMENT"  
13 Between lines 42 and 43, insert:  
14 "D. THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION  
15 33-1202, A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802 OR A TIMESHARE  
16 PLAN OR ASSOCIATION AS DEFINED IN SECTION 33-2202."  
17 Reletter to conform  
18 Page 2, line 6, after "CONTROL" insert "OR, IF DURING THE PERIOD OF DECLARANT  
19 CONTROL, EXCEPT WITH THE WRITTEN CONSENT OF THE DECLARANT IN EACH INSTANCE"  
20 Line 8, after "ASSOCIATION" insert ", IF ANY,"; strike "AN OWNER" insert "THE  
21 OWNERS"; after "OF" insert "THE"

- 1 Page 2, line 10, after the second "OF" insert "OWNERS OR"; strike "AS PRESCRIBED"  
2 insert "SPECIFIED"; after "DECLARATION" insert ", INCLUDING THE ASSENT OF ANY  
3 INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION"  
4 Line 16, after "OF" insert "OWNERS OR"; strike "AS PRESCRIBED" insert  
5 "SPECIFIED"; after "DECLARATION" insert "AND INCLUDING THE ASSENT OF ANY  
6 INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION"  
7 Line 20, after "OWNER" insert "THAT IS AUTHORIZED BY THE AFFIRMATIVE VOTE ON OR  
8 THE WRITTEN CONSENT TO THE AMENDMENT"  
9 Amend title to conform  
and, as so amended, it do pass

EDDIE FARNSWORTH  
CHAIRMAN

2382JUDICIARY  
02/10/2016  
11:24 AM  
H: MYR/rca

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

**ROLL CALL VOTE**

COMMITTEE ON \_\_\_\_\_ JUDICIARY \_\_\_\_\_ BILL NO. HB 2382

DATE February 10, 2016 MOTION: dpa

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		5	0	0	1

*Jan Mullen*  
 \_\_\_\_\_  
 COMMITTEE SECRETARY

APPROVED:  
*Eddie Farnsworth*  
 \_\_\_\_\_  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

ATTACHMENT \_\_\_\_\_



# HOUSE OF REPRESENTATIVES

HB 2386

patent troll prevention act

Prime Sponsor: Representative Farnsworth E, LD 12

---

X Committee on Judiciary

Caucus and COW

House Engrossed

---

## OVERVIEW

HB 2386 prohibits patent infringement claims that are made in bad faith.

## PROVISIONS

1. Prohibits a person from asserting patent infringement in bad faith. Outlines the following factors that the court may consider (non-exclusive) as evidence of a bad faith claim:
  - a. The demand does not contain the following:
    - i. The patent number;
    - ii. The name and address of the patent owner or assignee, if any;
    - iii. Facts relating to the specific areas where the product, service or technology infringes on the patent or is covered by the patent's claims.
  - b. The target of the claim has requested information outlined above and it hasn't been provided within a reasonable time.
  - c. No analysis was made in advance of the demand to compare the claims in the patent to the target of the claim's product, service or technology. If an analysis was made, it does not identify specific areas where the product, service or technology is covered by claims in the patent.
  - d. The demand requests a response or payment of licensing fee within an unreasonably short period of time.
  - e. The person making the assertion of infringement knew or should have known that the assertion is without merit.
  - f. The assertion of infringement contains false, misleading or deceptive information.
  - g. The person or a subsidiary/affiliate has previously filed or threatened to file a lawsuit(s) based on the same or substantially equivalent assertion and the court previously found the person's assertion without merit.
  - h. Any other factor deemed relevant by the court.
2. Outlines the following factors that the court may consider as evidence that a person has made an assertion of infringement in good faith:
  - a. If the demand didn't contain the information outlined above, it is provided within a reasonable period of time after being requested.
  - b. The person has:
    - i. Engaged in an analysis to establish a reasonable, good faith basis for believing the target infringed on the patent;
    - ii. Attempted to negotiate an appropriate remedy in a reasonable manner;

## HB 2386

- iii. The person has made a substantial investment in the use of the patent or in the production or sale of a product covered under the patent;
  - iv. The person either:
    - Demonstrated reasonable business practices to enforce the patent, or
    - Successfully enforced the patent or one substantially similar, through litigation
  - v. The person is either:
    - The inventor or original assignee, or
    - An institution of higher education or an affiliated technology transfer organization.
  - vi. Any other factor deemed relevant by the court.
3. Provides that it is not an unfair or deceptive trade practice for a person who has the right to license or enforce a patent to do any of the following, as long as it is not done in bad faith:
    - a. Advise others of that ownership or right of license or enforcement;
    - b. Communicate to others that the patent is available for license or sale;
    - c. Notify that the patent has been infringed pursuant to federal law (35 USC § 287).
    - d. Seek compensation for infringement or license to the patent, if it is reasonable to believe that the person may owe compensation or may need or want a license to the patent.
  4. States that any act or practice that does not comply with these requirements is unlawful under A.R.S. § 44-1522 (consumer fraud). Allows the Attorney General (AG) to investigate and enforce violations using consumer fraud statutes.
  5. Exempts demands or assertions of infringement that meet specific federal criteria (biological products and drugs).
  6. Allows the act to be cited as the “Patent Troll Prevention Act.”
  7. Contains a severability clause.

### CURRENT LAW

A.R.S. Title 44, Chapter 10, Article 7 provides for enforcement against acts of consumer fraud. A.R.S. § 44-1522 outlines practices that are considered unlawful as related to fraud. A.R.S. 44-1524 allows the AG to investigate unlawful acts. A.R.S. 44-1528 allows the AG to seek an injunction in court to prevent current or future unlawful acts while A.R.S. § 44-1531 provides civil penalties of up to \$10,000 per violation.

### ADDITIONAL INFORMATION

According to the National Conference of State Legislatures, as of November 2015, 27 states had enacted legislation to deter bad-faith assertions of patent infringement (commonly referred to as “patent trolling”). Information on the bills enacted in those states is available [here](#).

Fifty-second Legislature  
Second Regular Session

COMMITTEE ON JUDICIARY  
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2386  
(Reference to printed bill)

- 1 Page 1, line 19, after "INFRINGEMENT" insert "OR SHOULD OBTAIN A LICENSE TO A  
2 PATENT BUT DOES NOT INCLUDE A PETITION FILED IN A COURT OF COMPETENT  
3 JURISDICTION"
- 4 Line 25, after "MADE" insert "AND WHO HAS INFORMATION INDICATING THE ASSERTION  
5 WAS MADE IN BAD FAITH PURSUANT TO SECTION 44-1422"
- 6 Line 27, after "INFRINGEMENT" insert "AND WHO HAS INFORMATION INDICATING THE  
7 ASSERTION OF PATENT INFRINGEMENT WAS MADE IN BAD FAITH PURSUANT TO SECTION  
8 44-1422"
- 9 Strike lines 28 through 30
- 10 Between lines 41 and 42, insert:
- 11 "(d) AN EXPLANATION OF WHY THE PERSON MAKING THE ASSERTION HAS  
12 STANDING, IF THE ASSIGNMENT SYSTEM OF THE UNITED STATES PATENT AND TRADEMARK  
13 OFFICE DOES NOT IDENTIFY THE PERSON ASSERTING THE PATENT INFRINGEMENT AS THE  
14 OWNER."
- 15 Page 3, line 13, after "A" insert "CIVIL ACTION THAT INCLUDES A"  
16 Amend title to conform  
and, as so amended, it do pass

EDDIE FARNSWORTH  
CHAIRMAN

2386JUDICIARY  
02/10/2016  
11:28 AM  
H: MEB/rca

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

**ROLL CALL VOTE**

COMMITTEE ON JUDICIARY BILL NO. HB 2386

DATE February 10, 2016 MOTION: dpa

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		5	0	0	1

APPROVED:

  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

  
 COMMITTEE SECRETARY

ATTACHMENT



# HOUSE OF REPRESENTATIVES

HB 2446

prohibited weapon; definition; exclusions

Prime Sponsor: Representative Livingston, LD 22

---

X Committee on Judiciary

Caucus and COW

House Engrossed

---

## STRIKE EVERYTHING SUMMARY

The strike-everything amendment makes clarifying changes to an exception in the *prohibited weapons* statute.

## PROVISIONS

1. Excludes specific firearms or devices that are possessed, manufactured or transferred in compliance with federal law from the definition of a *prohibited weapon*.
2. Makes technical and conforming changes.

## CURRENT LAW

A.R.S. § 13-3101, Subsection A, paragraph 8 includes the following in the definition of a *prohibited weapon*:

- An item that is a bomb, grenade, rocket having a propellant charge of more than four ounces of mine and that is explosive, incendiary or poison gas;
- A device designed, made, or adapted to muffle the report of a firearm;
- A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function on the trigger;
- A rifle with a barrel length of less than 16 inches, or shotgun with a barrel length of less than 18 inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than 26 inches.

Under A.R.S. § 13-3101(B), these items are excluded from the definition of a *prohibited weapon* if registered in the National Firearms Registry and Transfer Records of the Treasury Department, or if the firearm has been classified as a curio or relic by the Treasury Department.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) was transferred from the Treasury Department to the Department of Justice through the Homeland Security Act of 2002. The National Firearms Registration and Transfer Record is maintained by the ATF.

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2446

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-3101, Arizona Revised Statutes, is amended to  
3 read:

4 13-3101. Definitions

5 A. In this chapter, unless the context otherwise requires:

6 1. "Deadly weapon" means anything that is designed for lethal use.  
7 The term includes a firearm.

8 2. "Deface" means to remove, alter or destroy the manufacturer's  
9 serial number.

10 3. "Explosive" means any dynamite, nitroglycerine, black powder, or  
11 other similar explosive material, including plastic explosives. Explosive  
12 does not include ammunition or ammunition components such as primers,  
13 percussion caps, smokeless powder, black powder and black powder substitutes  
14 used for hand loading purposes.

15 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
16 rifle, shotgun or other weapon that will expel, is designed to expel or may  
17 readily be converted to expel a projectile by the action of an explosive.  
18 Firearm does not include a firearm in permanently inoperable condition.

19 5. "Improvised explosive device" means a device that incorporates  
20 explosives or destructive, lethal, noxious, pyrotechnic or incendiary  
21 chemicals and that is designed to destroy, disfigure, terrify or harass.

22 6. "Occupied structure" means any building, object, vehicle,  
23 watercraft, aircraft or place with sides and a floor that is separately  
24 securable from any other structure attached to it, that is used for lodging,  
25 business, transportation, recreation or storage and in which one or more  
26 human beings either are or are likely to be present or so near as to be in  
27 equivalent danger at the time the discharge of a firearm occurs. Occupied

1 structure includes any dwelling house, whether occupied, unoccupied or  
2 vacant.

3 7. "Prohibited possessor" means any person:

4 (a) Who has been found to constitute a danger to self or to others or  
5 to have A persistent or acute ~~disabilities~~ DISABILITY or grave ~~disabilities~~  
6 DISABILITY pursuant to court order pursuant to section 36-540, and whose  
7 right to possess a firearm has not been restored pursuant to section 13-925.

8 (b) Who has been convicted within or without this state of a felony or  
9 who has been adjudicated delinquent for a felony and whose civil right to  
10 possess or carry a gun or firearm has not been restored.

11 (c) Who is at the time of possession serving a term of imprisonment in  
12 any correctional or detention facility.

13 (d) Who is at the time of possession serving a term of probation  
14 pursuant to a conviction for a domestic violence offense as defined in  
15 section 13-3601 or a felony offense, parole, community supervision, work  
16 furlough, home arrest or release on any other basis or who is serving a term  
17 of probation or parole pursuant to the interstate compact under title 31,  
18 chapter 3, article 4.1.

19 (e) Who is an undocumented alien or a nonimmigrant alien traveling  
20 with or without documentation in this state for business or pleasure or who  
21 is studying in this state and who maintains a foreign residence abroad. This  
22 subdivision does not apply to:

23 (i) Nonimmigrant aliens who possess a valid hunting license or permit  
24 that is lawfully issued by a state in the United States.

25 (ii) Nonimmigrant aliens who enter the United States to participate in  
26 a competitive target shooting event or to display firearms at a sports or  
27 hunting trade show that is sponsored by a national, state or local firearms  
28 trade organization devoted to the competitive use or other sporting use of  
29 firearms.

30 (iii) Certain diplomats.

31 (iv) Officials of foreign governments or distinguished foreign  
32 visitors who are designated by the United States department of state.

33 (v) Persons who have received a waiver from the United States attorney  
34 general.

35 (f) Who has been found incompetent pursuant to rule 11, Arizona rules  
36 of criminal procedure, and who subsequently has not been found competent.

37 (g) Who is found guilty except insane.

1           8. "Prohibited weapon":

2           (a) Includes the following:

3           (i) An item that is a bomb, grenade, rocket having a propellant charge  
4 of more than four ounces or mine and that is explosive, incendiary or poison  
5 gas.

6           (ii) A device that is designed, made or adapted to muffle the report  
7 of a firearm.

8           (iii) A firearm that is capable of shooting more than one shot  
9 automatically, without manual reloading, by a single function of the trigger.

10          (iv) A rifle with a barrel length of less than sixteen inches, or  
11 shotgun with a barrel length of less than eighteen inches, or any firearm  
12 that is made from a rifle or shotgun and that, as modified, has an overall  
13 length of less than twenty-six inches.

14          (v) An instrument, including a nunchaku, that consists of two or more  
15 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,  
16 wire or chain, in the design of a weapon used in connection with the practice  
17 of a system of self-defense.

18          (vi) A breakable container that contains a flammable liquid with a  
19 flash point of one hundred fifty degrees Fahrenheit or less and that has a  
20 wick or similar device capable of being ignited.

21          (vii) A chemical or combination of chemicals, compounds or materials,  
22 including dry ice, that is possessed or manufactured for the purpose of  
23 generating a gas to cause a mechanical failure; rupture or bursting or an  
24 explosion or detonation of the chemical or combination of chemicals,  
25 compounds or materials.

26          (viii) An improvised explosive device.

27          (ix) Any combination of parts or materials that is designed and  
28 intended for use in making or converting a device into an item set forth in  
29 item (i), (vi) or (viii) of this subdivision.

30          (b) Does not include:

31          (i) Any fireworks that are imported, distributed or used in compliance  
32 with state laws or local ordinances.

33          (ii) Any propellant, propellant actuated devices or propellant  
34 actuated industrial tools that are manufactured, imported or distributed for  
35 their intended purposes.

36          (iii) A device that is commercially manufactured primarily for the  
37 purpose of illumination.

1           9. "Trafficking" means to sell, transfer, distribute, dispense or  
2 otherwise dispose of a weapon or explosive to another person, or to buy,  
3 receive, possess or obtain control of a weapon or explosive, with the intent  
4 to sell, transfer, distribute, dispense or otherwise dispose of the weapon or  
5 explosive to another person.

6           B. The items set forth in subsection A, paragraph 8, subdivision (a),  
7 items (i), (ii), (iii) and (iv) of this section do not include any firearms  
8 or devices that are ~~registered in the national firearms registry and transfer~~  
9 ~~records of the United States treasury department or any firearm that has been~~  
10 ~~classified as a curio or relic by the United States treasury department~~  
11 POSSESSED, MANUFACTURED OR TRANSFERRED IN COMPLIANCE WITH FEDERAL LAW."

12 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH  
CHAIRMAN

2446JUDICIARY  
02/10/2016  
11:41 AM  
H: SP/rca

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

**ROLL CALL VOTE**

COMMITTEE ON \_\_\_\_\_ JUDICIARY \_\_\_\_\_ BILL NO. HB 2446

DATE February 10, 2016 MOTION: depose

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale					✓
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	1	0	1

*Jan Melleraux*  
 COMMITTEE SECRETARY

APPROVED:  
  
 EDDIE FARNSWORTH, Chairman  
 SONNY BORRELLI, Vice-Chairman

ATTACHMEN 1

**ARIZONA STATE LEGISLATURE**  
Fifty-second Legislature - Second Regular Session

**COMMITTEE ATTENDANCE RECORD**

COMMITTEE ON JUDICIARY

CHAIRMAN: Edwin W. Farnsworth VICE-CHAIRMAN: Sonny Borrelli

DATE	1/20/16	1/27/16	2/3/16	2/10/16	1/16
CONVENED	10:06 <sup>am</sup>	10:02 <sup>am</sup>	10:10 <sup>am</sup>	9:37 <sup>am</sup>	m
RECESSED					
RECONVENED					
ADJOURNED	10:53 <sup>am</sup>	10:36 <sup>am</sup>	10:54 <sup>am</sup>	11:36 <sup>am</sup>	
MEMBERS					
Mr. Friese	✓	✓	✓	✓	
Mr. Hale	✓	✓	✓	exc	
Mr. Kern	✓	✓	✓	✓	
Mr. Mesnard	✓	✓	✓	✓	
Mr. Borrelli, Vice-Chairman	✓	✓	✓	✓	
Mr. Farnsworth E, Chairman	✓	✓	✓	✓	

√ Present      --- Absent      exc Excused