

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – Second Regular Session

**COMMITTEE ON JUDICIARY**

Minutes of Meeting  
Thursday, January 26, 2012  
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:01 a.m. and attendance was noted by the secretary.

**Members Present**

Mr. Ash  
Mr. Chabin  
Mrs. Goodale

Mr. Hale  
Mr. Harper  
Mrs. Tovar

Mr. Vogt  
Mr. Smith D, Vice-Chairman  
Mr. Farnsworth, Chairman

**Members Absent**

None

**Committee Action**

HB2218 - DP (9-0-0-0)  
HB2241 - DPA (9-0-0-0)  
HB2282 - DPA (9-0-0-0)  
HB2356 - DP (9-0-0-0)  
HB2384 - DP (7-0-0-2)  
HB2385 - HELD

HB2386 - DPA (9-0-0-0)  
HB2433 - DP (9-0-0-0)  
HB2550 - DPA (7-1-0-1)  
HB2555 - DP (9-0-0-0)  
HB2559 - DP (9-0-0-0)

**CONSIDERATION OF BILLS:**

**HB2385 - campaigns; independent expenditures; corporations - HELD**

Chairman Farnsworth announced that HB2385 will be held.

**HB2282 - campaign finance; reporting; contributions - DO PASS AMENDED**

Yijee Jeong, Majority Intern, stated that HB2282 raises the monetary threshold necessary to report a contribution in a campaign finance report by an individual from \$25 to \$40 (Attachment 1). The Farnsworth two-line amendment dated 1/24/12 increases the amount to \$50 (Attachment 2).

Representative Nancy McLain, sponsor, advised that the impetus of the bill came from Mojave County. The bill tries to lessen the burden when reporting contributions. She expressed support of the proposed amendment.

Chairman Farnsworth stated that the Secretary of State's Office has no objection to the bill. They believe it reflects the cost of doing business. Representative McLain agreed. She said it just keeps up with inflation.

Vice-Chairman Smith announced the names of those who signed up in support of HB2282 but did not speak:

Nicholas Dranias, Goldwater Institute

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2282 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that HB2282 do pass.**

**Vice-Chairman Smith moved that the Farnsworth two-line amendment dated 1/24/12 be adopted (Attachment 2). The motion carried.**

**Vice-Chairman Smith moved that HB2282 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 3).**

### **HB2356 - drugs; definition - DO PASS**

Yijee Jeong, Majority Intern, explained that HB2356 is an emergency measure that expands the definition of *dangerous drugs* to include specific chemical compounds that compose "bath salts" (Attachment 4). The bill expands the definition of *schedule IV* drugs to include seven chemical compounds that compose bath salts.

Representative Karen Fann, sponsor, advised that bath salts are a lab-created synthetic drug now readily available at convenience stores and online. Packages are marked "not for human consumption" and are sold under pleasant-sounding names for \$25 to \$50, or more. Interviews with drug offenders indicate that the effects of bath salts are the same as the effects for methamphetamines: hallucinations, extreme anger and uncontrollable physical anxiety. Bath salts are banned in 28 states but remain legal in Arizona.

In response to Mr. Chabin, Representative Fann advised that a Senate bill has been introduced with the Pharmacy Board that identifies many of the synthetic compounds that are making up new drugs being produced; if any combination of these synthetic drugs comes up, it will automatically be illegal. The Senate bill will stand alone because it encompasses much more than the bath salt issue.

Monica Wipf, representing self, testified in support of HB2356. She advised that she owns two recovery homes in Prescott and has seen families devastated by the death of loved ones from the use of this drug, the destruction of families dealing with the use of this drug, and the after effects of this drug, which include severe mental disorder characterized by deterioration of normal

intellectual and social functioning, and by partial or complete withdrawal from reality. She opined that this legislation should target manufacturers as well as store owners. She maintained that bath salts need to be removed from shelves as soon as possible

Vice-Chairman Smith announced the names of those who signed up in support of HB2356 but did not speak:

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office  
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
Jen Sweeney, Government Affairs Director, Arizona Association of Counties  
Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns  
Jeff Gray, Legislative Liaison, Arizona Pharmacy Alliance

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2356 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that HB2356 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 5)**

**HB2218 - department of juvenile corrections; continuation - DO PASS**

MJ Bildner, Majority Assistant Research Analyst, said that HB2218 continues the Arizona Department of Juvenile Corrections (ADJC) for 10 years (Attachment 6). The bill contains a retroactive date of July 1, 2012.

Charles Flanagan, Director, Arizona Department of Juvenile Corrections (ADJC), expressed support of HB2218. He is thankful that after two one-year extensions, the Governor and the Committee of Reference have supported extending the agency for a full 10 years. The Department has been instrumental in reducing operating costs and has improved outcomes, focusing on the direct provision of services.

Vice-Chairman Smith announced the names of those who signed up in support of HB2218 but did not speak:

Luis Ebratt, President, Arizona Probation Officers Association, Arizona Conference of Police and Sheriffs  
James Mann, Arizona Fraternal Order of Police  
Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Don Isaacson, Arizona Fraternal Order of Police  
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office  
Donna Hamm, Executive Director, Middle Ground Prison Reform  
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
Beth Rosenberg, Lobbyist, Children's Action Alliance

**Vice-Chairman Smith moved that HB2218 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 7).**

**HB2559 - victims' rights; courtroom posting - DO PASS**

MJ Bildner, Majority Assistant Research Analyst, related that HB2559 makes changes to the requirement of notifying victims of their rights before court proceedings (Attachment 8). The bill requires the victims' rights statement to be posted in each superior and limited jurisdiction court and read out loud by the judge at the daily commencement of the regular criminal docket.

Mr. Vogt, sponsor, stated that HB2559 requires the posting of the victims' rights statement outside every superior and limited jurisdiction court as well as having it read out loud at the beginning of every docket.

Art Harding, Legislative Affairs Director, Office of the Attorney General (AG), expressed support of HB2559. He introduced Dan Levey, Office of Victim Services.

Dan Levey, Office of Victim Services, Attorney General's Office (AG), responded to questions. He related that there are victims' advocates throughout the criminal justice system. This legislation advises victims of their rights in court and is motivated by a court decision that expanded the victims' rights definition to include misdemeanor offenses. The proposal strikes a balance. Currently, the statement is read in superior courts; it will now be read in limited jurisdiction courts and posted outside each court.

Vice-Chairman Smith announced the names of those who signed up in support of HB2559 but did not speak:

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office  
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
Jason Frazier, Mothers Against Drunk Driving (MADD), representing self  
Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2559 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that HB2559 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 9).**

**HB2386 - asbestos related liability; successor corporations - DO PASS AMENDED**

Magdalena Jorquez, Majority Research Analyst, reviewed the provisions of HB2386 which adds a new section of law in the statute governing limitations on actions that would limit liability of cumulative asbestos-related liability of successor corporations and delineates the methods of determining that amount (Attachment 10). The Farnsworth five-line amendment dated 1/24/12 removes those corporations that never manufactured, sold or distributed asbestos products and are liable only as successor corporations (Attachment 11).

Nick Simonetta, Government Affairs Consultant, Crown Cork and Seal, spoke in support of HB2386. The bill makes changes to the corporate successor liability laws to avoid a continuing

anomaly that occurred through the asbestos litigation where there are innocent companies that never manufactured, sold or distributed asbestos products. He advised that in the 1960s, Crown Cork and Seal, a small bottle cap business, merged with another company that had a bottle capping division and an insulation division. At the time of the merger, the insulation division was closed down and was no longer a functioning entity. Seven years later, when the lawsuits began against asbestos manufacturers, Crown Cork and Seal became liable for millions of dollars because of the insulation division of the prior company under the successor laws even though it has never produced asbestos products. He said that similar legislation has passed in 15 other states which have eased the burden on the claim. He related that there is still liability but it is limited.

Mike Rowley, Assistant General Counsel, Crown Cork and Seal, testified in support of HB2386. He advised that he manages the asbestos litigation for Crown Cork and Seal. In response to questions, he related that the company has never manufactured asbestos-related products, a number of other states have worked with the American Legislative Exchange Council (ALEC) on this issue, and that claims exist and will continue to exist; however, liability will be limited by this legislation. He advised that over 300,000 claims have been filed against Crown in this litigation; there are currently about 20 active claims in Arizona.

Mr. Chabin expressed reservations about this proposal because it may eliminate valid claims under existing law. Chairman Farnsworth explained that this legislation will have a narrow application to the few companies that bought assets but never manufactured or distributed asbestos products. He said those companies who engaged in asbestos production will still have liability.

Mr. Hale queried the number of companies that fall within this limited scope. Mr. Rowley said he does not have that information but he has heard that one or two companies might fall under this statute.

Vice-Chairman Smith announced the names of those who signed up in support of HB2386 but did not speak:

Karlene Wenz, Government Affairs Specialist, Liberty Mutual Insurance

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2386 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed in as neutral on HB2386 but did not speak:

Ben Goldstein, Lobbyist, Arizona Trial Lawyers Association

**Vice-Chairman Smith moved that HB2386 do pass.**

**Vice-Chairman Smith moved that the Farnsworth five-line amendment dated 1/24/12 be adopted (Attachment 11). The motion carried.**

**Vice-Chairman Smith moved that HB2386 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 12).**

**HB2241 - statute of limitations; moving violation - DO PASS AMENDED**

Yijee Jeong, Majority Intern, stated that HB2241 increases the statute of limitations for a criminal offense arising from a serious physical injury caused by a moving violation from one year to five years (Attachment 13). The Farnsworth two-line amendment dated 1/24/12 decreases the statute of limitations from the proposed five years to two years (Attachment 14).

Representative Steve Montenegro, sponsor, advised that this proposal was brought to him by the Maricopa County Attorney's Office and closes a loophole in the law. The legislation expands the statute of limitation from one year to two years for a moving traffic violation that causes a serious physical injury or death. This expansion ensures adequate time for law enforcement to conduct a thorough investigation and for prosecutors to determine whether felony charges are appropriate. He related a case in which a small child was killed and no charges were filed against the person responsible for the accident because the statute of limitations had expired.

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office, testified in support of HB2241. In response to questions, she advised that the reason for not charging the person in the case cited above was that there was no felony charge that was appropriate, and by the time the investigation was finished, the one-year statute of limitations was over. Conduct necessary to constitute a felony requires criminal recklessness or criminal negligence. This legislation does not change current law on what constitutes a criminal offense of a moving violation; it expands the statute of limitations by one year.

Vice-Chairman Smith announced the names of those who signed up in support of HB2241 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
Nicole Eades, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2241 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that HB2241 do pass.**

**Vice-Chairman Smith moved that the Farnsworth two-line amendment dated 1/24/12 be adopted (Attachment 14). The motion carried.**

**Vice-Chairman Smith moved that HB2241 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 15).**

**HB2550 - victims' rights; criminal offense; interviews - DO PASS AMENDED**

Magdalena Jorquez, Majority Research Analyst, explained that HB2550 removes the provision that exempts peace officers from the ability to refuse to give an interview as a victim (Attachment 16). The Vogt two-line amendment dated 1/24/12 clarifies that the definition of criminal offense only extends to violations of local criminal ordinances (Attachment 17).

Mr. Vogt, sponsor, related that this legislation codifies in statute a decision made by the Arizona Supreme Court.

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office, in support of HB2550, advised that this legislation conforms the statutes with Arizona case law. It has been the practice since 1996 that police officers who are victims are not subject to a pre-trial interview.

Vice-Chairman Smith stated his understanding that under current law, a police officer can give an interview if he so desires, but can invoke his right not to be interviewed. Ms. Baker agreed.

Vice-Chairman Smith announced the names of those who signed up in support of HB2550 but did not speak:

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2550 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2550 but did not speak:

Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona

**Vice-Chairman Smith moved that HB2550 do pass.**

**Vice-Chairman Smith moved that the Vogt two-line amendment dated 1/24/12 be adopted (Attachment 17). The motion carried.**

**Vice-Chairman Smith moved that HB2550 as amended do pass. The motion carried by a roll call vote of 7-1-0-1 (Attachment 18).**

#### **HB2384 - burglary; trespass; commercial yard; definition - DO PASS**

MJ Bildner, Majority Assistant Research Analyst, said that HB2384 expands the definition of *fenced commercial yard* to include yards that are zoned for business, not just used primarily for business (Attachment 19).

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council, spoke in support of HB2384. She advised that this bill is a result of the Council's disagreement with the court's decision on a burglary that took place at a fenced commercial yard. Because the activity at the commercial yard was not ongoing, the court's interpretation was that the person was not guilty of this charge. To clarify the issue, the Council is proposing that the term "zoned" be added to the definition of fenced commercial yard.

Chairman Farnsworth stated that the court decided that the way the law is currently drafted, it did not apply to commercial yards if they were not doing business at that moment. This legislation addresses that concern.

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

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

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

Seth Apfel, representing self

**Vice-Chairman Smith moved that HB2384 do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 20).**

**HB2555 - sexually violent person; escape; sentence - DO PASS**

Magdalena Jorquez, Majority Research Analyst, stated that HB2555 increases the penalty of escape in the second degree for escapees from the Arizona State Hospital (ASH) to a Class 5 felony for commitments arising from sexually violent offenses (Attachment 21).

Mr. Ash questioned whether a commitment to ASH is a civil or criminal commitment. Ms. Jorquez said she will look into that.

Mr. Vogt, sponsor, stated that HB2555 raises the penalty of escape from ASH from a Class 2 misdemeanor to a Class 5 felony, and only applies to convicted sexually violent persons.

Vice-Chairman Smith expressed concern that this also applies to Rule 11 people who are not mentally able to go to trial.

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office, in support of HB2555, recounted that last year, a violent serial rapist escaped from ASH. Within about 12 hours, law enforcement was able to locate and capture him. During that time, the escapee was able to obtain identification, a cell phone, a rental car and a large butcher knife. After he was arrested, he admitted that he was aware that the penalty for a sexually violent person who escapes is only a Class 2 misdemeanor and carries a maximum of four months in jail. The statute provides that escape from jail is a Class 5 felony; however, the penalty for escape for a person adjudicated a sexually violent person is a Class 2 misdemeanor. This legislation puts this offense on the same par as other forms of escape.

Vice-Chairman Smith announced the names of those who signed up in support of HB2555 but did not speak:

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Chad Heinrich, Government Relations Coordinator, City of Tempe  
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
John Thomas, Arizona Association of Chiefs of Police  
Art Harding, Legislative Affairs Director, Arizona Attorney General's Office

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2555 but did not speak:

Donna Hamm, Executive Director, Middle Ground Prison Reform



Vice-Chairman Smith announced the names of those who signed up as neutral on HB2555 but did not speak:

Colby Bower, Arizona Department of Health Services

**Vice-Chairman Smith moved that HB2555 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 22).**

**HB2433 - bail bond agent lists; solicitation - DO PASS**

MJ Bildner, Majority Assistant Research Analyst, explained that HB2433 makes numerous changes to the requirements governing bail bonds agents lists (Attachment 23). The bill prohibits a private company from soliciting bail bond businesses inside or within 200 feet of any entrance of a court or city jail and classifies the violation as a Class 3 misdemeanor.

John Burns, President, Arizona Bail Bondsmen Association, expressed support for HB2433. He advised that bail bondsmen manage approximately 20,000 defendants in criminal justice proceedings every day. Bail bondsmen have to have constant contact with them and have to chase after them when they do not show up for court to bring them back to custody. The Association has been working for the past three years to overhaul the industry. Currently five bills are going through the process that will make it more fair to the citizens of Arizona, to the “Mom and Pop” bail companies and to the industry.

In response to Mr. Harper’s question about the purpose of the language “200 feet from court or jail,” Mr. Burns answered that there is an issue with someone standing next to a court or jail soliciting business. Mr. Harper said he does not understand why the bill tries to suppress competition. Mr. Vogt commented that there are rules against soliciting business when folks are distressed, such as the rule against lawyers soliciting business. Chairman Farnsworth stated that this is not anti-competitive; it just limits proximity. Mr. Burns pointed out that soliciting language is already in statute and this legislation further clarifies the statute.

Representative David Gowan, sponsor, appeared in support of HB2433.

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2433 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that HB2433 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 24).**

Without objection, the meeting adjourned at 10:42 a.m.

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Joanne Bell, Committee Secretary  
February 1, 2012

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